

House Bill 1148 (COMMITTEE SUBSTITUTE)

By: Representatives Cannon of the 172nd, Dickey of the 134th, Corbett of the 174th, Rhodes of the 124th, Meeks of the 178th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to income tax imposition, rate, computation, exemptions, and credits, so as to revise
3 tax credits for donation of real property for conservation purposes; to revise required filings;
4 to repeal provisions regarding the State Properties Commission; to revise the aggregate
5 amount of tax credits allowed; to extend the date for acceptance of new applications; to
6 repeal penalty provisions; to repeal a definition; to provide for related matters; to provide for
7 an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
11 income tax imposition, rate, computation, exemptions, and credits, is amended by revising
12 Code Section 48-7-29.12, relating to tax credits for donation of real property for conservation
13 purposes, as follows:

14 "48-7-29.12.

15 (a) As used in this Code section, the term:

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- 16 (1) 'Conservation easement' means a nonpossessory interest in real property imposing
17 limitations or affirmative obligations, the purposes of which are consistent with at least
18 two conservation purposes.
- 19 (2) 'Conservation purpose' means any of the following:
- 20 (A) Water quality protection for wetlands, rivers, streams, or lakes;
 - 21 (B) Protection of wildlife habitat consistent with state wildlife conservation policies;
 - 22 (C) Protection of outdoor recreation consistent with state outdoor recreation policies;
 - 23 (D) Protection of prime agricultural or forestry lands; and
 - 24 (E) Protection of cultural sites, heritage corridors, or archeological and historic
25 resources.
- 26 (3) 'Donated property' means the real property of which a qualified donation is made
27 pursuant to this Code section.
- 28 (4) 'Eligible donor' means any person who owns an interest in a qualified donation.
- 29 (5) 'Fair market value' means the value of the donated property as determined pursuant
30 to subsections ~~(c.1)~~ (d) and ~~(c.2)~~ (e) of this Code section.
- 31 (6) 'Qualified donation' means the fee simple conveyance to the state; a county, a
32 municipality, or a consolidated government of this state; the federal government; or a
33 bona fide charitable nonprofit organization qualified under the Internal Revenue Code
34 and, beginning on January 1, 2014, accredited by the Land Trust Accreditation
35 Commission of 100 percent of all right, title, and interest in the entire parcel of donated
36 real property, and the donation is accepted by such state, county, municipality,
37 consolidated government, federal government, or bona fide charitable nonprofit
38 organization for use in a manner consistent with at least two conservation purposes. Such
39 term shall also include the donation to and acceptance by the state; a county, a
40 municipality, or a consolidated government of this state; the federal government; or a
41 bona fide charitable nonprofit organization qualified under the Internal Revenue Code
42 and, beginning on January 1, 2014, accredited by the Land Trust Accreditation

43 Commission of a conservation easement. Any real property which is otherwise required
 44 to be dedicated pursuant to local government regulations or ordinances or to increase
 45 building density levels shall not be eligible as a qualified donation under this Code
 46 section. Any real property which is used for or associated with the playing of golf or is
 47 planned to be so used or associated shall not be eligible as a qualified donation under this
 48 Code section.

49 (7) 'Related person' ~~has the meaning provided by~~ shall have the same meaning as set
 50 forth in Code Section 48-7-28.3.

51 (8) 'Substantial valuation misstatement' means a valuation such that the claimed value
 52 of any property on the appraisal as submitted to the ~~State Properties Commission~~
 53 Department of Natural Resources is 150 percent or more of the amount determined to be
 54 the correct amount of such valuation ~~pursuant to subsections (c.1) and (c.2) of this Code~~
 55 section by the Department of Natural Resources.

56 (b)(1) A taxpayer shall be allowed a state income tax credit against the tax imposed by
 57 Code Section 48-7-20 or 48-7-21 for each qualified donation under this Code section.

