GEORGIA

DEPARTMENT OF REVENUE

LOCAL GOVERNMENT SERVICES DIVISION

2018

GATO

May 8-10, 2018

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COURT CASES

LEGISLATION

November 1, 2016

In the Court of Appeals of Georgia

A16A1029. BRIDGES et al. v. COLLINS-HOOTEN et al.

MCMILLIAN, Judge.

Eric Bridges appeals the trial court's order disbursing excess tax sale funds in this interpleader action, asserting in related enumerations of error that the trial court erred (1) in ordering the excess funds to be disbursed to the Georgia Department of Revenue and (2) in awarding attorney fees beyond those allowed in an interpleader action. For the reasons set forth below, we affirm in part and reverse in part.

On December 4, 2001, Dougherty County conducted a non-judicial tax sale of the property at 3111 Winterwood Avenue (the "Property") for unpaid taxes. Heartwood 11, Inc. ("Heartwood") purchased the Property at the tax sale, which, after payment of all past due taxes and costs, generated $45,274.54 in excess funds (the "Funds"). On November 26, 2002, Fairbanks Capital Corporation ("FCC") redeemed

the Property from Heartwood, and a quitclaim deed was recorded in Dougherty County identifying FCC as the redeeming party.

Over eleven years later, in January 2014, Denver Collins-Hooten, acting as the tax director of Dougherty County (the "Tax Director"), filed an interpleader action in the Superior Court of Dougherty County and deposited the Funds into the court's registry. The Tax Director named Otis Bridges, Eric Bridges,[1] FCC, and the Georgia Department of Revenue as respondents with a potential interest in the Funds. The trial court granted the Tax Director's motion to serve all respondents by publication, and Eric responded in July 2014, asserting his claim to the Funds. The following month, Eric filed a "Motion to Disburse Proceeds or in the Alternative for Grant of Summary Judgment," noting that he was entitled to the Funds and that no other persons or entities had made any claim to the Funds.

On September 2, 2014, the Tax Director filed a separate motion to disburse, acknowledging that Eric was the only respondent to respond to the interpleader action. In her motion, the Tax Director also included a claim for attorney fees relative

[1] Otis Bridges, who subsequently passed away in May 2005, was the record owner of the Property at the time of the tax sale in December 2001. Eric Bridges is the administrator of Otis Bridges' estate and his sole heir. For the sake of clarity, we will refer to these individuals as Otis and Eric.

to the filing of the interpleader action in the amount of $3,735 and requested a hearing to determine which of the respondents should receive the Funds. On September 10, 2014, the trial court entered an order granting Eric's motion to disburse the Funds, awarding the full amount to Eric, subject only to the Tax Director's filing of a bill of costs.

The Tax Director thereafter filed an emergency motion to set aside the order and halt the disbursement of the Funds on the grounds that the trial court did not allow it a full 30 days to respond to Eric's motion to disburse, which she characterized as a motion for summary judgment. The same day, the Tax Director moved for an extension of time to respond to Eric's motion, as well as for leave to substitute party defendant FCC with Select Portfolio Servicing, Inc. ("SPS").[2] The trial court then entered separate orders halting any disbursement of the Funds, setting aside its previous order awarding the Funds to Eric, and granting the Tax Director's motion to substitute.

[2] It appears from the record that at some point the Tax Director learned that FCC had been acquired by SPS after FCC had already redeemed the Property. Although SPS was served on October 7, 2014, it is undisputed that SPS never responded to the interpleader petition, and SPS is not a party to this appeal.

Following a hearing, the trial court entered an order denying Eric's motion to disburse the Funds and a subsequent order finding that SPS is the entity with a priority interest in the Funds. However, because SPS did not make a claim for the Funds, the trial court ordered the Funds to be disbursed to the Georgia Department of Revenue[3] after payment of attorney fees totaling $8,183.57 to the Tax Director. This appeal followed.

1. In his first two enumerations of error, Eric asserts that the trial court erred in finding that SPS has a priority interest in the Funds. Whether SPS has a priority interest in the Funds under the relevant statutes is a question of law, which we review de novo. See *City of Atlanta v. Hotels.com*, 289 Ga. 323, 325 (1) (710 SE2d 766) (2011).

Under Georgia law, if a property owner fails to pay county property taxes, the county may conduct a sale of the property to satisfy the unpaid taxes. See OCGA § 48-4-1. Following a tax sale, the tax deed vests the purchaser with a defeasible fee interest in the property that continues for a one-year period during which time other interested parties retain a statutory right of redemption. *Land USA, LLC v. Ga. Power*

[3] Pursuant to OCGA § 48-4-5 (c), after five years have elapsed from the tax sale date, the party holding the excess funds is to pay over to the Georgia Department of Revenue any unclaimed excess funds.

Co., 297 Ga. 237, 239 (1) (773 SE2d 236) (2015) (delinquent taxpayer or party holding interest in or lien on property may redeem property by paying to tax sale purchaser the purchase price plus taxes paid and interest). "If the property is redeemed, the tax sale is essentially rescinded and a quitclaim deed is executed by the tax sale purchaser back to the owner of the property at the time of levy and sale." *Nat. Tax Funding, L.P. v. Harpagon Co., LLC*, 277 Ga. 41, 42 (1) (586 SE2d 235) (2003).

And when "a creditor of the original taxpayer redeems the property, the amount paid by the redeeming creditor becomes a first lien on the property. The redeeming creditor then has first priority to repayment – a 'super-lien' for the redemption price – and may proceed to foreclose against the property based upon that lien." *Nat. Tax Funding*, 277 Ga. at 42-43 (1). Other lienholders at the time of the sale that have not been fully paid – through excess funds or otherwise – retain their presale liens on the property. See *DLT List, LLC v. M7VEN Supportive Housing & Dev. Group*, 335 Ga. App. 318, 321 (1) (779 SE2d 436) (2015).

When a tax sale generates additional funds more than those necessary to satisfy the tax lien, OCGA § 48-4-5 (a) governs the payment of excess tax sale proceeds. That statute provides:

> If there are any excess funds after paying taxes, costs, and all expenses of a sale made by the tax commissioner . . . the officer selling the property shall give written notice of such excess funds to the record owner of the property at the time of the tax sale and to the record owner of each security deed affecting the property and to all the other parties having any recorded equity interest or claim in such property at the time of the tax sale. Such notice shall be sent by first-class mail within 30 days after the tax sale. The notice shall contain a description of the land sold, the date sold, the name and address of the tax sale purchaser, the total sale price, and the amount of excess funds collected and held by the tax commissioner, tax collector, sheriff, or other officer. The notice shall state that the excess funds are available for distribution to the owner or owners as their interests appear in the order of priority in which their interests exist.[4]

The Tax Director argued below, and the trial court agreed, that SPS has a priority interest in the Funds, relying on this Court's decision in *Wester v. United Capital Financial of Atlanta, LLC*, 282 Ga. App. 392 (638 SE2d 779) (2006), which held that the interest of the redeeming creditor takes priority over any claims on the property, including the property owner's interest. However, shortly after the trial court entered its order, *Wester* was expressly overruled by *DLT List.* 335 Ga. App. at

[4] The record does not disclose whether the Tax Director or her predecessor had provided the required notice to interested parties within 30 days of the tax sale.

320.[5] In *DLT List*, this Court explained that *Wester* had incorrectly expanded the holding of *Nat. Tax Funding* to mean that the redeeming creditor could both redeem the property and receive excess funds from the tax sale to pay for the priority lien created by the redemption:

> Instead, *Nat. Tax Funding* held that following a tax sale, the holder of a lien has two options – it may either file a claim to collect against proceeds from the sale, *or* it may assert its rights following the tax sale via a statutory claim for redemption, in which case it obtains a first priority lien on the property, which it may then enforce by levy and sale.

(Citation and punctuation omitted.) 335 Ga. App. at 323 (1). Thus, the trial court erred in relying on *Wester* to find that SPS, as the redeeming creditor, had a priority interest in the Funds and in denying Eric's motion to disburse on that basis.

The question then is whether the trial court properly granted the Tax Director's motion to disburse the Funds on grounds now asserted by the Tax Director – that SPS had a separate recorded security interest on the property at the time of the 2001 tax

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[5] We note that our Supreme Court recently granted a writ of certiorari in *DLT List*. See Case No. S16C0646. However, under our Constitution's two-term rule, this Court is required to "dispose of every case at the term for which it is entered on the court's docket for hearing or at the next term." Ga. Const. Art. VI, § IX, ¶ II. Thus, "we are not at liberty to delay the disposition of appeals in anticipation of pending decisions from [our own] Supreme Court." *In the Interest of J. F.*, 338 Ga. App. 15, 18 (789 SE2d 274) (2016).

sale. Based on our review of the record, SPS's purported security interest is only referenced in the quitclaim deed executed upon the redemption sale. The security deed is not in the record nor is there any evidence of the actual amount of the security interest. To the contrary, in support of his motion to disburse the Funds, Eric submitted the affidavit of a title examiner who averred that he examined the real property records for the Property for the period 1981 to 2014 and found that Otis had, over the years, secured payment of borrowed money with several individuals and banks, including NationsCredit,[6] but that each of the respective security deeds had been satisfied of record and that there were no outstanding security deeds under or in his name secured by the Property. Although the Tax Director now argues on appeal that there was insufficient evidence presented to the trial court to support a finding that SPS's security deed was cancelled, at the hearing on the parties' cross motions to disburse, the Tax Director, through counsel, conceded that any outstanding security deeds had been paid even before the Property's several subsequent sales. This argument has therefore been waived. See *Reed v. State*, 294 Ga. 877, 879 (2), n.2 (757 SE2d 84) (2014); *Hollberg v. Spalding County*, 281 Ga. App. 768, 774-75 (2)

[6] The title examiner further explained that NationsCredit appointed FCC as its duly authorized power of attorney for all loans whose servicing was transferred from NationsCredit to FCC in 2001 and recorded the power of attorney on July 8, 2002.

(b) (637 SE2d 163) (2006) ("Admissions of fact, made by a party's counsel during a hearing or trial are regarded as admissions in judicio and are binding on the party.") (citation and punctuation omitted).

Although SPS apparently had an interest in the Property at the time of the tax sale that gave it a statutory right of redemption, it is undisputed that SPS's security deed has now been fully satisfied, and it no longer retains any priority lien on the Property. See *DLT List,* 335 Ga. App. at 321 (1). Accordingly, the trial court erred in finding that SPS is entitled to receipt of the Funds instead of Eric, as the administrator of the original owner's estate.[7] See OCGA § 48-4-5 (b) ("Such excess funds shall be distributed by the superior court to the interested parties, including the owner, as their interests appear and in the order of priority in which their interests exist.").

2. Eric next asserts that the Tax Director was not a disinterested party to this interpleader action because she made a direct claim to at least a portion of the Funds and thus has no standing to recover attorney fees. OCGA § 48-4-5 (b) provides in pertinent part:

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[7] Based on our holding in this Division, we need not address Eric's fifth enumeration of error, in which he asserts that he is entitled to the Funds because SPS defaulted after failing to file an answer or otherwise present its claim following the Tax Director's personal service of the interpleader petition on SPS.

> The tax commissioner, tax collector, sheriff, or other officer may file, when deemed necessary, an interpleader action in superior court for the payment of the amount of such excess funds. . . . The cost of litigation of such an interpleader action, including reasonable attorney's fees, shall be paid from the excess funds upon order of the court.

The record here confirms that the Tax Director not only sought the cost of bringing the interpleader action, but also directly claimed entitlement to a portion of the Funds for "ad valorem taxes that may be either presently due or past due on the subject property." While this assertion was improper,[8] the trial court did not award any portion of the Funds to the Tax Director for this purpose, nor do we find that such an improper allegation invalidates the entire interpleader action. The Tax Director is clearly permitted under Georgia law to otherwise bring an interpleader action regarding excess funds following a tax sale. See OCGA § 48-4-5 (b). Accordingly, this enumeration of error provides no basis for reversal.

3. In the alternative, in his final enumeration of error, Eric maintains that the trial court's award of attorney fees to the Tax Director must be reduced. In her initial

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[8] See *Iglesia Del Dios Vivo Columna Y Apoyo De La Verdad La Luz Del Mundo, Inc. v. Downing*, 321 Ga. App. 778, 781 (742 SE2d 742) (2013) (tax commissioner not authorized to use excess funds to satisfy any outstanding ad valorem taxes accrued on the subject property after the tax sale).

motion to disburse the Funds, the Tax Director asserted a claim for $3,735 in attorney fees. However, after the trial court initially awarded the Funds to Eric – subject to the payment of the attorney fees requested by the Tax Director – the Tax Director continued to actively litigate the matter, including filing an emergency motion to set aside, requesting a hearing, moving to substitute one of the potentially interested parties, and filing an amended interpleader petition before attending and arguing at the hearing on the motion to disburse. At the time the trial court ultimately entered its final order disbursing the Funds, the Tax Director requested and received an order granting attorney fees in the amount of $8,183.57.

