

Senate Bill 458

By: Senators Wilkinson of the 50th, Gooch of the 51st, Ginn of the 47th, Brass of the 28th and Mullis of the 53rd

AS PASSED

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 conditions upon which family
5 owned farmed entities may elect to discontinue a qualifying use of bona fide conservation
6 use property while incurring a reduced penalty; 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 1 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to
11 general provisions regarding ad valorem taxation of property, is amended by revising
12 subsections (a), (b), (j), (k.1), (l), and (q) of Code Section 48-5-7.4, relating to bona fide
13 conservation use property, as follows:

14 "(a) For purposes of this article, the term 'bona fide conservation use property' means
15 property described in and meeting the requirements of paragraph (1) or (2) of this
16 subsection, as follows:

17 (1) Not more than 2,000 acres of tangible real property of a single person, the primary
18 purpose of which is any good faith production, including but not limited to subsistence
19 farming or commercial production, from or on the land of agricultural products or timber,
20 subject to the following qualifications:

21 (A) Such property includes the value of tangible property permanently affixed to the
22 real property which is directly connected to such owner's production of agricultural
23 products or timber and which is devoted to the storage and processing of such
24 agricultural products or timber from or on such real property;

25 (A.1) In the application of the limitation contained in the introductory language of this
26 paragraph, the following rules shall apply to determine beneficial interests in bona fide

27 conservation use property held in a family owned farm entity as described in division
28 (1)(C)(iv) of this subsection:

29 (i) A person who owns an interest in a family owned farm entity as described in
30 division (1)(C)(iv) of this subsection shall be considered to own only the percent of
31 the bona fide conservation use property held by such family owned farm entity that
32 is equal to the percent interest owned by such person in such family owned farm
33 entity; and

34 (ii) A person who owns an interest in a family owned farm entity as described in
35 division (1)(C)(iv) of this subsection may elect to allocate the lesser of any unused
36 portion of such person's 2,000 acre limitation or the product of such person's percent
37 interest in the family owned farm entity times the total number of acres owned by the
38 family owned farm entity subject to such bona fide conservation use assessment, with
39 the result that the family owned farm entity may receive bona fide conservation use
40 assessment on more than 2,000 acres;

41 (B) Such property excludes the entire value of any residence and its underlying
42 property; as used in this subparagraph, the term 'underlying property' means the
43 minimum lot size required for residential construction by local zoning ordinances or
44 two acres, whichever is less. The board of tax assessors shall not require a recorded
45 plat or survey to set the boundaries of the underlying property. This provision for
46 excluding the underlying property of a residence from eligibility in the conservation use
47 covenant shall only apply to property that is first made subject to a covenant or is
48 subject to the renewal of a previous covenant on or after May 1, 2012;

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

51 (i) One or more natural or naturalized citizens;

52 (ii) An estate of which the devisees or heirs are one or more natural or naturalized
53 citizens;

54 (iii) A trust of which the beneficiaries are one or more natural or naturalized citizens;

55 (iv) A family owned farm entity, such as a family corporation, a family partnership,
56 a family general partnership, a family limited partnership, a family limited
57 corporation, or a family limited liability company, all of the interest of which is
58 owned by one or more natural or naturalized citizens related to each other by blood
59 or marriage within the fourth degree of civil reckoning, except that, solely with
60 respect to a family limited partnership, a corporation, limited partnership, limited
61 corporation, or limited liability company may serve as a general partner of the family
62 limited partnership and hold no more than a 5 percent interest in such family limited
63 partnership, an estate of which the devisees or heirs are one or more natural or

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

73 (v) A bona fide nonprofit ~~conservation~~ organization designated under Section
 74 501(c)(3) of the Internal Revenue Code;

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

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

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

81 (i) The nature of the terrain;

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

83 (iii) The past usage of the land;

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

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

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

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

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

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

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

98 (F) The primary purpose described in this paragraph includes land conservation and
 99 ecological forest management in which commercial production of wood and wood fiber

100 products may be undertaken primarily for conservation and restoration purposes rather
101 than financial gain; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

