

House Bill 238 (AS PASSED HOUSE AND SENATE)

By: Representatives Hatchett of the 150th, Abrams of the 89th, England of the 116th, LaRiccia of the 169th, Epps of the 144th, and others

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 provide for
3 an expanded definition of family farm; to provide for an exception or limitation to a breach
4 of the covenants for use of the property for solar power generation or for farm labor housing;
5 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
6 for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 1 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to
10 general provisions regarding ad valorem taxation of property, is amended by revising
11 subparagraph (a)(1)(C) and subsection (p) of Code Section 48-5-7.4, relating to bona fide
12 conservation use property, as follows:

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

- 15 (i) One or more natural or naturalized citizens;
- 16 (ii) An estate of which the devisees or heirs are one or more natural or naturalized
17 citizens;
- 18 (iii) A trust of which the beneficiaries are one or more natural or naturalized citizens;
- 19 (iv) A family owned farm entity, such as a family corporation, a family partnership,
20 a family general partnership, a family limited partnership, a family limited
21 corporation, or a family limited liability company, all of the interest of which is
22 owned by one or more natural or naturalized citizens related to each other by blood
23 or marriage within the fourth degree of civil reckoning, except that, solely with
24 respect to a family limited partnership, a corporation, limited partnership, limited
25 corporation, or limited liability company may serve as a general partner of the family
26 limited partnership and hold no more than a 5 percent interest in such family limited

27 partnership, an estate of which the devisees or heirs are one or more natural or
 28 naturalized citizens, ~~or~~ a trust of which the beneficiaries are one or more natural or
 29 naturalized citizens, or an entity created by the merger or consolidation of two or
 30 more entities which independently qualify as a family owned farm entity, and which
 31 family owned farm entity derived 80 percent or more of its gross income from bona
 32 fide conservation uses, including earnings on investments directly related to past or
 33 future bona fide conservation uses, within this state within the year immediately
 34 preceding the year in which eligibility is sought; provided, however, that in the case
 35 of a newly formed family farm entity, an estimate of the income of such entity may
 36 be used to determine its eligibility;

37 (v) A bona fide nonprofit conservation organization designated under Section
 38 501(c)(3) of the Internal Revenue Code;

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

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

43 "(p) The following shall not constitute a breach of a covenant:

44 (1) Mineral exploration of the property subject to the covenant or the leasing of the
 45 property subject to the covenant for purposes of mineral exploration if the primary use
 46 of the property continues to be the good faith production from or on the land of
 47 agricultural products;

48 (2) Allowing all or part of the property subject to the covenant to lie fallow or idle for
 49 purposes of any land conservation program, for purposes of any federal agricultural
 50 assistance program, or for other agricultural management purposes;

51 (3) Allowing all or part of the property subject to the covenant to lie fallow or idle due
 52 to economic or financial hardship if the owner notifies the board of tax assessors on or
 53 before the last day for filing a tax return in the county where the land lying fallow or idle
 54 is located and if such owner does not allow the land to lie fallow or idle for more than
 55 two years of any five-year period;

56 (4)(A) Any property which is subject to a covenant for bona fide conservation use
 57 being transferred to a place of religious worship or burial or an institution of purely
 58 public charity if such place or institution is qualified to receive the exemption from ad
 59 valorem taxation provided for under subsection (a) of Code Section 48-5-41. No
 60 person shall be entitled to transfer more than 25 acres of such person's property in the
 61 aggregate under this paragraph.

62 (B) Any property transferred under subparagraph (A) of this paragraph shall not be
 63 used by the transferee for any purpose other than for a purpose which would entitle

- 64 such property to the applicable exemption from ad valorem taxation provided for under
 65 subsection (a) of Code Section 48-5-41 or subsequently transferred until the expiration
 66 of the term of the covenant period. Any such use or transfer shall constitute a breach
 67 of the covenant;
- 68 (5) Leasing a portion of the property subject to the covenant, but in no event more than
 69 six acres, for the purpose of placing thereon a cellular telephone transmission tower. Any
 70 such portion of such property shall cease to be subject to the covenant as of the date of
 71 execution of such lease and shall be subject to ad valorem taxation at fair market value;
- 72 (6) Allowing all or part of the property subject to the covenant on which a corn crop is
 73 grown to be used for the purpose of constructing and operating a maze so long as the
 74 remainder of such corn crop is harvested;
- 75 (7)(A) Allowing all or part of the property subject to the covenant to be used for
 76 agritourism purposes.
- 77 (B) As used in this paragraph, the term 'agritourism' means charging admission for
 78 persons to visit, view, or participate in the operation of a farm or dairy or production
 79 of farm or dairy products for entertainment or educational purposes or selling farm or
 80 dairy products to persons who visit such farm or dairy;
- 81 (8) Allowing all or part of the property which has been subject to a covenant for at least
 82 one year to be used as a site for farm weddings;
- 83 (9) Allowing all or part of the property which has been subject to a covenant for at least
 84 one year to be used to host not for profit equestrian performance events to which
 85 spectator admission is not contingent upon an admission fee but which may charge an
 86 entry fee from each participant; ~~or~~
- 87 (10) Allowing all or part of the property subject to the covenant to be used to host a not
 88 for profit rodeo event to which spectator admission and participant entry fees are charged
 89 in an amount that in aggregate does not exceed the cost of hosting such event;
- 90 (11)(A) Allowing part of the property subject to the covenant to be used for solar
 91 generation of energy and conversion of such energy into heat or electricity, and the sale
 92 of the same in accordance with applicable law.
- 93 (B) The provisions of subparagraph (A) of this paragraph shall not allow the portion
 94 of the property on which such solar energy generating equipment is located, as depicted
 95 by a boundary survey prepared by a licensed surveyor, and which is subject to an
 96 existing covenant to remain in the covenant. Such property shall be removed from the
 97 existing covenant at the time of the installation of the solar energy generating
 98 equipment and shall be subject to the penalty for breach of the covenant contained in
 99 subsection (q) of this Code section and shall be subject to ad valorem taxation at fair
 100 market value; or