Because OCGA § 48-4-5 (b) provides in mandatory language that the trial court "shall" award attorney fees, the award of attorney fees will be affirmed on appeal if there is any evidence to support it. See *Grapefields, Inc. v. Kosby*, 309 Ga. App. 588, 589 (710 SE2d 816) (2011). As explained in Division 2, under Georgia law, a tax commissioner is authorized to file an interpleader action for the payment of the amount of any excess funds available following a tax sale. OCGA § 48-4-5 (b). And the statute authorizing the filing of an interpleader action also provides that "[t]he cost of litigation of such an interpleader action, including reasonable attorney's fees, shall be paid from the excess funds upon order of the court." Id. This statute

does not specifically limit the actions to be taken by a tax commissioner in litigating the action, and the trial court here found the attorney fees submitted by the Tax Director to be reasonable. Based on the record before us, we cannot say that there was no evidence to support the trial court's award of attorney fees to the Tax Director. See *LN West Paces Ferry Assocs., LLC v. McDonald*, 306 Ga. App. 641, 646 (1) (although attorney fees were substantial relative to the damages at issue, moving party presented evidence fees were reasonable in light of amount of time and expense required).

And although Eric argues on appeal that certain time entries showed work unrelated to this action and should not have been included in the trial court's order awarding attorney fees, he failed to object on these specific grounds below. Thus, this argument was waived and presents nothing for review in this appeal. See *Primas v. City of Milledgeville*, 296 Ga. 584, 585 (769 SE2d 326) (2015).

Judgment affirmed in part and reversed in part. Miller, P. J., Ellington, P. J., Phipps, P. J., Dillard, Branch, Mercier and Peterson, JJ., concur. McFadden, J., concurs as to Divisions 1 and 2 and dissents as to Division 3.

A16A1029. BRIDGES et al. v. COLLINS-HOOTEN et al.

MCFADDEN, Judge, concurring in part and dissenting in part.

I concur in Divisions 1 and 2. Because the Tax Director is entitled to reasonable attorney fees only for discharging the limited role of a plaintiff in interpleader, I respectfully dissent from Division 3.

A requirement for a plaintiff to file an interpleader action is that she "must not have or claim any interest in the subject matter." *Almand v. Reese*, 209 Ga. 138, 142 (71 SE2d 223) (1952). Once she is no longer disinterested, she loses the right to require the other parties to interplead. See *Gardner v. Haas, Howell & Dodd*, 178 Ga. 685, 687 (173 SE 863) (1934).

And although OCGA § 48-4-5 allows the trial court to award reasonable attorney fees, in interpleader actions, "[t]he general justification for granting counsel fees is that the stakeholder is helping the parties to a prompt result, and because of the

minimal work required to institute a suit in interpleader, the fund will not be seriously depleted." *Mass. Mut. Life Ins. Co. v. Central Penn Nat. Bank*, 372 FSupp. 1027, 1044 (E.D. Pa. 1974) (punctuation omitted). The crucial factor is that the stakeholder must be disinterested in the outcome. *Midland Nat. Life Ins. Co. v. Emerson*, 121 Ga. App. 427, 428 (a) (174 SE2d 211) (1970) (citations omitted). If the stakeholder is not disinterested, "it is necessary for the court to segregate the costs incurred in performing the 'stakeholder' function and award the plaintiff only those fees." *Mass. Mut.*, 372 FSupp. at 1044.

Here, as the majority acknowledges, the Tax Director was not disinterested. First, as noted in Division 2 of the majority opinion, the Tax Director herself made a direct claim to a portion of the funds. Second, as the majority acknowledges, the Tax Director acted as an advocate, arguing that SPS had a priority interest in the funds. The proper course would have been for the Tax Director to seek dismissal as a party to the action, not to assert her own claims or to advocate on behalf of another. *Cheek v. Savannah Valley Production Credit Assn.*, 244 Ga. 768, 770 (5) (262 SE2d 90) (1979). I would hold that the Tax Director was not entitled to attorney fees for asserting her own direct claim or for acting as an advocate for SPS, vacate the award of attorney fees, and remand for recalculation accordingly.

SECOND DIVISION
MILLER, P. J.,
DOYLE, P. J., and REESE, J.

February 20, 2018

In the Court of Appeals of Georgia

A17A1850. SUNTRUST BANK v. TODD COWAN, AS TAX COMMISSIONER FOR DOUGLAS COUNTY et al.

REESE, Judge.

SunTrust Bank ("SunTrust") appeals the trial court's order disbursing excess tax sale funds in this interpleader action. SunTrust asserts that the trial court erred in finding that J. Michael Vince, LLC ("JMV") had a priority interest in the excess funds and disbursing those funds to JMV. For the reasons set forth, infra, we reverse and remand.

The record shows that on October 12, 2011, SunTrust obtained a security deed in the amount of $246,535.26 on the real property located at 1000 Landon Drive Douglasville ("the Property"), granted by Regina Jordan.[1] On March 3, 2015, Douglas

[1] Regina Jordan is not a party to this appeal.

County conducted a tax sale of the Property. ACS Burton, LLC purchased the Property at the tax sale. On April 1, 2015, the Mirror Lake Community Association, Inc. ("the MLCA") executed and recorded a notice of lien on the Property in the amount of $1,237.19. The record contains a document dated April 14, 2015, appearing to assign the MLCA lien on the Property to JMV.

On April 15, 2015, a redemption quitclaim deed from ACS Burton, LLC and in favor of Regina Jordan was recorded in Douglas County. In June 2015, the Douglas County Tax Commissioner filed an interpleader action in the Superior Court of Douglas County stating that the Property sold for "$165,000, leaving excess funds in the amount of $152,232.58" and deposited the excess funds into the court's registry. Both SunTrust and JMV timely filed answers to the interpleader seeking the excess funds and claiming first priority lienholder status.

The trial court, on October 26, 2015, issued a "Final Order" awarding the Douglas County Tax Commissioner $1,240 in attorney fees and the remaining excess funds totaling $150,992.58 to JMV. The trial court explicitly relied on *Wester v. United Capital Financial of Atlanta,*[2] and *United Capital Financial of Atlanta v.*

[2] 282 Ga. App. 392 (638 SE2d 779) (2006), overruled by *DLT List v. M7VEN Supportive Housing & Dev. Group*, 335 Ga. App. 318, 323 (1) (779 SE2d 436) (2015), aff'd by *DLT List v. M7VEN Supportive Housing & Dev. Group*, 301 Ga. 131,

American Investment Assoc.[3] as controlling legal authority. Just two weeks later, however, this Court unanimously overruled *Wester* and *United Capital* in *DLT List v. M7VEN Supportive*, ("*DLT List I*").[4] This Court held that as to excess tax sale funds, a redeeming creditor can only make a claim for the funds in the amount of the pre-tax sale lien that gave it the right to redeem.[5]

On April 29, 2016, SunTrust filed a motion to set aside the "Final Order," because the bank never received the "entered order." Pursuant to OCGA § 9-11-60 (g), the trial court vacated the "Final Order" on May 12, 2016. SunTrust filed a motion to compel JMV to return the excess funds to the court's registry, and JMV filed a motion to reinstate the "Final Order."

On September 6, 2016, the Supreme Court of Georgia granted a writ of certiorari in *DLT List I* .[6] On September 14, 2016, JMV moved the trial court to stay

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132 (800 SE2d 362) (2017).

[3] 302 Ga. App. 400 (691 SE2d 272) (2010), overruled by *DLT List,* 335 Ga. App. at 323 (1), aff'd by *DLT List*, 301 Ga. at 132.

[4] *DLT List*, 335 Ga. App. 318 (779 SE2d 436) (2015).

[5] *DLT List*, 335 Ga. App. at 323 (1).

[6] See *DLT List v. M7VEN Supportive Housing & Dev. Group*, S16C0646 (September 6, 2016).

the proceedings until the Supreme Court of Georgia ruled on *DLT List I*, acknowledging that "that decision may directly affect the outcome of the instant matter."

The trial court held a hearing to address the three motions. After the hearing, the trial court issued an order, dated September 26, 2016: (1) granting SunTrust's motion to compel payment of the excess funds into the registry of the trial court or post a bond; (2) granting JMV's motion to stay the proceedings until the Supreme Court of Georgia ruled in *DLT List I*; and (3) denying JMV's motion to reinstate the "Final Order."

On January 24, 2017, JMV filed a motion seeking to dismiss the entire case or alternatively reinstate the "Final Order," informing the trial court that it had already spent the excess funds "in the ordinary course [of business] without any information on SunTrust's concerns." The trial court denied the motion to dismiss the action but granted JMV's request to re-enter the "Final Order." This appeal followed.

Whether JMV has a priority interest in the excess funds pursuant to statutory authority is a question of law, which we review de novo.[7] With this guiding principle in mind, we turn now to SunTrust's specific claims of error.

As an initial matter, the Supreme Court of Georgia issued an opinion in *DLT List v. M7VEN Supportive Housing & Dev. Group*, ("*DLT List II*")[8] on May 15, 2017, which affirmed this Court's opinion *DLT List I*, but under a different rationale.[9] Thus, "a redeeming creditor of a tax sale property does not have a priority lien against excess funds arising from that sale."[10]

SunTrust asserts that the trial court erred in finding that JMV had a priority interest in the excess funds. We agree and therefore reverse the judgment and remand this case.

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[7] See *Bridges v. Collins-Hooten*, 339 Ga. App. 756, 758 (1) (792 SE2d 721) (2016).

[8] 301 Ga. 131 (800 SE2d 362) (2017).

[9] *DLT List*, 301 Ga. at 136 (1) (following a tax sale, *Nat. Tax Funding, v. Harpagon Co.*, 277 Ga. 41 (586 SE2d 235) (2003), does not apply to the distribution of excess tax sale funds amongst competing lienholders).

[10] *DLT List*, 301 Ga. at 136 (2) (punctuation omitted).

The Supreme Court of Georgia has declined to "adopt a rule of universal retroactivity in all civil cases."[11] Instead, to determine whether to default to the rule of retroactivity,

> Georgia courts assess three factors: (1) whether the decision in question established a new principle of law either by overruling past precedent or deciding an issue of first impression, the resolution of which was not clearly foreshadowed; (2) whether retroactive application would further or retard the operation of the rule in question; and (3) whether retroactive application would result in substantial inequitable results.[12]

In *DLT List I*, this Court did not create new law; rather, it corrected a judicial misconstruction and misapplication of an existing law. Further, this Court's opinion did not state that the ruling should not be applied retroactively or that it should only be applied in a pure or selective prospective manner.[13]

As for the second *Findley* factor, our Supreme Court addressed the issue of whether the reversal of *Wester* and *United Capital* would "disrupt the law and prove

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[11] *Findley v. Findley*, 280 Ga. 454, 460 (1) (629 SE2d 222) (2006).

[12] *Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt*, 286 Ga. 731, 738 (3) (691 SE2d 218) (2010) (citations omitted).

[13] See *Findley*, 280 Ga. at 460-461 (1).

problematic" to those who relied on those cases.[14] The Court stated that *Wester*, which "extended the lien priority in OCGA § 48-4-43 to the distribution of excess tax sale funds, was decided only ten years ago and with very little analysis. Moreover, the [*Wester*] decision has proven unworkable because of the year-long redemption window in OCGA § 48-4-40."[15]

Finally, applying the decision in *DLT List I* would not result in a substantially inequitable outcome for either party. As shown above, two weeks after the initial Final Order was issued, this Court unanimously overruled *Wester* and *United Capital*, the cases on which the trial court relied. Also, less than a year after the Final Order was initially issued, the Supreme Court granted certiorari in *DLT List I*. After the grant of certiorari, JMV moved the trial court to stay the proceedings, specifically acknowledging that the Supreme Court's decision might affect the outcome of the proceedings.

Consequently, JMV can not show justifiable or "good faith reliance"[16] on *Wester* and *United Capital*. For the same reasons, we find no merit to JMV's claims

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[14] *DLT List II*, 301 Ga. at 135 (2).

[15] Id. (punctuation omitted).

[16] See *Findley*, 280 Ga. at 456 (1), 462 (1).

(1) that it had "vested" rights to the excess funds or (2) that the issue was moot because it had already spent the funds. Therefore, we reverse the Final Order and remand this action to the trial court for further consideration in light of the holdings in *DLT List I and II*.

Judgment reversed and case remanded. Miller, P. J., and Doyle, P. J., concur.

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S16G0646. DLT LIST, LLC et al. v. M7VEN SUPPORTIVE HOUSING & DEVELOPMENT GROUP.

HUNSTEIN, Justice.

In Wester v. United Capital Financial of Atlanta, LLC, 282 Ga. App. 392 (638 SE2d 779) (2006), and again in United Capital Financial of Atlanta v. American Investment Assoc., 302 Ga. App. 400 (691 SE2d 272) (2010), the Court of Appeals held that a creditor who redeems property following a tax sale has first priority to excess funds resulting from that tax sale. The Court of Appeals overruled those decisions in DLT List, LLC v. M7VEN Supportive Housing & Dev. Group, 335 Ga. App. 318 (779 SE2d 436) (2015), concluding that a redeeming creditor has no such priority; we granted certiorari to consider whether a redeeming creditor after a tax sale has a first priority claim on excess tax sale funds. Though we disagree with the rationale employed by the Court of Appeals below, we nevertheless affirm its decision.