58 (2) Except as otherwise provided in paragraph (3) of this subsection and in
 59 subsection ~~(d)~~ (f) of this Code section, such credit shall be limited to an amount not to
 60 exceed the lesser of ~~\$500,000.00, 25 percent~~ \$1 million, 50 percent of the fair market
 61 value of the donated real property as fair market value is established for the year in which
 62 the donation occurred, or ~~25~~ 50 percent of the difference between the fair market value
 63 and the amount paid to the donor if the donation is effected by a sale of property for less
 64 than fair market value as established for the year in which the donation occurred.

65 (3) Except as otherwise provided in subsection ~~(d)~~ (f) of this Code section, in the case
 66 of a taxpayer whose net income is determined under Code Section 48-7-23, the aggregate
 67 total credit allowed to all partners in a partnership shall be limited to an amount not to
 68 exceed the lesser of ~~\$500,000.00, 25 percent~~ \$1 million, 50 percent of the fair market
 69 value of the donated real property as fair market value is established for the year in which

70 the donation occurred, or ~~25~~ 50 percent of the difference between the fair market value
71 and the amount paid to the donor if the donation is effected by a sale of property for less
72 than fair market value as established for the year in which the donation occurred.

73 (c) No tax credit shall be allowed under this Code section unless the taxpayer files with
74 the taxpayer's income tax return ~~a copy of the State Property Commission's determination~~
75 ~~and~~ a copy of a certification issued by the Department of Natural Resources that the
76 donated property is suitable for conservation purposes and meets the following additional
77 requirements, where applicable:

78 (1) Subdivision is prohibited for a donated property of less than 500 acres and limited
79 to one subdivision for a donated property of 500 acres or more;

80 (2) New construction on donated property of structures, roads, impoundments, ditches,
81 dumping, or any other activity that would harm the protected conservation values of such
82 donation is prohibited on such property;

83 (3) New construction on donated property within 150 feet of any perennial or
84 intermittent stream is prohibited;

85 (4) A buffer of at least 100 feet on each side of any perennial streams on donated
86 property which ensures at least 75 percent tree canopy evenly distributed after harvest is
87 maintained and a buffer of at least 50 feet on each side of any intermittent streams on
88 donated property which ensures at least 75 percent tree canopy evenly distributed after
89 harvest is maintained;

90 (5) Timber and agricultural activities undertaken on the donated property are prohibited
91 unless in accordance with best management practices published by the State Forestry
92 Commission or the Soil and Water Conservation Commission, as the case may be;

93 (6) New construction on donated property causing more than 1 percent of such property's
94 total surface area to be covered by impervious surfaces is prohibited;

95 (7) Mining on the property is prohibited; and

96 (8) Planting on the donated property of non-native invasive species listed in Category 1,
97 Category 1 Alert, or Category 2 of the 'List of Non-Native Invasive Plants in Georgia'
98 developed by the Georgia Exotic Pest Council is prohibited.

99 ~~(c.1)~~(d) For each application for certification, the Department of Natural Resources shall
100 require submission of an appraisal of the qualified donation by the taxpayer along with a
101 nonrefundable \$5,000.00 application fee; provided, however, that the nonrefundable
102 application fee for property donated to the state shall be 1 percent of the total value of the
103 donation, unless such donation is being made to qualify the state for a federal or state grant.
104 The appraisal required by this subsection shall be a full narrative appraisal and include:

105 (1) A certification page, as established by the Uniform Standards of Professional
106 Appraisal Practice, signed by the appraiser; and

107 (2) An affidavit signed by the appraiser which includes a statement specifying:

108 (A) The value of the unencumbered property, the total value of the qualified donation
109 in gross, and an accompanying statement identifying the methods used to determine
110 such values;

111 (B) Whether a subdivision analysis was used in the appraisal;

112 (C) Whether the landowner or related persons own any other property, the value of
113 which is increased as a result of the donation; and

114 (D) That the appraiser is certified pursuant to Chapter 39A of Title 43.