173 Prior to a denial of eligibility under this paragraph, the tax assessor shall conduct and
 174 provide proof of a visual, on-site inspection of the property. Reasonable notice shall
 175 be provided to the property owner before being allowed a visual, on-site inspection of
 176 the property by the tax assessor;

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

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

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

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

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

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

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

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

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

245 (4) For the purposes of this Code section, any final determination on appeal that causes
246 an increase in taxes and creates an additional billing shall be paid to the tax commissioner

247 as any other tax due. After the tax bill notice has been mailed out, the taxpayer shall be
 248 afforded 60 days from the date of the postmark to make full payment of the adjusted bill.
 249 Once the 60 day payment period has expired, the bill shall be considered past due and
 250 interest shall accrue from the original billing due date as specified in Code Section
 251 48-2-40 without limit until the bill is paid in full. Once past due, all other fees, penalties,
 252 and late and collection notices shall apply as prescribed in this chapter for the collection
 253 of delinquent taxes.

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

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

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

283 the bill is paid in full. Once past due, all other fees, penalties, and late and collection
 284 notices shall apply as prescribed in this chapter for the collection of delinquent taxes."

285 "(q) In the following cases, the penalty specified by subsection (l) of this Code section
 286 shall not apply and the penalty imposed shall be the amount by which current use
 287 assessment has reduced taxes otherwise due for the year in which the covenant is breached,
 288 such penalty to bear interest at the rate specified in Code Section 48-2-40 from the date of
 289 the breach:

290 (1) Any case in which a covenant is breached solely as a result of the foreclosure of a
 291 deed to secure debt or the property is conveyed to the lienholder without compensation
 292 and in lieu of foreclosure, if:

293 (A) The deed to secure debt was executed as a part of a bona fide commercial loan
 294 transaction in which the grantor of the deed to secure debt received consideration equal
 295 in value to the principal amount of the debt secured by the deed to secure debt;

296 (B) The loan was made by a person or financial institution who or which is regularly
 297 engaged in the business of making loans; and

298 (C) The deed to secure debt was intended by the parties as security for the loan and
 299 was not intended for the purpose of carrying out a transfer which would otherwise be
 300 subject to the penalty specified by subsection (l) of this Code section;

301 (2) Any case in which a covenant is breached solely as a result of a medically
 302 demonstrable illness or disability which renders the owner of the real property physically
 303 unable to continue the property in the qualifying use, provided that the board of tax
 304 assessors shall require satisfactory evidence which clearly demonstrates that the breach
 305 is the result of a medically demonstrable illness or disability;

306 (3) Any case in which a covenant is breached solely as a result of an owner electing to
 307 discontinue the property in its qualifying use, provided such owner has renewed without
 308 an intervening lapse at least once the covenant for bona fide conservation use, has
 309 reached the age of 65 or older, and has kept the property in a qualifying use under the
 310 renewal covenant for at least three years. Such election shall be in writing and shall not
 311 become effective until filed with the county board of tax assessors; ~~or~~

312 (4) Any case in which a covenant is breached solely as a result of an owner electing to
 313 discontinue the property in its qualifying use, provided such owner entered into the
 314 covenant for bona fide conservation use for the first time after reaching the age of 67 and
 315 has either owned the property for at least 15 years or inherited the property and has kept
 316 the property in a qualifying use under the covenant for at least three years. Such election
 317 shall be in writing and shall not become effective until filed with the county board of tax
 318 assessors; or

319 (5) Any case in which a covenant is breached solely as a result of an owner that is a
320 family owned farm entity as described in division (a)(1)(C)(iv) of this Code section
321 electing to discontinue the property in its qualifying use on or after the effective date of
322 this paragraph, provided the owner has renewed at least once, without an intervening
323 lapse, the covenant for bona fide conservation use, has kept the property in a qualifying
324 use under the renewal covenant for at least three years, and any current shareholder,
325 member, or partner of such family owned farm entity has reached the age of 65 and such
326 shareholder, member, or partner held some beneficial interest, directly or indirectly
327 through a family owned farm entity, in the property continuously since the time the
328 covenant immediately preceding the current renewal covenant was entered. Such election
329 shall be in writing and shall not become effective until filed with the county board of tax
330 assessors."

331 **SECTION 2.**

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

333 **SECTION 3.**

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