The facts are not in dispute. Appellee M7VEN Supportive Housing & Development Group ("M7") failed to pay taxes on two properties ("the

properties") located in Carroll County, and, consequently, Vickie Bearden, Tax Commissioner of Carroll County, conducted a tax sale. The properties were purchased by Appellant DLT List, LLC ("DLT"), for a total of $110,000, and the tax sale resulted in excess funds of approximately $105,000. On June 6, 2014, Bearden notified M7, DLT, and others of excess funds, and, on July 14, 2014, M7 filed a certificate of authorization seeking to receive the excess funds; though there were no other claims made on the funds, Bearden did not release the funds.

In September 2014, Appellee Design Acquisition, LLC ("Design Acquisition") as a lienholder against M7,[1] redeemed the properties from DLT for a total of $132,000, and DLT issued quitclaim deeds of redemption to M7. In October 2014, Design Acquisition filed a declaratory judgment action claiming entitlement to the excess funds, and, in November 2014, Bearden filed

[1] M7 had also failed to pay property taxes on separate property in Fulton County, resulting in the issuance of writs of fieri facias against both M7 and its Fulton County property; those fi. fas., however, were not recorded in Carroll County. See OCGA § 48-2-56 (a) ("liens for all taxes due the state or any county or municipality in the state shall arise as of the time the taxes become due and unpaid and all tax liens shall cover all property in which the taxpayer has any interest from the date the lien arises until such taxes are paid"). In September 2014, Design Acquisition purchased the fi. fas. for $1,395.55.

an equitable interpleader action for the purpose of distributing the excess funds, see OCGA § 48-4-5 (b); the two actions were consolidated. The trial court determined that, because M7 was the only entity to have made a claim for the excess funds or to have had a recorded interest in the properties at the time of the tax sale, Bearden should have timely released the excess funds to M7. DLT and Design Acquisition appealed, arguing that, pursuant to Wester and United Capital, Design Acquisition had first priority to the excess funds as the redeeming creditor. The Court of Appeals, however, overruled United Capital and Wester, concluding that those decisions were an improper expansion of our decision in National Tax Funding v. Harpagon Co., 277 Ga. 41 (586 SE2d 235) (2003); the appellate court applied OCGA § 48-4-5 (a)[2] to the question of excess

[2] OCGA § 48-4-5 (a) provides as follows:

> If there are any excess funds after paying taxes, costs, and all expenses of a sale made by the tax commissioner, tax collector, or sheriff, or other officer holding excess funds, the officer selling the property shall give written notice of such excess funds to the record owner of the property at the time of the tax sale and to the record owner of each security deed affecting the property and to all other parties having any recorded equity interest or claim in such property at the time of the tax sale. Such notice shall be sent by first-class mail within 30 days after the tax sale. The notice shall contain a description of the land sold, the date sold, the name and address of the tax sale purchaser, the total sale price, and the amount of excess

funds and determined that Design Acquisition had no claim to the excess funds because it was not a lienholder at the time of the tax sale. DLT List, 335 Ga. App. at 322.

1. In National Tax Funding, this Court construed various statutes governing tax sales to address the interest acquired by a party obtaining a tax-sale deed to a property, the status of competing tax liens in existence at the time of the tax sale, and the options available to the holder of a competing tax lien. 277 Ga. at 42-45. Regarding the options available to the holder of a competing tax lien following a tax sale, this Court explained that such a lienholder

> may either file a claim to collect against any proceeds from the sale, or it may assert its rights following the tax sale via a statutory claim for redemption, in which case it obtains a *first priority lien* on the property, which it may then enforce by levy and sale.

(Emphasis supplied.) 277 Ga. at 44. Thereafter, in Wester and United Capital, the Court of Appeals reasoned that the first priority lien, as quoted above, applies to excess funds arising out of the tax sale. However, in its decision

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> funds collected and held by the tax commissioner, tax collector, sheriff, or other officer. The notice shall state that the excess funds are available for distribution to the owner or owners as their interests appear in the order of priority in which their interests exist.

below, the Court of Appeals discounted that reasoning and concluded that National Tax Funding does not permit a redeeming creditor to "both redeem the property *and* receive excess funds from the tax sale to pay for the priority lien created by the redemption." DLT List, 335 Ga. App. at 323 (emphasis supplied). This is a misinterpretation of our decision in National Tax Funding.

As an initial matter, National Tax Funding does not control the specific issue presented in this case nor did it control in Wester or United Capital. Instead, National Tax Funding addresses the status of liens following a tax sale and the options of competing lienholders; the opinion makes only a fleeting reference to excess tax sale funds. See id. at 42. Likewise, the options available to competing lienholders following a tax sale as they were discussed in National Tax Funding — i.e., redeeming the property or claiming a portion of the tax sale proceeds — does not control the question of the distribution of excess tax sale funds, and the contrary conclusion reached by the Court of Appeals below was error.

2. The question we must now address is whether a redeeming creditor has a first priority claim on excess tax sale funds. To answer that question, we must delve into the statutory authority governing tax sales and liens.

> Under our well established rules of statutory construction, we
>
> > presume that the General Assembly meant what it said and said what it meant. To that end, we must afford the statutory text its "plain and ordinary meaning," we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would.

(Citations and punctuation omitted.) Deal v. Coleman, 294 Ga. 170, 172-173 (751 SE2d 337) (2013). We "look to the text of the provision in question and its context within the larger legal framework to discern the intent of the legislature in enacting it." Scott v. State, 299 Ga. 568, 571 (788 SE2d 468) (2016). See also OCGA § 1-3-1 (a), (b). Where the statutory text is "clear and unambiguous," we attribute to the statute its plain meaning, and our search for statutory meaning ends. See Deal, 294 Ga. at 173.

Real property sold under an execution issued for the collection of taxes may be redeemed by the payment of the statutorily prescribed redemption price by a defendant in fi. fa. or any person having any right, title, or interest in or lien upon such property. See OCGA § 48-4-40. Redemption places title to the real property back into the hands of the defendant in fi. fa., and "the amount expended by the [redeemer] shall constitute a first lien on the property and . . .

shall be repaid prior to any other claims upon the property." (Emphasis supplied.) OCGA § 48-4-43. Thus, when read together, OCGA §§ 48-4-40 and § 48-4-43 grant a redeeming creditor a first lien on the subject real property in the amount expended to redeem the property that, once recorded, takes priority over any other claims upon the property. Design Acquisition urges us to conclude, as the Court of Appeals did in Wester and United Capital, that the super lien awarded to the redeemer of a tax sale property also gives the redeemer first priority to excess tax sale funds. See OCGA § 48-4-5 (a) (explaining that excess funds are distributed "to the owner or owners as their interests appear in the order of priority in which their interests exist"). We do not find the lien to be so broad.

The super lien created by OCGA § 48-4-43, which is granted specifically to the redeemer of a tax sale property, is in derogation of the common law, see United States ex rel. IRS v. McDermott, 507 U. S. 447 (II) (113 SCt 1526, 123 LE2d 128) (1993) (recognizing the common-law lien principle of "first in time is the first in right" (citation and punctuation omitted), and must be strictly construed, see White v. Aiken, 197 Ga. 29, 33 (28 SE2d 263) (1943) ("Lien laws are to be strictly construed, and one who claims a lien must bring himself

clearly within the law."). See also OCGA § 44-14-320 (a) (establishing tax liens, along with tradesmen and mortgage liens). The plain language of OCGA § 48-4-40 permits the redemption of *real property*, and OCGA § 48-4-43 awards a priority lien to a redeeming creditor that is specific to the *real property* at issue; we are constrained by this language. See OCGA § 48-4-40 (establishing the right to redeem *real* property); OCGA § 48-4-43 (granting redeemer of real property "first lien on *the property*" to be paid "prior to any other claims *upon the property*" (emphasis supplied)). On the other hand, as the parties both recognize, excess funds from a tax sale are *personal* property that is separate and distinct from the real property itself. See Ga. Lien Svcs. v. Barrett, 272 Ga. App. 656 (1) (613 SE2d 180) (2005) (recognizing a distinction between the interest in real property associated with a tax sale and the resulting excess funds); Barrett v. Marathon Inv. Corp., 268 Ga. App. 196 (1) (601 SE2d 516) (2004) (same). Cf. OCGA § 48-1-2 (13) and (19) (recognizing that, as used in Title 48, the definition of "personal property" includes "money"). Thus, the priority lien acquired by a redeeming creditor is exclusive to real property, and the priority lien does not apply to the excess funds.

Amicus curiae contends that the Court of Appeals decision below, and by

extension our decision today, will disrupt the law and prove problematic to those who have relied on Wester and United Capital. Wester, which extended the lien priority in OCGA § 48-4-43 to the distribution of excess tax sale funds, was decided only ten years ago and with very little analysis. Moreover, the Wester decision has proven unworkable because of the year-long redemption window in OCGA § 48-4-40. In Brina Bay Holdings, LLC v. Echols, 314 Ga. App. 242 (723 SE2d 533) (2012), Brina Bay Holdings, LLC, obtained an interest in real property after it had been sold at a tax sale and subsequently redeemed the property; thus, under Wester, Brina Bay had first priority on any excess sale funds. Brina Bay, however, was unable to recover the excess tax sale funds to which it had priority under Wester because, at the time it redeemed the property — which was well within the one-year time frame – the funds had already been distributed to the defendant in fi. fa. in accordance with OCGA § 48-4-5 (a). Brina Bay, 314 Ga. App. at 242.

This case presents another scenario in which the rule in Wester proves unworkable. Here, as the trial court found, M7 was the single claimant to the

excess tax sale funds, and there were no other recorded liens[3] on the property; however, for reasons that are not entirely clear, the tax commissioner did not disburse the funds. It was only months later, after Design Acquisition redeemed the property and filed a declaratory judgment action seeking the funds, that the tax commissioner sought to distribute the funds. The rule as announced in Wester, combined with the year-long redemption period, results in tax officials holding excess funds for at least a year in anticipation that the property *might* be redeemed or, in the event that the funds are paid out in a timely manner, potentially depriving a later-in-time redeeming creditor of a priority lien on excess funds. The bright-line rule announced here avoids such scenarios and is consistent with the plain language of the statutes.

Accordingly, though we disapprove of the rationale of the decision below, we affirm the judgment of the Court of Appeals that a redeeming creditor of a tax sale property does not have a priority lien against excess funds arising from that sale.

Judgment affirmed. Hines, C. J., Melton, P. J., Benham, Nahmias,

[3] We do not speak to the status of the then-existing fi. fas. issued by Fulton County. See OCGA § 48-2-56 (a).

Blackwell, Peterson, and Grant, JJ., and Judge Eric W. Norris, concur. Boggs, J., disqualified.

Decided May 15, 2017.

Certiorari to the Court of Appeals of Georgia — 335 Ga. App. 318.

Clark Law Group, John C. Clark, for appellants.

Smith & Liss, Donald L. Cook, Jr.; Mark A. Thompson, for appellee.

Ayoub & Mansour, John A. B. Ayoub; Giacoma, Schleicher Roberts & Daughdrill, Brian E. Daughdrill; Flower Hein Cheatwood & Williams, Robert P. Hein, amici curiae.

Court of Appeals
of the State of Georgia

ATLANTA, October 18, 2017

The Court of Appeals hereby passes the following order:

A17A0703. CLAYTON COUNTY BOARD OF TAX ASSESSORS v. ALDEASA ATLANTA JOINT VENTURE.

This case involves a dispute regarding the imposition of ad valorem tax by Appellant Clayton County Board of Tax Assessors (the "Board") on the interest held by Appellee Aldeasa Atlanta Joint Venture ("Aldeasa") pursuant to a lease agreement that permitted Aldeasa to operate a retail business at the Hartsfield-Jackson Atlanta International Airport (the "Airport"). Aldeasa contended in the trial court that OCGA § 6-3-21 (1985)[1] is unconstitutional if interpreted to impose an ad valorem tax on usufructs at the Airport, arguing that the statute would violate the Uniformity Clause of the Constitution of Georgia, Ga. Const. of 1983, Art, VII, Sec. I, Par. III, and that the 1983 amendment to OCGA § 6-3-21 violates Ga. Const. of 1983, Art. III, Sec. V, Par. III.

The Superior Court of Clayton County held, inter alia, that

> OCGA § 6-3-21 . . . was never intended to impose [ad valorem] tax on usufructs located at the [A]irport. If OCGA § 6-3-21 were interpreted to authorize such taxes on usufructs, the statute would violate the Georgia Constitution's requirement of uniformity of taxation and would have to be declared unconstitutional. Per the Constitution, uniformity requires

[1] This appeal involves the 2011 and 2012 tax years, such that the 1985 version of the statute applies.

that property in one location must be taxed the same as property in another location. Thus, only taxing usufructs at the [A]irport is a violation of uniformity.