115 Appraisals received by the Department of Natural Resources shall be reviewed by the
116 Department of Natural Resources to determine whether the appraisal contains a substantial
117 valuation misstatement. If the Department of Natural Resources determines that an
118 appraisal contains a substantial valuation misstatement, the Department of Natural
119 Resources shall report the appraiser who prepared the appraisal to the Georgia Real Estate
120 Commission for investigation and, if warranted, disciplinary action forwarded to the State
121 Properties Commission for review. The State Properties Commission shall approve the
122 appraisal amount submitted or recommend a lower amount based on its review and inform

123 ~~the Department of Natural Resources of its determination. The State Properties~~
124 ~~Commission shall be authorized to promulgate any rules and regulations necessary to~~
125 ~~administer the provisions of this subsection. Any appraisal deemed to contain a substantial~~
126 ~~valuation misstatement shall be submitted to the Georgia Real Estate Commission for~~
127 ~~further investigation and disciplinary action. Upon receipt of the State Properties~~
128 ~~Commission's determination, the Department of Natural Resources may proceed with the~~
129 ~~certification process.~~

130 ~~(c.2)(e)~~ (e) The Board of Natural Resources shall promulgate any rules and regulations
131 necessary to implement and administer subsections (c) and ~~(c.1)~~ (d) of this Code section.
132 A final determination by the Department of Natural Resources ~~or the State Properties~~
133 ~~Commission~~ shall be subject to review and appeal under Chapter 13 of Title 50, the
134 'Georgia Administrative Procedure Act.'

135 ~~(d)(f)~~(f)(1) In no event shall the total amount of any tax credit under this Code section for
136 a taxable year exceed the taxpayer's income tax liability. In no event shall the total
137 amount of the tax credit allowed to a taxpayer under subsection (b) of this Code section
138 exceed ~~\$250,000.00~~ \$500,000.00 with respect to tax liability determined under Code
139 Section 48-7-20 or ~~\$500,000.00~~ \$1 million with respect to tax liability determined under
140 Code Section 48-7-21. Any unused tax credit shall be allowed to be carried forward to
141 apply to the taxpayer's succeeding five years' tax liability. However, the amount in
142 excess of such annual dollar limits shall not be eligible for carryover to the taxpayer's
143 succeeding years' tax liability nor shall such excess amount be claimed by or reallocated
144 to any other taxpayer. No such tax credit shall be allowed the taxpayer against prior
145 years' tax liability.

146 (2) Only one qualified donation may be made with respect to any real property that was,
147 in the five years prior to donation, within the same tax parcel of record, except that a
148 subsequent donation may be made by a person who is not a related person with respect
149 to any prior eligible donors of any portion of such tax parcel.

150 (3)(A) Beginning on January 1, 2016, and ending on December 31, 2021, the aggregate
151 amount of tax credits allowed under this Code section shall not exceed \$30 million per
152 calendar year. For the period beginning on June 1, 2022, and ending on December 31,
153 2026, the aggregate amount of tax credits allowed under this Code section shall not
154 exceed \$4 million per calendar year. For the period beginning on June 1, 2026, and
155 ending on December 31, 2031, the aggregate amount of tax credits allowed under this
156 Code section shall not exceed \$30 million per calendar year. The Department of
157 Natural Resources shall accept no new applications for the tax credits allowed under
158 this Code section after December 31, ~~2026~~ 2031.

159 (B) Prior to any renewal of the exemption for donations of real property beyond the
160 date authorized by subparagraph (A) of this paragraph, the Department of Natural
161 Resources shall provide a report to the Governor, the President of the Senate, the
162 Speaker of the House of Representatives, and the chairpersons of the House Committee
163 on Ways and Means and the Senate Finance Committee on the activity of the program
164 occurring during the preceding years. The report shall include, but not be limited to:

- 165 (i) The number of applications and the total number of acres donated;
166 (ii) The value of the qualified donations accepted into the program and which two of
167 the five conservation purposes contained in paragraph (2) of subsection (a) of this
168 Code section were the basis for the qualification of the property;
169 (iii) The aggregate amount of income tax credits granted pursuant to this Code
170 section; and
171 (iv) A listing of the direct and indirect benefits to the state due to the donation of land
172 for conservation purposes.