101 (12)(A) Allowing part of the property subject to the covenant to be used for farm labor
 102 housing. As used in this paragraph, the term 'farm labor housing' means all buildings
 103 or structures used as living quarters when such housing is provided free of charge to
 104 workers who provide labor on agricultural property.
 105 (B) The provisions of subparagraph (A) of this paragraph shall not allow the portion
 106 of the property on which such farm labor housing is located and which is subject to an
 107 existing covenant to remain in the covenant. Such property shall be removed from the
 108 existing covenant at the time construction of the farm labor housing begins and shall
 109 be subject to ad valorem taxation at fair market value."

110 **SECTION 2.**

111 Said article is further amended by revising subsection (q) of Code Section 48-5-7.7, relating
 112 to the forest land protection act, as follows:

113 "(q) The following shall not constitute a breach of a covenant:

114 (1) Mineral exploration of the property subject to the covenant or the leasing of the
 115 property subject to the covenant for purposes of mineral exploration if the primary use
 116 of the property continues to be the good faith production from or on the land of timber;

117 (2) Allowing all or part of the property subject to the covenant to lie fallow or idle for
 118 purposes of any forestry conservation program, for purposes of any federal agricultural
 119 assistance program, or for other agricultural management purposes;

120 (3) Allowing all or part of the property subject to the covenant to lie fallow or idle due
 121 to economic or financial hardship if the qualified owner notifies the board of tax assessors
 122 on or before the last day for filing a tax return in the county where the land lying fallow
 123 or idle is located and if such qualified owner does not allow the land to lie fallow or idle
 124 for more than two years of any five-year period;

125 (4)(A) Any property which is subject to a covenant for forest land conservation use
 126 being transferred to a place of religious worship or burial or an institution of purely
 127 public charity if such place or institution is qualified to receive the exemption from ad
 128 valorem taxation provided for under subsection (a) of Code Section 48-5-41. No
 129 qualified owner shall be entitled to transfer more than 25 acres of such person's
 130 property in the aggregate under this paragraph.

131 (B) Any property transferred under subparagraph (A) of this paragraph shall not be
 132 used by the transferee for any purpose other than for a purpose which would entitle
 133 such property to the applicable exemption from ad valorem taxation provided for under
 134 subsection (a) of Code Section 48-5-41 or subsequently transferred until the expiration
 135 of the term of the covenant period. Any such use or transfer shall constitute a breach
 136 of the covenant; or

137 (5) Leasing a portion of the property subject to the covenant, but in no event more than
 138 six acres of every unit of 2,000 acres, for the purpose of placing thereon a cellular
 139 telephone transmission tower. Any such portion of such property shall cease to be
 140 subject to the covenant as of the date of execution of such lease and shall be subject to
 141 ad valorem taxation at fair market value;

142 (6)(A) Allowing part of the property subject to the covenant to be used for solar
 143 generation of energy and conversion of such energy into heat or electricity, and the sale
 144 of the same in accordance with applicable law.

145 (B) The provisions of subparagraph (A) of this paragraph shall not allow the portion
 146 of the property on which such solar energy generating equipment is located, as depicted
 147 by a boundary survey prepared by a licensed surveyor, and which is subject to an
 148 existing covenant to remain in the covenant. Such property shall be removed from the
 149 existing covenant at the time of the installation of the solar energy generating
 150 equipment and shall be subject to the penalty for breach of the covenant contained in
 151 subsection (r) of this Code section and shall be subject to ad valorem taxation at fair
 152 market value; or

153 (7)(A) Allowing part of the property subject to the covenant to be used for farm labor
 154 housing. As used in this paragraph, the term 'farm labor housing' means all buildings
 155 or structures used as living quarters when such housing is provided free of charge to
 156 workers who provide labor on agricultural property.

157 (B) The provisions of subparagraph (A) of this paragraph shall not allow the portion
 158 of the property on which such farm labor housing is located and which is subject to an
 159 existing covenant to remain in the covenant. Such property shall be removed from the
 160 existing covenant at the time construction of the farm labor housing begins and shall
 161 be subject to ad valorem taxation at fair market value."

162 **SECTION 3.**

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

165 **SECTION 4.**

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