The Board contends on appeal that the trial court erred in finding that OCGA § 6-3-21 (1985) would violate the uniformity clause if it imposed ad valorem tax on Aldeasa's interest at the Airport. Aldeasa contends on appeal that OCGA § 6-3-21 (1985) does not authorize the imposition of ad valorem tax on its interest at the Airport, and again argues that if it does authorize such tax, it is unconstitutional, for the same reasons argued in the trial court. Aldeasa moves this Court to transfer this case to the Supreme Court of Georgia.

Under our Constitution, the Supreme Court has appellate jurisdiction over "all cases in which the constitutionality of a law . . . has been drawn in question." Ga. Const. of 1983, Art. VI, Sec. VI, Par. II (1). Accordingly, this appeal is hereby TRANSFERRED to the Supreme Court for disposition.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, 10/18/2017

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Stephen E. Castlen , *Clerk.*

FOURTH DIVISION
DILLARD, C. J.,
RAY and SELF, JJ.

January 22, 2018

In the Court of Appeals of Georgia

A17A1843. COLEMAN, et al. v. GLYNN COUNTY, GEORGIA.

A17A1844. COLEMAN, et al. v. GLYNN COUNTY, GEORGIA.

A17A1845. COLEMAN, et al. v. GLYNN COUNTY, GEORGIA.

RAY, Judge.

J. Matthew Coleman, IV and Elizabeth Blair Coleman ("the Colemans") filed three class action lawsuits on behalf of themselves and all taxpayers similarly situated seeking refunds for taxes that were overpaid based on Glynn County's incorrect application of a local homestead exemption. On the parties' cross-motions for summary judgment in each case, the trial court entered a consolidated order denying the Colemans' motion and granting summary judgment to Glynn County. In three

related appeals, the Colemans appeal from the trial court's judgment.[1] In Case Nos. A17A1843, A17A1844, and A17A1845, the primary issue on appeal is whether the trial court erred in construing the terms of the homestead exemption. A secondary issue is whether the trial court erred in barring a portion of the asserted claims. These appeals are consolidated for the purposes of review. For the reasons that follow, we affirm in part and reverse in part in each case.

The record shows that in 2000 the Georgia Legislature passed House Bills 1690 and 1691, which were local legislation providing the residents of Glynn County with a homestead exemption from ad valorem property taxes for county and school purposes (hereinafter collectively referred to as the "Act" or the "Exemption"). The Act provides that the amount of the Exemption shall be "equal to the amount by which the current year assessed value of that homestead exceeds the base year assessed value of that homestead." Further, the term "base year" as defined in the Act "means the taxable year immediately preceding the taxable year in which the

[1] The three cases previously came before this Court on Glynn County's appeal from the trial court's order granting class certification in each case. In a consolidated opinion, we affirmed the class certification in each case. See *Glynn County v. Coleman*, 334 Ga. App. 559 (779 SE2d 753) (2015), cert. denied.

exemption under this Act is first granted to the most recent owner of such homestead."

On or about July 21, 2005, the Colemans purchased certain real property in Glynn County known as Tax Parcel Number 04-01187. The Colemans applied for the Exemption on February 1, 2006. Their application was granted in 2006, and the Colemans' homestead exemption was in effect for the 2006 tax year. However, Glynn County used and continues to use 2006, as opposed to 2005, as the base year for calculating the amount of their homestead exemption. The assessed value for the property in 2006 was $133,800, whereas the assessed value of the property in 2005 was $70,006.

On or about November 10, 2011, the Colemans filed a written request with the Glynn County Tax Commissioner, pursuant to OCGA § 48-5-380 (b), for a refund of the taxes that they overpaid in tax years 2008-2010 based on the use of the improper base year in calculating their exemption amount. Glynn County did not respond to their request. Consequently, the Colemans filed their first class action lawsuit against Glynn County on November 20, 2012, seeking a refund of all overpaid ad valorem taxes for tax years 2008-2010, as well as mandamus, declaratory, injunctive, and other equitable relief for the refund of all overpaid ad valorem taxes for tax years

2001-2010. Thereafter, the trial court entered an order certifying four classes, comprised of:

> Glynn County property owners receiving the [ ] Exemption in the calculation of their tax bills in [any year between 2001-2010] and for whom Glynn County used the year in which the [ ] Exemption was first granted as the Base Year rather than the immediately preceding year in calculating the exemption amount under the [ ] Act for property tax bills in [any year between 2001-2010] and for whom the value frozen in the year in which the [ ] Exemption was first granted is greater than the value in the immediately preceding year[.]

The first class is comprised of taxpayers who paid taxes between 2001-2007, which contains separate subclasses for each year. The second, third, and fourth classes are comprised of taxpayers who paid taxes in 2008, 2009, and 2010, respectively.

On or about November 20, 2012, the Colemans filed a written request with the Glynn County Tax Commissioner, pursuant to OCGA § 48-5-380 (b), for a refund of the taxes that they overpaid in tax years 2011-2012 based on the use of the improper base year in calculating their exemption amount. Glynn County did not respond to their request. Consequently, the Colemans filed their second class action lawsuit against Glynn County on November 27, 2013, seeking a refund of all overpaid ad valorem taxes for tax years 2011-2012, as well as mandamus, declaratory, injunctive,

and other equitable relief . The trial court granted class certification in the second lawsuit, defining that class as:

> Glynn County property owners receiving the [ ] Exemption in the calculation of their tax bills in 2011 or 2012 for whom Glynn County used the year in which the [ ] Exemption was first granted as the Base Year rather than the immediately preceding year in calculating the exemption amount under the [ ] Act for property tax bills in 2011 or 2012 and for whom the value frozen in the year in which the [ ] Exemption was first granted is greater than the value in the immediately preceding year.

On July 16, 2014, the Colemans filed their third class action lawsuit against Glynn County, seeking a refund of all overpaid ad valorem taxes for tax year 2013, later amended to include tax years 2014-2016, based on the continued use of the improper base year in calculating their exemption amount. The trial court granted class certification in the third lawsuit, ultimately defining that class as:

> Glynn County property owners receiving the [ ] Exemption in the calculation of their tax bills in 2013, 2014, 2015 or 2016 for whom Glynn County used the year in which the [ ] Exemption was first granted as the Base Year rather than the immediately preceding year in calculating the exemption amount under the [ ] Act for property tax bills in 2013, 2014, 2015 or 2016 and for whom the value frozen in the year

> in which the [ ] Exemption was first granted is greater than the value in the immediately preceding year.

The Colemans and Glynn County filed cross-motions for summary judgment in each case. The primary issue was the proper interpretation of the term "base year" as it is defined in the Act, and a secondary issue was whether the plaintiffs could seek refunds for taxes payed more than three years before the demand for refund was made. After oral argument, the trial court ruled that Glynn County properly applied the Exemption and that the Coleman's base year was properly determined to be 2006, reasoning that "the effective date of [the Colemans'] exemption was January 1, 2007." The trial court further ruled that, even if the base year had been improperly determined under the Act, the Colemans would be barred from seeking a refund of taxes overpaid prior to 2008 and the class members would be barred from seeking a refund of taxes overpaid prior to 2010. Accordingly, the trial court entered a consolidated order denying the Colemans' motion for partial summary judgment and granting summary judgment to Glynn County. The Colemans' appeals ensued.

1. In several related enumerations of error, the Colemans contend that the trial court erred in construing the terms of the Act. We agree.

"Summary judgments enjoy no presumption of correctness on appeal, and an appellate court must satisfy itself de novo that the requirements of OCGA § 9-11-56 (c) have been met." (Citation omitted.) *Ga. Commercial Stores, Inc. v. Forsman*, 342 Ga. App. 542, 543 (803 SE2d 805) (2017). Furthermore, "the interpretation of a statute is a question of law, which is reviewed de novo on appeal. Indeed, when only a question of law is at issue, as here, we owe no deference to the trial court's ruling and apply the 'plain legal error' standard of review." (Punctuation and footnotes omitted.) *Kemp v. Kemp*, 337 Ga. App. 627, 632 (788 SE2d 517) (2016).

When we interpret any statute or act of legislation,

> we necessarily begin our analysis with familiar and binding canons of construction. In considering the meaning of a statute, our charge as an appellate court is to presume that the General Assembly meant what it said and said what it meant. Toward that end, we must afford the statutory text its plain and ordinary meaning, consider the text contextually, read the text in its most natural and reasonable way, as an ordinary speaker of the English language would, and seek to avoid a construction that makes some language mere surplusage. And when the language of a statute is plain and susceptible to only one natural and reasonable construction, courts must construe the statute accordingly.

(Punctuation and footnotes omitted.) Id. at 632-633.

Here, the Act specifically defines the term "base year" as "the taxable year immediately preceding the taxable year in which the exemption under this Act is first granted to the most recent owner of such homestead." The Colemans purchased their property in 2005; in so doing, they were certainly liable for a portion of the taxes in the 2005 tax year. Further, the Colemans applied for and were granted the Exemption in 2006, which was applicable for the 2006 tax year. Under a plain reading of the clear language of the Act, the term "base year" must be construed to mean the taxable year preceding the taxable year in which the homestead exemption was granted to the applicant. As to the Colemans, the correct base year for the purposes of the Exemption is 2005.

In granting summary judgment to Glynn County, the trial court appeared to engraft language onto the Act which would require an applicant for the Exemption to be the owner of the qualifying property on January 1 of the "base year," to apply for the homestead exemption in the "base year," and to maintain their application until the following tax year in order to receive the Exemption. There is simply no reasonable authorization for such an interpretation in this case. Based on the plain language of the Act, the "base year" is merely the taxable year immediately preceding

the taxable year in which the applicant was the owner of the property on January 1 – in other words, the year prior to the year in which the homestead exemption was granted. Accordingly, the trial court's summary judgment with regard to this issue in Case Nos. A17A1843, A17A1844, and A17A1845 must be reversed.

2. The Colemans next contend that the trial court erred: (i) in holding that they are barred from seeking a refund of taxes overpaid prior to 2008; and (ii) in holding that the class members would be barred from seeking a refund of taxes overpaid prior to 2010. We shall address each contention in turn.

As governmental bodies, the counties of this State are entitled to sovereign immunity and, thus, are not subject to suit for any cause of action unless provided for by statute. *McElmurray v. Augusta-Richmond County*, 274 Ga. App. 605, 609-610 (2) (a) (618 SE2d 59) (2005). OCGA § 48-5-380 is the statute under which taxpayers may seek refunds from counties and municipalities. "The statutory authorization to bring an action for a tax refund in superior court against a [county] is an express waiver of sovereign immunity, and the [county's] consent to be sued [for a tax refund] must be strictly construed." (Citations omitted.) *Sawnee Elec. Membership Corp. v. Ga. Dept. of Revenue*, 279 Ga. 22, 23 (2) (608 SE2d 611) (2005).

Under the respective versions of OCGA § 48-5-380 that apply to the class-action lawsuits at issue, a taxpayer may request a refund of illegally and erroneously assessed taxes or overpaid taxes from the county within three years of the payment of such taxes and then file suit if such refund request is denied or not timely addressed within a specified time period. See OCGA § 48-5-380 (b), (c). [2]

(a) *The Colemans* – Because OCGA § 48-5-380 (b) limits taxpayer recovery to payments made within three years of a written claim for refund, Glynn County's sovereign immunity would only be waived for the improper payments made within that three-year window. See *Webb v. Coweta County*, 178 Ga. App. 170, 170 (1), (2) (342 SE2d 345) (1986) (in tax refund action, taxpayer's right to recover is limited to the three-year window prior to the filing of his written claim for refund). As the record shows that the Colemans filed a written request with Glynn County on November 10, 2011, the trial court correctly concluded that the Colemans are barred from recovering any overpaid taxes prior to 2008. [3]

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[2] For the version of OCGA § 48-5-380 in effect when the first and second lawsuits were filed, see Laws 2010, Act 670, § 7-1, eff. Jan. 1, 2011. The current version of OCGA § 48-5-380 was in effect at the time the third lawsuit was filed. See Laws 2014, Act 612, § 5, eff. July 1, 2014.

[3] To be precise, the Colemans would have no claim for any such taxes paid before November 10, 2008.

(b) *The class members* – The filing of the written claim for a refund by the Colemans under OCGA § 48-5-380 (b) also satisfied the class members' precondition for filing suit because the named plaintiffs in a class action lawsuit are generally permitted to act as representatives on behalf of the entire class and it would be untenable to require each class member to file individual written requests for a refund in order to participate in the class action. See *Barnes v. City of Atlanta*, 281 Ga. 256, 257-260 (1) (637 SE2d 4) (2006). However, our Supreme Court has held that it is the combination of the named plaintiffs' satisfaction of the precondition for suit *and* the subsequent filing of the actual lawsuit as a class action that places the governmental body on notice of the nature of the suit, the governing law, and the extent of the class. *Schorr v. Countrywide Homes Loans, Inc.*, 287 Ga. 570, 572-573 (697 SE2d 827) (2010). Thus, it appears that while the Colemans satisfied the precondition for the class members' participation in the lawsuits, it is actually the filing of the class action lawsuits that served as the class members' demand for refunds. To be consistent with the holdings in *Barnes*, supra, and *Schorr*, supra, we must conclude that it is

> the filing of the refund claims in the trial court by [the Colemans] who had exhausted their administrative remedies [that] satisfie[s] the exhaustion requirement on behalf of the [class members]. Therefore, OCGA § 48-5-380 (b) bars the refund claims of the [class] members . .