173 ~~(d.1)~~(g) Any tax credits under this Code section earned by a taxpayer in the taxable years
174 beginning on or after January 1, 2013, and previously claimed but not used by such
175 taxpayer against such taxpayer's income tax may be transferred or sold in whole or in part
176 by such taxpayer to another Georgia taxpayer, subject to the following conditions:

177 (1) The transferor may make only a single transfer or sale of tax credits earned in a
178 taxable year; however, the transfer or sale may involve one or more transferees;

179 (2) The transferor shall submit to the department a written notification of any transfer or
180 sale of tax credits within 30 days after the transfer or sale of such tax credits. The
181 notification shall include such transferor's tax credit balance prior to transfer, the
182 remaining balance after transfer, all tax identification numbers for each transferee, the
183 date of transfer, the amount transferred, and any other information required by the
184 department;

185 (3) Failure to comply with this subsection shall result in the disallowance of the tax
186 credit until the taxpayer is in full compliance;

187 (4) Any unused credit may be carried forward to subsequent taxable years provided that
188 the transfer or sale of this tax credit does not extend the time in which such tax credit can
189 be used. The carry-forward period for tax credit that is transferred or sold shall begin on
190 the date on which the tax credit was originally earned; and

191 (5) A transferee shall have only such rights to claim and use the tax credit that were
192 available to the transferor at the time of the transfer. To the extent that such transferor
193 did not have rights to claim and use the tax credit at the time of the transfer, the
194 department shall either disallow the tax credit claimed by the transferee or recapture the
195 tax credit from the transferee. The transferee's recourse is against the transferor.

196 ~~(e)(1) Whenever:~~

197 ~~(A) Any person prepares an appraisal of the value of property and knows, or~~
198 ~~reasonably should have known, that the appraisal would be used in connection with a~~
199 ~~return or a claim for refund claiming a tax credit under this Code section; and~~

200 ~~(B) The claimed value of the property on such appraisal as submitted to the State~~
201 ~~Properties Commission results in a substantial valuation misstatement with respect to~~
202 ~~such property for purposes of claiming a tax credit under this Code section;~~

203 then such person shall pay a penalty in the amount determined under paragraph (2) of this
204 subsection.

205 ~~(2) The amount of the penalty imposed under paragraph (1) of this subsection on any~~
206 ~~person with respect to an appraisal shall be equal to the lesser of:~~

207 ~~(A) The greater of:~~

208 ~~(i) Twenty-five percent of the difference between the amount of the tax credit~~
209 ~~claimed on the taxpayer's return or claim for refund and the amount of the tax credit~~
210 ~~to which the taxpayer is actually entitled, to the extent the difference is attributable~~
211 ~~to the misstatement described in paragraph (1) of this subsection; or~~

212 ~~(ii) Ten thousand dollars; or~~

213 ~~(B) One hundred twenty-five percent of the gross income received by the person~~
214 ~~described in paragraph (1) of this subsection for the preparation of the appraisal.~~

215 ~~(3) No penalty shall be imposed under paragraph (1) of this subsection if the person~~
216 ~~establishes to the satisfaction of the commissioner that the value established in the~~
217 ~~appraisal was more likely than not the proper value.~~

218 ~~(4) Except as otherwise provided, the penalty provided by this subsection shall be in~~
219 ~~addition to any other penalties provided by law. The amount of any penalty under this~~
220 ~~subsection shall be assessed within three years after the return or claim for refund with~~
221 ~~respect to which the penalty is assessed was filed, and no proceeding in court without~~
222 ~~assessment for the collection of such penalty shall be begun after the expiration of such~~
223 ~~period. Any claim for refund of an overpayment of the penalty assessed under this~~
224 ~~subsection shall be filed within three years from the time the penalty was paid.~~

225 ~~(f)(h)~~ No credit shall be allowed under this Code section with respect to any amount
226 deducted from taxable net income by the taxpayer as a charitable contribution.

227 ~~(g)(i)~~ The commissioner shall promulgate any rules and regulations necessary to
228 implement and administer this Code section."

229 **SECTION 2.**

230 This Act shall become effective upon its approval by the Governor or upon its becoming law
231 without such approval.

232 **SECTION 3.**

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