> . for those taxes that were paid more than three years before the date on which the [Colemans] filed the complaint in this case.

Barnes, supra at 260 (1). As the record shows that the Colemans filed the first class-action lawsuit on November 20, 2012, the class members would only be barred from recovering tax refunds for payments made prior to November 20, 2009. Accordingly, the trial court erred in establishing 2010 as the cut-off point for the class members' claims.

(c) Lastly, the Colemans contend that any refunds for tax payments they and the class members made that fall outside of the three-year window under OCGA § 48-5-380 (b) may nevertheless be recoverable by way of mandamus, equity, injunction, or declaratory relief. We disagree.

"The sovereign immunity of the state and its departments and agencies can only be waived by an Act of the General Assembly *which specifically provides* that sovereign immunity is thereby waived and *the extent of such waiver*." (Emphasis supplied.) Ga. Const. Art. I, Sec. II, Par. IX (e). OCGA § 48-5-380 (b) provides an explicit, limited waiver of sovereign immunity to allow actions for the refund of taxes to those payments which are made within three years of a proper refund demand. The statute does not contain an unlimited waiver for any other action seeking to recover

taxes paid at *any* time outside of the three-year window. As noted earlier, "[t]he statutory authorization to bring an action for a tax refund in superior court against a [county] is an express waiver of sovereign immunity, and the [county's] consent to be sued [for a tax refund] must be strictly construed." (Citations omitted.) *Sawnee Elec. Membership Corp.*, supra at 23 (2). Furthermore, our Supreme Court has held that prior cases finding an exception to sovereign immunity for claims in equity were in error, and that "sovereign immunity is a bar to injunctive relief at common law[.]" *Ga. Dept. of Natural Resources v. Ctr. for a Sustainable Coast, Inc.*, 294 Ga. 593, 596-603 (2) (755 SE2d 184) (2014). And "[u]nder the rationale of *Sustainable Coast*, it appears that, absent a statutory provision affording claimants an express right to seek declaratory relief against [a county], sovereign immunity would bar such claims." (Citations omitted.) *SJN Props., LLC v. Fulton County Bd. of Tax Assessors*, 296 Ga. 793, 802 (2) (b) (iii) (770 SE2d 832) (2015).

Further, in order to obtain mandamus relief, "a claimant must establish that (1) no other adequate legal remedy is available to effectuate the relief sought; and (2) the applicant has a clear legal right to such relief." (Citation and punctuation omitted.) *SJN Properties, LLC*, supra at 800 (2) (b) (ii). Here, neither the Colemans nor the class members have a "clear legal right" to any tax refunds for payments made outside

the three-year window provided in OCGA § 48-5-380 (b). See generally *Webb*, supra at 170 (1), (2). To hold otherwise would render the provisions of OCGA § 48-5-380 (b) meaningless. Furthermore, "mandamus relief applies prospectively only. It will not lie to compel the undoing of acts already done[,] and this is so even though the action taken was clearly illegal." (Citation omitted.) *Atlanta Independent School System v. Lane*, 266 Ga. 657, 660 (6) (469 SE2d 22) (1996) (upholding denial of mandamus relief to taxpayer who sought to compel the repayment of illegally allocated tax payments). Therefore, it follows that the trial court did not err in disposing of the mandamus claim which sought to compel Glynn County to refund the taxes it had received outside of the three-year window set forth in OCGA § 48-5-380 (b).

Case No. A17A1843 affirmed in part and reversed in part; Case No. A17A1844 affirmed in part and reversed in part; and Case No. A17A1845 affirmed in part and reversed in part. Dillard, C. J., and Self, J., concur.

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S17G0091. COLUMBUS BOARD OF TAX ASSESSORS et al. v. THE MEDICAL CENTER HOSPITAL AUTHORITY.

HUNSTEIN, Justice.

In May 2007, The Medical Center Hospital Authority ("Hospital Authority") filed an action against the Columbus Board of Tax Assessors and related parties (together, "the Tax Board") in which it sought a declaration that its leasehold interest in a building located on real property owned by a private entity constituted public property exempt from ad valorem taxation under OCGA § 48-5-41 (a) (1). The superior court granted summary judgment to the Hospital Authority, finding that the Hospital Authority's leasehold interest qualified as "public property," and was thus exempt from ad valorem property taxation. The Tax Board appealed this decision to the Court of Appeals, which affirmed the trial court's grant of summary judgment.[1] See Columbus, Ga. Bd.

[1] The Hospital Authority further alleged that it was tax exempt because it met the requirements as a home for the aged pursuant to OCGA § 48-5-40 (2). The Court of Appeals did not reach this issue on appeal as it affirmed summary judgment on the "public property" exemption. See Columbus, Ga. Bd. of Tax Assessors v. Med.

of Tax Assessors v. Med. Center Hosp. Auth., 338 Ga. App. 302 (788 SE2d 879) (2016).

We granted certiorari to decide whether the Court of Appeals erred in determining that two prior bond validation orders conclusively determined, for purposes of OCGA § 48-5-41 (a) (1) (A), that the property at issue is "public property" exempt from ad valorem taxation. For the reasons that follow, we hold that these orders did not conclusively establish that the Hospital Authority's leasehold interest was "public property" exempt from ad valorem taxes and therefore reverse the Court of Appeals and remand this case for further proceedings.

1. *Factual and Procedural Background*

This is a decade old case that has a rich and detailed factual background and procedural history. We address the pertinent parts of that history below, including the lease agreement, the bond validations, the superior court's grant of summary judgment regarding ad valorem taxes, and the opinion of the Court of Appeals affirming that judgment.

Center Hosp. Auth., 338 Ga. App. 302 (788 SE2d 879) (2016). We did not grant certiorari on this question, and, therefore, we do not review it.

(a) *Creation of Lease Agreement*

On June 1, 2004, Columbus Regional Healthcare System, Inc. ("Columbus Regional"),[2] as the lessor, and the Hospital Authority, as the lessee, entered into a long-term lease agreement. Specifically, the lease stated that the Hospital Authority wanted "to construct, own, and operate" on land owned by Columbus Regional a facility known as Spring Harbor at Green Island, a continuing care retirement center. At the conclusion of the lease term, all improvements would become the absolute property of Columbus Regional, including the Spring Harbor facility. To further the goals of the lease, the Hospital Authority subsequently issued revenue bonds to finance construction of Spring Harbor. At the same time, the Hospital Authority entered into a management agreement with another private entity, a subsidiary of Columbus Regional, to develop, market, and manage the operation of Spring Harbor on behalf of the Hospital Authority. See Columbus, 338 Ga. App. at 302-304.

(b) *Bond Validation Orders*

[2] Columbus Regional is a private non-profit organization.

Later in 2004, the superior court validated the financing of the Hospital Authority's bonds, finding, in pertinent part, "that the purposes for which the Bonds are being issued, as described in the petition and complaint, are in furtherance of the public purposes for which Defendant Authority was established." Following a 2007 bond refinancing, the superior court again was tasked with considering the validity of the revenue bonds, and was specifically "*requested to rule on which entity did in fact build, manage and own[ ] Spring Harbor at Green Island*." In its detailed, 27-page order, the superior court both validated the refinancing of the bonds, and also concluded, in relevant part, that clear and convincing evidence "demonstrate[d] that the [Hospital] Authority ha[d] transferred and delegated [its] rights and duties to a private company." Specifically, the court noted that, though the bond documents stated that Columbus Regional would "have little participation in the Project," the court found it "apparent [that] Columbus Regional ha[d] acquired the site, built Spring Harbor, prepared all legal documents and financial transfers, and [would] own, manage and control Spring Harbor." Indeed, the court found that the Hospital Authority "ha[d] transferred all the bond proceeds, acquisition, construction,

management, and total control of this Project to a private company, Columbus Regional Healthcare System Inc., and/or 'affiliates.'"

Subsequently, the superior court explained that it

> cannot rule as a matter of fact and as a matter of law [that] Spring Harbor is a project which originated with the [Hospital] Authority, or as one which will only benefit the [Hospital] Authority and the public, or that "no person, partnership, association, or corporation shall have any rights hereunder, or that the [Hospital] Authority will 'own' and 'manage' the Spring Harbor at Green Island project."

The court reiterated that "the entire project is owned, managed, and controlled by [a private entity], and once the bonds are paid, the [Hospital] Authority has agreed that [Columbus Regional] will take possession and will own everything on site . . . all property of every kind, real or personal." Nevertheless, as referenced above, the court validated the 2007 bond refinancing, finding that the project itself served a public purpose as contemplated under the Hospital Authorities Law.[3]

(c) *Proceedings Regarding Ad Valorem Taxation*

[3] The trial courts' bond validation rulings were not appealed, and we express no opinion on their merits.

Between the validation of the 2004 and 2007 bonds, the Tax Board sent the Hospital Authority a bill for its Spring Harbor property tax obligation, which included taxes for all improvements made to the facility. The Hospital Authority refused to pay, contending that its property interest in Spring Harbor was exempt from ad valorem property taxation and subsequently filed for declaratory and injunctive relief in Muscogee County Superior Court.

At the request of the trial court, the parties filed cross-motions for summary judgment regarding the taxability of Spring Harbor. Specifically, the Hospital Authority contended, inter alia, that its leasehold interest was exempt from ad valorem taxation pursuant to OCGA § 48-5-41 (a) (1) (A). The trial court granted summary judgment to the Hospital Authority finding, in relevant part, that

> the validity of Plaintiff Hospital Authority's property interest in Spring Harbor under the ground lease, and the validity of the ground lease itself, has been established by the Superior Court of Muscogee County in two separate Bond Validation orders, one in 2004 and another in 2007. *While these Bond Validation orders did not specifically resolve the issue of taxation regarding the Spring Harbor property, the orders did confirm the Hospital Authority's ownership of Spring Harbor.* [4]

[4] The superior court's conclusion regarding the Hospital Authority's ownership of Spring Harbor is inconsistent with the lengthy factual findings made by the trial

> These two Bond Validation orders also determined that Spring Harbor was a valid and proper project of the Hospital Authority that advances the Hospital Authority's purposes . . . . In the instant case, income derived from the operation of Spring Harbor would not only go toward supporting its continued operation, but would necessarily be used to satisfy the Hospital Authority's revenue bond indebtedness. On both counts, said income would be used in furtherance of the functions and purposes of the Hospital Authority.
>
> Based on the foregoing, this Court concludes that Plaintiff Hospital Authority's property interest in the facilities and improvements constituting Spring Harbor qualifies as public property, and therefore, it is exempt from ad valorem property taxation.

(Emphasis supplied.) The Tax Board appealed this decision to the Court of Appeals.

(d) *Court of Appeals Opinion*

Relying on the 2004 and 2007 bond validation orders, which the Court of Appeals determined were conclusive on the question of ownership and taxation, the Court of Appeals affirmed the trial court's grant of summary judgment. Specifically, relying upon the bond validation's "conclusive findings," the court concluded that the Hospital Authority's leasehold interest was public property

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court in the 2007 bond validation order. However, the superior court order does not address these inconsistencies.

because, in part, "'the purposes for which the (b)onds (were) being issued, as described in the petition and complaint, (were) in furtherance of the public purposes for which (the Hospital) Authority was established.'" Columbus, 338 Ga. App. at 305. We granted the petition for certiorari to review that holding and now reverse the decision of the Court of Appeals.

2. *Analysis*

Bond validation decisions are "incontestable and conclusive." Ga Const. of 1983 Art. IX, Sec. VI, Par. IV. See also OCGA § 36-82-78 ("[T]he judgment of the superior court confirming and validating the issuance of the bonds and the security therefor shall be forever conclusive against the governmental body upon the validity of such bonds and the security therefor."). However, this restriction "only attaches to those matters that are referenced and adjudicated in [the bond] proceedings." Sherman v. Fulton County Bd. of Assessors, 288 Ga. 88, 94 (701 SE2d 472) (2010).

As the Tax Board argues, and the superior court correctly recognized below, the bond validation orders "[do] not specifically resolve the issue of taxation regarding Spring Harbor." Indeed, the bond validation orders include

factual determinations regarding the ownership, control, and management of the property, and the Court of Appeals appears to have misconstrued the bond validation orders in this respect.

It is well established that "[a]ll public property is exempt from taxation . . . but it is exempt only so long as it remains in public ownership." Delta Air Lines, Inc. v. Coleman, 219 Ga. 12, 16 (131 SE2d 768) (1963) (recognizing that where an entity owns a leasehold interest, that estate can be severed from the fee interest and classified separately for ad valorem tax purposes). Though OCGA § 48-5-41 (a) (1) (A) does not define "public property," this Court has established its meaning as property which "is owned by the State, or some political division thereof, and title to which is vested directly in the State, or one of its subordinate political divisions, or in some person holding exclusively for the benefit of the State, or a subordinate public corporation." Sigman v. Brunswick Port Auth., 214 Ga. 332, 335 (104 SE2d 467) (1958). When property is held not by the State itself, but instead by an instrumentality such as a hospital authority, whether it is "public property" depends on whether the instrumentality "holds title only for the benefit of the State and the public."

Hosp. Auth. of Albany v. Stewart, 226 Ga. 530, 537 (175 SE2d 857) (1970). Put another way, the question in this case is whether the Hospital Authority holds the leasehold interest for "public purposes . . . in the furtherance of the legitimate functions of the hospital authority," id. at 531, rather than for "private gain or income." Id. at 537. As the Court of Appeals previously observed, "the mere fact that property is owned by a Hospital Authority does not exempt it from property taxes." Columbus, Ga. Bd. of Tax Assessors v. Med. Center Hosp. Auth., 336 Ga. App. 746, 752 (783 SE2d 182) (2016). [5]

Just like the superior court below, the Court of Appeals presumed that the Hospital Authority's leasehold interest was *public property* because the bonds issued were found to have a *public purpose* in both the 2004 and 2007 bond validations. It may be that in many cases — perhaps even most cases — facts establishing that bonds have a public purpose also will tend to show that property associated with those bonds is public property, but it is not inevitably so. The question of whether a hospital authority's property interest qualifies for ad valorem tax exemption as "public property" is a separate and distinct

[5] This Court of Appeals decision arose from a separate action that involved the same parties but different property.

question from the issues presented in a bond validation proceeding. Instead, the standard to be applied in order to determine whether a hospital authority's property interest qualifies as "public property" is set forth in our decisions in Stewart and Sigman.

Consequently, the bond validation proceedings did not conclusively establish whether the leasehold interest of the Hospital Authority is "public property" for tax purposes, and the superior court below should have drawn its own conclusions about taxability.[6] To the extent that the Court of Appeals and superior court considered the bond validation judgments conclusive on the question of taxability, we reverse and remand for further proceedings consistent with this opinion.

Judgment reversed and case remanded with direction. All the Justices concur.

[6] We do not foreclose the possibility that the superior court might *consider* facts found in the bond validation proceedings. Indeed, because this issue was presented to the superior court in the form of a motion for summary judgment, the court should review all submitted record materials in support of and opposing the motion in order to determine whether a genuine issue of material fact existed as to the ad valorem tax exemption.

Decided October 16, 2017.

Certiorari to the Court of Appeals of Georgia — 338 Ga. App. 302.

Troutman Sanders, Charles F. Palmer, Kevin G. Meeks; Robert R. Lomax, for appellants.

Dentons US, J. Randolph Evans, Keshia W. Lipscomb; Rothschild & Rothschild, Jerome M. Rothschild, Andrew A. Rothschild; Scott C. Crowley; Brown & Adams, Jeffrey A. Brown, for appellee.

In the Supreme Court of Georgia

Decided: January 29, 2018

S17A1421. HALL COUNTY BOARD OF TAX ASSESSORS v. WESTREC PROPERTIES, INC.
S17A1422. HALL COUNTY BOARD OF TAX ASSESSORS v. PS RECREATIONAL PROPERTIES, I.
S17A1423. HALL COUNTY BOARD OF TAX ASSESSORS v. CHATTAHOOCHEE PARKS, INC.
S17A1424. HALL COUNTY BOARD OF TAX ASSESSORS v. MARCH FIRST, INC.
S17A1425. HALL COUNTY BOARD OF TAX ASSESSORS v. AMP III-LAZY DAYS, LLC.

BOGGS, Justice.

These five essentially identical appeals arise from the assessment of taxes by the Hall County Board of Tax Assessors.[1] The trial court granted summary judgment in favor of appellee taxpayers based upon the Board's failure to schedule a timely settlement conference as required by the 2015 amendment to OCGA § 48-5-311 (g) (2), 2015 Ga. Laws p. 1219 et seq. ("the Act"),[2] and the

[1]The trial court heard all five cases together and entered the same summary judgment order in each case. All taxpayers are represented by the same counsel, and other than the styles, the specific valuations, and the record references, the briefs are essentially identical and raise the same three issues on appeal. The relevant dates with respect to the tax appeals are the same for all taxpayers.

[2] See 2015 Georgia Laws Act 193 (H.B. 202).

Board appeals. Because the plain language of the statute, as amended by the Act, requires the Board to schedule and notice a settlement conference with the taxpayer within 45 days of receipt of a taxpayer's notice of appeal, and provides that the appeal shall terminate in the event the Board elects not to do so, we affirm.

The relevant facts are not in dispute. Appellee-taxpayers Westrec Properties, Inc. (Sunrise Cove & Snug Harbor Marinas), PS Recreational Properties, I. (Holiday Marina), Chattahoochee Parks, Inc. (Aqualand Marina), March First, Inc. (Gainesville Marina), and AMP III – Lazy Days, LLC (Lazy Days Marina) operate marinas on Lake Lanier in Hall County. The marinas are located on shoreline property leased from the U. S. Army Corps of Engineers. For the 2015 tax year, the Board revised its real property tax assessments to include the assessed value of docks and other improvements as part of the leasehold interest instead of personalty, as in previous years. This increased the assessed value substantially: according to the taxpayers, between 345 and 3200 percent. On June 1, 2015, the taxpayers appealed to the Board of Equalization. After hearings on December 10 and December 17 to determine the fair market value of the taxpayers' property, the Board of Equalization upheld the

assessments.[3]

On January 1, 2016, the Act went into effect.[4] It extensively amended the provisions of OCGA § 48-5-311 governing county boards of equalization and tax appeals, including subsection (g) relating to appeals to superior courts. The subsection as amended requires the county board of tax assessors to schedule a settlement conference in the event of the taxpayer's filing of a notice of appeal to the superior court. With respect to the latter, subsection (g) (2) provides:

> Within 45 days of receipt of a taxpayer's notice of appeal and before certification of the appeal to the superior court, the county board of tax assessors shall send to the taxpayer notice that a settlement conference, in which the county board of tax assessors and the taxpayer shall confer in good faith, will be held at a specified date and time which shall be no later than 30 days from the notice of the settlement conference, and notice of the amount of the filing fee, if any, required by the clerk of the superior court. The taxpayer may exercise a one-time option to reschedule the settlement conference to a different date and time acceptable to the taxpayer, but in no event later than 30 days from the date of the notice. If at the end of the 45 day review period the county board of tax assessors elects not to hold a settlement conference, then the

[3] A hearing was held on December 10, 2015, but due to allegedly inadequate notice a second hearing was held on December 17. After each hearing, the Board of Equalization entered an order upholding the assessment.

[4] As noted in Division 2, below, certain provisions of the Act did not go into effect until a later date. However, most provisions, including those governing appeals to the superior courts, became effective on January 1, 2016.

> appeal shall terminate and the taxpayer's stated value shall be entered in the records of the board of tax assessors as the fair market value for the year under appeal and the provisions of subsection (c) of Code Section 48-5-299 shall apply to such value.

On January 8, 2016, the taxpayers filed with the Board their respective Notices of Appeal to the Superior Court of Hall County. The 45-day notice period provided by OCGA § 48-5-311 (g) (2), as amended by the Act, accordingly ended on February 22, 2016. On March 8, 2016, the taxpayers mailed to the Board letters noting the failure to provide timely notice of a settlement conference and demanding that the Board "(i) enter into the records of the board of tax assessors the taxpayer's stated value of [dollar amount], (ii) refund any overage of taxes paid for the Subject Property for Tax Year 2015, and (iii) reimburse the [taxpayer] its costs of litigation and reasonable attorney's fees accumulated in this matter." On March 17, 2016, the Board's counsel responded, declining to comply with the taxpayers' March 8 demands.

On June 10, 2016, the Board provided notice to the taxpayers of a settlement conference scheduled for June 20, 2016. On June 13, 2016, prior to the settlement conference, the Board certified the appeal to the Hall County Superior Court. On June 20, 2016, the taxpayers' attorney, under protest,

attended the settlement conference with the Board. Unable to agree on a fair market value, the parties proceeded with the superior court litigation.

On July 15, 2016, the taxpayers filed their motions for summary judgment. After oral argument, the trial court found that the revised version of OCGA § 48-5-311 (g) (2) applied to the parties, that the Board failed to send notice of a settlement conference within 45 days and before certifying the appeal, and that the Board therefore elected not to hold a settlement conference within the mandatory time provided by statute. It therefore granted summary judgment in favor of all taxpayers, directed that the Board enter the taxpayers' stated values and that the valuation carry forward in accordance with OCGA § 48-5-299 (c). The trial court also determined that the taxpayers were entitled to attorney fees pursuant to OCGA § 48-5-311 (g) (4) (B) (ii), and that the statute was not unconstitutional on the grounds asserted by the Board. This appeal by the Board followed.

1. Relying upon Ga. Const. Art. I, Sec. II, Par. III,[5] the Board complains that the Act is unconstitutional because it usurps the function of the judiciary

[5] "The legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided."

and thus violates the separation of powers clause. The Board contends that the termination of the appeal for failure to meet the requirement to schedule a settlement conference divests the superior court of jurisdiction after it has taken the appeal, and that such legislative action interferes with the superior court by taking away its power to decide a case pending in its court. We disagree. The requirements imposed by the Act do not remove a case from the jurisdiction of the superior court. Rather, they are part of an administrative procedure that, like many others, imposes threshold conditions before the appeal reaches the jurisdiction of the superior court.

In McCauley v. Bd. of Tax Assessors, 243 Ga. 844 (257 SE2d 266) (1979), this Court interpreted former Ga. Code Ann. § 92-6912 (6) (B), which provided:

> An appeal by the taxpayer shall be effected by filing with the county board of tax assessors a written notice of appeal . . . . The county board of tax assessors shall certify the notice of appeal, any other papers specified by the appellant, including the staff information from the file used by either the board of tax assessors or the board of equalization, all of which papers and information shall become a part of the record on appeal to the superior court, to the clerk of the superior court.

See 243 Ga. at 845. In McCauley, the taxpayer, "out of an abundance of

caution," id., filed a notice of appeal in the superior court as well as with the board of tax assessors. The superior court dismissed the appeal because the taxpayer failed to avail himself of trial "at the first term following the filing of the appeal" pursuant to former Ga. Code Ann. § 92-6912 (6) (D) (1).[6] This Court reversed, holding that the taxpayer's notice of appeal to the superior court was premature, and that "the appeal was not officially filed in superior court until . . . the date of the board's certification of the notice of appeal and filing of the statutorily required documents." Id.

The relevant statutory language in McCauley remains largely unchanged in the current Code. OCGA § 48-5-311 (g) (2) provides: "An appeal by the taxpayer as provided in paragraph (1) of this subsection shall be effected by e-mailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by mailing to or filing *with the county board of tax assessors* a written notice of appeal." (Emphasis supplied.) As provided in the former Code section, the taxpayer is required to file a notice of appeal with the Board, not the superior court, and nothing is transmitted to the court at

[6] A similar requirement remains in effect and is found in OCGA § 48-5-311 (g) (4) (A).

that time.

The Act does not change this long-standing administrative process, but simply provides for additional requirements to be met, by both the Board and the taxpayer, before the appeal is "officially filed in superior court," as stated in McCauley. Within 45 days of the taxpayer's notice of appeal and *before* certification of the appeal to superior court, the board of tax assessors is required to give notice of a settlement conference, to be held within 30 days of the notice. OCGA § 48-5-311 (g) (2). That subsection further provides: "If at the end of the 45 day review period the county board of tax assessors elects not to hold a settlement conference, then the appeal shall terminate." Since this is contemplated to occur *before* the certification to superior court, the appeal is still not "officially filed" at the time provided for such termination. In contrast, if after the settlement conference the parties fail to agree, then written notice of the filing fee is given to the taxpayer, that fee is paid, and the proceeds are remitted to the county. Within 30 days of receipt of the proof of payment from the clerk of the superior court, the Board is required to "certify to the clerk of the superior court the notice of appeal and any other papers specified by the person appealing," and serve the taxpayer with a copy of the notice of appeal and the

civil action file number. OCGA § 48-5-311 (g) (2). Only then is the appeal "officially filed" and jurisdiction acquired by the superior court.[7]

The cases cited by the Board, in contrast, concern actions already pending in the judicial system. In these decisions, this Court held unconstitutional various attempts by the legislature to impose limitations or restrictions upon judgments already imposed by the trial court. See, e.g., Sentence Review Panel v. Moseley, 284 Ga. 128 (663 SE2d 679) (2008) (statute authorized review and reduction of sentences already imposed by trial court in judgment of conviction); Northside Manor, Inc. v. Vann, 219 Ga. 298 (133 SE2d 32) (1963) (statute allowed amendment of petition after judgment sustaining general demurrer entered by trial court); Parks v. State, 212 Ga. 433 (93 SE2d 663) (1956) (statute prohibited appellate court reversal of conviction for lack of proof of venue). These decisions have no application to a condition imposed in the course of an administrative appeal before it is "officially filed" with the superior

[7] We note that the administrative procedures outlined in OCGA § 48-5-311 also impose obligations on the taxpayer that may cause termination of the appeal if not met. See, e.g., Hall County Bd. of Tax Assessors v. Avalon Hill Partners, LLC, 307 Ga. App. 520 (705 SE2d 674) (2010) (taxpayer's failure to file notice of appeal within 30 days barred appeal), relying on Peagler v. Georgetown Assoc., 232 Ga. 848 (209 SE2d 186) (1974), construing former Ga. Code Ann. § 92-6912 (5) (C).

court.[8] Such administrative prerequisites for appeal are within the purview of the General Assembly and do not violate the separation of powers clause.

2. The Board next asserts that the Act does not apply to these appeals because the initial appeals by the taxpayers to the Board of Equalization occurred in 2015, before the effective date of the Act.[9] It asserts that "the entire ad valorem tax appeal process is intertwined" and thus must be treated as a single appeal.

But the statutory scheme outlined in OCGA § 48-5-311 does not provide for a single, unified appeal. Instead, in OCGA § 48-5-311 (e) (1) (A) (i) - (iv)

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[8] The Board also asserts that the jurisdiction of the superior court is invoked as soon as the taxpayer's initial notice of appeal to the superior court is filed with the board of tax assessors, citing Fulton County Bd. of Tax Assessors v. CPS Four Hundred, Ltd., 213 Ga. App. 1 (443 SE2d 645) (1994). But that case involved an attempted appeal by the board of tax assessors, which failed to file or serve the required notice to the taxpayer. The Court of Appeals affirmed the dismissal of the appeal, observing that filing certification of the record did not constitute notice and failure to serve notice upon the taxpayer deprived the superior court of jurisdiction. Id. at 2 (1). And Monroe County Bd. of Tax Assessors v. Wilson, 336 Ga. App. 404, 406-407 (785 SE2d 67) (2016), also cited by the Board, relied upon McCauley, supra, to hold that the certification of the appeal, not the taxpayer's notice of appeal, completed the filing of the appeal. The statute makes clear that *all* its requirements must be met to confer jurisdiction. The Board attempts to make a distinction between "substantive" and "procedural" elements of the appeal to superior court, contending that the certification is irrelevant to jurisdiction and applies only to scheduling on the next available trial calendar, but this contention runs counter to our clear holding in McCauley.

[9] While the effective date of other sections of the Act is delayed, section 16 of the Act, dealing with appeals to the superior court, falls within Section 27 (c) of the Act, which provides for an effective date of January 1, 2016.

the Act enumerates multiple administrative avenues for appealing the original tax assessment by the county board of tax assessors, after an initial appeal to the county board itself under OCGA § 48-5-311 (e) (2) (A). If the taxpayer is dissatisfied with the result of this initial appeal, three options are available, depending upon the property and the issues appealed: appeal to the county board of equalization under OCGA § 48-5-311 (e) (2) (C); appeal to an arbitrator under OCGA § 48-5-311 (f); or appeal to a hearing officer under OCGA § 48-5-311 (e.1). Each method of appeal prescribes a different process in considerable detail. Only at the conclusion of one of these three separate administrative appeals do the taxpayer *and* the county board of tax assessors have the option of appealing to the superior court under OCGA § 48-5-311 (g). An appeal to the superior court is the first opportunity for the board of tax assessors, as opposed to the taxpayer, to appeal, yet another indication that the appeal in subsection (g) is not part of an overarching, unified appeal. Finally, OCGA § 48-5-311 (g) (3) explicitly provides that the appeal to superior court "shall constitute a de novo action."[10]

The appeals filed by the taxpayers on January 8, 2016 therefore are de

[10] The Board acknowledges this in its first claim of error.

novo appeals and not mere continuations of the administrative process begun in 2015, and they are governed by the provisions of OCGA § 48-5-311, as amended by the Act and effective on January 1, 2016.

3. Finally, the Board contends that the statute, as amended, does not provide a penalty for failing to send a notice of settlement conference. The Board asserts that the penalty only obtains if the Board affirmatively chooses not to hold a settlement conference, and that the statute provides no penalty for failing to send the required notice to the taxpayer.

> When we consider the meaning of a statute, we must presume that the General Assembly meant what it said and said what it meant. To that end, we must afford the statutory text its plain and ordinary meaning, we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would.

(Citations and punctuation omitted.) Deal v. Coleman, 294 Ga. 170, 172-173 (1) (a) (751 SE2d 337) (2013). Here, a plain reading of the statute requires that, "[w]ithin 45 days of receipt of a taxpayer's notice of appeal and before certification of the appeal to the superior court, the county board of tax assessors *shall* send to the taxpayer notice that a settlement conference . . . will be held at a specified date and time." (Emphasis supplied.) If at the end of 45 days, the

Board "elects not to hold a settlement conference, then the appeal *shall* terminate and the taxpayer's stated value" is adopted. (Emphasis supplied.)

"The word 'shall' is generally construed as a word of command. The import of the language is mandatory." (Citations and punctuation omitted.) State v. Collier, 279 Ga. 316, 317 (612 SE2d 281) (2005). The Board argues that because the penalty is "located after other language within the statute," it is not a consequence of the notice requirement. In support of this argument, it cites Fulton County Bd. of Tax Assessors v. Fast Evictions, LLC, 314 Ga. App. 178 (723 SE2d 461) (2012), and Jasper County Bd. of Tax Assessors v. Thomas, 289 Ga. App. 38 (656 SE2d 188) (2007), both of which ultimately rely upon language from Barton v. Atkinson, 228 Ga. 733, 739 (1) (187 SE2d 835) (1972):

> [L]anguage contained in a statute which, given its ordinary meaning, commands the doing of a thing within a certain time, when not accompanied by any negative words restraining the doing of the thing afterward, will generally be construed as merely directory and not as a limitation of authority, and this is especially so where no injury appeared to have resulted from the fact that the thing was done after the time limited by the plain wording of the Act. [Cits.]

But in Thomas, the Court of Appeals found that a prior version of OCGA § 48-5-311 (g) (4) (a) "[did] not lay out any penalty or consequence arising from a

superior court's failure to conduct a nonjury trial on an appeal within 40 days" and thus was merely directory rather than mandatory. 289 Ga. App. at 40 (1).[11] In contrast, in Fast Evictions, the Court of Appeals found that because OCGA § 48-5-311 (f) (3) (A) "specifies the effect of the failure of the board to accept or reject the taxpayer's appraisal within 45 days, that language must be enforced." 314 Ga. App. at 181.

Here, OCGA § 48-5-311 (g) (2), like OCGA § 48-5-311 (f) (3) (A), and unlike § 48-5-311 (g) (4) (a), lays out a penalty as well as a requirement. And the only language intervening between the requirement and the penalty is a recitation of the procedural details of scheduling the required settlement conference.[12] Immediately thereafter, and in the same paragraph, penalties are provided against both the taxpayer and the board of tax assessors. If the board of tax assessors "elects" not to hold a settlement conference, the appeal

[11] Moreover, the Court of Appeals noted in Thomas that the provision in the same subsection that such an appeal "shall be heard as soon as practicable" was an "acknowledgment of practical concerns" and reinforced its conclusion that the 40-day requirement was directory rather than mandatory. Id. at 40-41 (1).

[12] Former OCGA § 48-5-311 (f) (3) (A) contains similar intervening language between the requirement and the penalty, but in Fast Evictions, the Court of Appeals construed the entire provision as a whole and found it mandatory rather than discretionary. 314 Ga. App. at 180-181.

terminates in favor of the taxpayer. On the other hand, if the taxpayer "chooses" not to participate in the conference, the taxpayer loses the opportunity to seek fees and costs in superior court. OCGA § 48-5-311 (g) (2). Reading this provision as a whole, it is clear that the legislature intended to impose the corresponding penalty upon the board of tax assessors for failing to schedule and send notice of a settlement conference within 45 days of the taxpayer's notice of appeal.[13]

The Board further contends that in order to "elect" not to hold a settlement conference, it must have done so through an official, recorded vote. But the statute does not so require. Webster's Third New International Dictionary defines the verb "elect" as: "To make a selection of: choose," while Ballentine's Law Dictionary defines it as "To make a choice."[14] And when the General Assembly wishes to require a vote in the provisions of OCGA § 48-5-311, it explicitly requires it. See, e.g., OCGA § 48-5-311 (e) (6) (D) (i) (majority vote

[13] The Board also attempts to make a distinction between an election to hold a settlement conference "at the end of" the 45 day period, as opposed to "within" the 45 day period. But it is undisputed here that the Board did not send notice of or schedule a settlement conference at the end of *or* within the 45 day period, but over five months after the taxpayers' notices of appeal were filed with the Board.

[14] Both dictionaries add that "elect" may be defined as selecting a person for office, by vote or otherwise, but that definition is inapplicable here.

of county board of equalization required in decision on administrative appeal); OCGA § 48-5-311 (g) (1) ("county governing authority" by majority vote may prohibit appeal to superior court by county board of tax assessors).

Here, the term "elect" is the equivalent of "choose," as the corresponding penalties resulting from the Board's choice or the taxpayer's choice demonstrate. Therefore, from the Board's election not to send the required notice within the time provided by statute, it is a reasonable inference that the Board likewise elected not to hold a settlement conference at the end of the 45 day period. The Board does not contend that it neglected to send notice through oversight or mistake; it follows that it made a choice not to do so.

The Board concedes that it did not send a notice within the 45 day statutory period, but its counsel asserted at oral argument that the Board's interpretation of the statute permits the Board to send a notice of settlement conference at any time, months – or even decades – after expiration of the 45 day period. The Board contends the onus is on the taxpayer to file a mandamus petition to force the scheduling of a settlement conference. But that is not what the plain language of the statute provides. Moreover, "[t]he writ of mandamus is properly issued only if (1) no other adequate legal remedy is available to

effectuate the relief sought; and (2) the applicant has a clear legal right to such relief." (Citations and punctuation omitted.) Bibb County v. Monroe County, 294 Ga. 730, 734 (2) (755 SE2d 760) (2014). And "[a] clear legal right to the relief sought may be found only where the claimant seeks to compel the performance of a public duty that an official or agency is required by law to perform. [Cit.]" Id. at 735 (2) (b). Because the Board itself contends that it has no statutory obligation to send a notice at any particular time, under the Board's asserted reading of the statute, no mandamus could lie. And a notice that could be sent at any time – even years – after receipt of a taxpayer's notice of appeal would be meaningless, and "[i]t is a basic rule of construction that a statute or constitutional provision should be construed to make all its parts harmonize and to give a sensible and intelligent effect to each part, as it is not presumed that the legislature intended that any part would be without meaning." (Citations and punctuation omitted.) Gilbert v. Richardson, 264 Ga. 744, 747-748 (3) (452 SE2d 476) (1994).

The Board failed to give the required notice within the 45 day time period mandated by OCGA § 48-5-311 (g) (2), and therefore elected not to have a settlement conference. It is accordingly subject to the penalty provided by the

legislature in the same subsection. The trial court therefore did not err in granting summary judgment to the taxpayers.

Judgment affirmed. All the Justices concur.

House Bill 85 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 171st, England of the 116th, McCall of the 33rd, Williams of the 119th, and Greene of the 151st

A BILL TO BE ENTITLED

AN ACT

To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to revise definitions related to the value of property; to provide for the values for assessments for forest land conservation use property and qualified timberland property; to revise provisions related to covenants for forest land conservation use property; to provide for the certification and appraisal of certain timberland property by the state revenue commissioner; to provide for the return of such property to the commissioner; to provide for appeals; to provide for definitions; to provide that the state revenue commissioner shall deduct and retain an administrative fee from assistance grants related to forest land conservation use property; to provide for related matters; to provide for a contingent effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended in Chapter 5, relating to ad valorem taxation of property, by adding a new subparagraph to paragraph (3) of Code Section 48-5-2, relating to definitions, as follows:

"(G) Fair market value of 'qualified timberland property' means the fair market value determined in accordance with Article 13 of this chapter."

SECTION 2.

Said title is further amended in said chapter by revising paragraphs (5) and (6) of Code Section 48-5-2, relating to definitions, as follows:

"(5) 'Forest land conservation use value' of forest land conservation use property means the amount determined in accordance with the specifications and criteria provided for in Code Section 48-5-271 and Article VII, Section I, Paragraph III(f) of the Constitution.

(6) 'Forest land fair market value' means the ~~2008~~ fair market value of the forest land determined in accordance with Article VII, Section I, Paragraph III(f) of the Constitution~~;~~

~~provided, however, that when the 2008 fair market value of the forest land has been appealed by a property owner and the ultimate fair market value of the forest land is changed in the appeal process by either the board of assessors, the board of equalization, a hearing officer, an arbitrator, or a superior court judge, then the final fair market value of the forest land shall replace the 2008 fair market value of the forest land. This final fair market value of the forest land shall be used in the calculation of local assistance grants. If local assistance grants have been granted to either a county, a county board of education, or a municipality based on the 2008 fair market value of forest land and subsequently the fair market value of such forest land is reduced on an appeal, then the county or the municipality shall reimburse the state, within 12 months unless otherwise agreed to by the parties, the difference between local assistance grants paid to the county or municipality and the amount which would have been due based on the final fair market value of the forest land. Such 2008 valuation may increase from one taxable year to the next by a rate equal to the percentage change in the price index for gross output of state and local government from the prior year to the current year as defined by the National Income and Product Accounts and determined by the United States Bureau of Economic Analysis and indicated by the Price Index for Government Consumption Expenditures and General Government Gross Output (Table 3.10.4).~~"

SECTION 3.

Said title is further amended in said chapter by adding two new subsections to Code Section 48-5-7, relating to assessment of tangible property, to read as follows:

"(c.5) Tangible real property which qualifies as forest land conservation use property pursuant to the provisions of Code Section 48-5-7.7 shall be assessed at 40 percent of its forest land conservation use value and shall be taxed on a levy made by each respective tax jurisdiction according to 40 percent of the property's forest land conservation use value.

(c.6) Tangible real property which qualifies as qualified timberland property in accordance with the provisions of Article 13 of this chapter shall be assessed at 40 percent of its fair market value of qualified timberland property and shall be taxed on a levy made by each respective tax jurisdiction according to 40 percent of its fair market value of qualified timberland property as such value is determined by the commissioner in accordance with Article 13 of this chapter."

SECTION 4.

Said title is further amended in said chapter by revising subsections (b), (c), (d), and (v) of Code Section 48-5-7.7, relating to the Georgia Forest Land Protection Act of 2008, as follows:

"(b) As used in this Code section, the term:

(1) 'Contiguous' means real property within a county that abuts, joins, or touches and has the same undivided common ownership. If an applicant's tract is divided by a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track, then the applicant has, at the time of the initial application, a one-time election to declare the tract as contiguous irrespective of a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track.

(2) 'Forest land conservation use property' means real property that is forest land ~~each tract of which consists of more than 200 acres of tangible real property of an owner~~ of at least 200 acres in aggregate which lies within one or more counties, provided that such forest land is in parcels of at least 100 acres within any given county and that is subject to the following qualifications:

(A) Such property must be owned by an individual or individuals or by any entity registered to do business in this state;

(B) Such property excludes the entire value of any residence and its underlying land located on the property; as used in this subparagraph, the term 'underlying land' means the minimum lot size required for residential construction by local zoning ordinances or two acres, whichever is less. This provision for excluding the underlying land of a residence from eligibility in the conservation use covenant shall only apply to property that is first made subject to such a covenant, or is subject to a renewal of a previous conservation use covenant, on or after January 1, 2014;

(C) Such property has as its primary use the good faith subsistence or commercial production of trees, timber, or other wood and wood fiber products from or on the land. Such primary use includes land conservation and ecological forest management in which commercial production of wood and wood fiber products may be undertaken primarily for conservation and restoration purposes rather than financial gain. Such property may, in addition, have one or more of the following secondary uses:

(i) The promotion, preservation, or management of wildlife habitat;

(ii) Carbon sequestration in accordance with the Georgia Carbon Sequestration Registry;

(iii) Mitigation and conservation banking that results in restoration or conservation of wetlands and other natural resources; or

(iv) The production and maintenance of ecosystem products and services, such as, but not limited to, clean air and water.

Forest land conservation use property may include, but is not limited to, land that has been certified as environmentally sensitive property by the Department of Natural

Resources or which is managed in accordance with a recognized sustainable forestry certification program, such as the Sustainable Forestry Initiative, Forest Stewardship Council, American Tree Farm Program, or an equivalent sustainable forestry certification program approved by the State Forestry Commission.

(3) 'Qualified owner' means any individual or individuals or any entity registered to do business in this state.

(4) 'Qualified property' means forest land conservation use property as defined in this subsection.

(5) 'Qualifying purpose' means a use that meets the qualifications of subparagraph (C) of paragraph (2) of this subsection.

(c) The following additional rules shall apply to the qualification of forest land conservation use property for conservation use assessment:

(1) ~~All contiguous forest~~ Forest land conservation use property of an owner within a county for which forest land conservation use assessment is sought under this Code section shall be in ~~a single covenant~~ covenants, which shall include forest land of at least 200 acres in aggregate which lies within one or more counties, provided that such forest land is in parcels of at least 100 acres within any given county, unless otherwise required under subsection (e) of this Code section;

(2) When one-half or more of the area of a single tract of real property is used for the qualifying purpose, then the entirety of such tract shall be considered as used for such qualifying purpose unless some other type of business is being operated on the portion of the tract that is not being used for a qualifying purpose; provided, however, that such other portion must be minimally managed so that it does not contribute significantly to erosion or other environmental or conservation problems or must be used for one or more secondary purposes specified in subparagraph (b)(2)(C) of this Code section. The following uses of real property shall not constitute using the property for another type of business:

(A) The lease of hunting rights or the use of the property for hunting purposes;

(B) The charging of admission for use of the property for fishing purposes;

(C) The production of pine straw or native grass seed;

(D) The granting of easements solely for ingress and egress; and

(E) Any type of business devoted to secondary uses listed under subparagraph (b)(2)(C) of this Code section; and

(3) No otherwise qualified forest land conservation use property shall be denied conservation use assessment on the grounds that no soil map is available for the county or counties, if applicable, in which such property is located; provided, however, that if no soil map is available for the county or counties, if applicable, in which such property

is located, the board of tax assessors shall use the current soil classification applicable to such property.

(d) No property shall qualify for conservation use assessment under this Code section unless and until the qualified owner of such property agrees by covenant with the appropriate taxing authority to maintain the eligible property in forest land conservation use for a period of ~~15~~ ten years beginning on the first day of January of the year in which such property qualifies for such conservation use assessment and ending on the last day of December of the final year of the covenant period. After the qualified owner has applied for and has been allowed conservation use assessment provided for in this Code section, it shall not be necessary to make application thereafter for any year in which the covenant period is in effect and conservation use assessment shall continue to be allowed such qualified owner as specified in this Code section. At least 60 days prior to the expiration date of the covenant, the county board of tax assessors where the property is located shall send by first-class mail written notification of such impending expiration. Upon the expiration of any covenant period, the property shall not qualify for further conservation use assessment under this Code section unless and until the qualified owner of the property has entered into a renewal covenant for an additional period of ~~15~~ ten years; provided, however, that the qualified owner may enter into a renewal contract in the ~~fourteenth~~ ninth year of a covenant period so that the contract is continued without a lapse for an additional ~~15~~ ten years."

"(v) At such time as the property ceases to be eligible for forest land conservation use assessment or when any ~~15 year~~ ten-year covenant period expires and the property does not qualify for further forest land conservation use assessment, the qualified owner of the property shall file an application for release of forest land conservation use treatment with the county board of tax assessors where the property is located who shall approve the release upon verification that all taxes and penalties with respect to the property have been satisfied. After the application for release has been approved by such board of tax assessors, the board shall file the release in the office of the clerk of the superior court in the county in which the original covenant was filed. The clerk of the superior court shall file and index such release in the real property records maintained in the clerk's office. No fee shall be paid to the clerk of the superior court for recording such release. The commissioner shall by regulation provide uniform release forms."

SECTION 5.

Said title is further amended in said chapter by adding a new article to read as follows:

″ARTICLE 13

48-5-600.

As used in this article, the term:

(1) 'Bona fide production of trees' means the good faith, real, actual, and genuine production of trees for commercial uses.

(2) 'Qualified owner' means an individual or entity that meets the conditions of Code Section 48-5-603.

(3) 'Qualified timberland property' means timberland property that meets the conditions of Code Section 48-5-604.

(4) 'Timberland property' means tangible real property that has as its primary use the bona fide production of trees for the primary purpose of producing timber for commercial uses.

48-5-600.1.

In accordance with Article VII, Section I, Paragraph III(f.1) of the Constitution of Georgia, qualified timberland property shall be classified as a separate and distinct class of tangible property. The procedures prescribed by this article for appraisal and valuation of such property and for appeals of the assessed value of such property shall be exclusive.

48-5-601.

(a) Qualified timberland property shall be returned to the commissioner between January 1 and April 1 each year.

(b) The fair market value of qualified timberland property shall be determined through an annual appraisal conducted by the commissioner in accordance with the qualified timberland property appraisal manual provided for in Code Section 48-5-602.

(c) The commissioner shall have access to qualified timberland property for the purpose of conducting appraisals, provided that prior notice has been given to the qualified owner of such property.

(d) The commissioner shall ensure that the appraisal values of qualified timberland property are delivered to county tax officials by July 1 of each year.

(e) Notwithstanding anything in this chapter to the contrary, pursuant to Article VII, Section I, Paragraph III(f.1) of the Constitution, the value of qualified timberland property shall be at least 175 percent of such property's forest land conservation value determined pursuant to this chapter.

48-5-602.

(a) The commissioner shall adopt by rule, subject to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and maintain a qualified timberland property appraisal manual that shall be used by the commissioner in the appraisal of qualified timberland property for ad valorem tax purposes.

(b) The commissioner shall provide for a period of consultation with the Georgia Agricultural Statistical Service, Cooperative Extension Service, Georgia Forestry Association, and State Forestry Commission prior to the adoption of the qualified timberland property appraisal manual.

(c)(1) Such manual shall be proposed and published on or before June 1, 2019, and annually thereafter.

(2) Published manuals shall apply to the tax year following the tax year in which they are published.

(3) This annual publication requirement shall not be construed to require annual adjustments, revisions, or modifications to the appraisal methodology.

(d) Such manual shall contain:

(1) Complete parameters for the appraisal of qualified timberland property;

(2) A table of regional values for qualified timberland property based on the geographic locations and productivity levels within the state; and

(3) A prescription of methods and procedures by which identification data, appraisal and assessment data, sales data, and any other information relating to the appraisal and assessment of property shall be furnished to the department using electronic data processing systems and equipment.

48-5-603.

The commissioner shall certify as a qualified owner any individual or entity registered to do business in this state that is engaged in the bona fide production of trees for the primary purpose of producing timber for commercial uses, provided that such individual or entity:

(1) Registers with the commissioner; and

(2) Certifies to the commissioner that such individual or entity is engaged in the bona fide production of trees.

48-5-604.

(a) Upon application by a qualified owner, the commissioner shall certify as qualified timberland property any timberland property that is titled to a qualified owner, provided that:

(1) The timberland property is at least 50 contiguous acres;

(2) The production of trees on the timberland property is being done for the purpose of making a profit and is the primary activity taking place on the property;

(3) A consistent effort has been clearly demonstrated in land management in accordance with accepted commercial forestry practices, which may include reforestation, periodic thinning, undergrowth control of unwanted vegetation, fertilization, prescribed burning, sales of timber, and maintenance of firebreaks; and

(4) Such qualified owner:

(A) Submits a list of all parcels to the commissioner that contain timberland property and that identify the specific portions of such parcels that such owner certifies are timberland property; and

(B) Certifies that such timberland property is used for the bona fide production of trees and that:

(i) There is a reasonable attainable economic salability of the timber products within a reasonable future time; and

(ii) The production of trees is being done for the purpose of making a profit and is the primary activity taking place on the property.

(b)(1) The qualified owner's submission provided for in paragraph (4) of subsection (a) of this Code section shall be certified by the qualified owner and shall be updated annually filed together with such qualified owner's return required by subsection (a) of Code Section 48-5-601. If such conditions are not met annually, the real property at issue shall be decertified as qualified timberland property and the commissioner shall notify the respective county tax officials of such decertification by April 15 of the respective year.

(2) The commissioner shall be authorized to conduct an audit of any list submitted pursuant to this Code section.

(c) The commissioner shall file certifications of qualified timberland property with the respective county tax officials in which any of such real property exists by April 15 each year.

48-5-605.

(a) A taxpayer or county board of tax assessors may appeal the commissioner's decisions related to:

(1) Such taxpayer's status as a qualified owner;

(2) The certification or noncertification of such taxpayer's timberland as qualified timberland property; or

(3) The appraised value of such taxpayer's qualified timberland property.

(b)(1) Such appeals shall be made as an appeal to the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 within 30 days of the commissioner's publication of such decision.

(2) The Georgia Tax Tribunal shall issue a final decision on such appeals on or before September 1 of the year in which an appeal is filed.

48-5-606.

(a) A taxpayer, group of taxpayers, county board of tax assessors, or association representing taxpayers may appeal the commissioner's decisions related to the commissioner's complete parameters for the appraisal of qualified timberland property required by paragraph (1) of subsection (d) of Code section 48-5-602.

(b)(1) Such appeals shall be made as an appeal to the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 within 60 days of the commissioner's publication of such manual.

(2) The Georgia Tax Tribunal shall issue a final decision on such appeals on or before September 1 of the year in which an appeal is filed.

48-5-607.

The commissioner shall be authorized to prescribe such forms and promulgate such rules and regulations as are necessary to implement this article."

SECTION 6.

Said title is further amended in Chapter 5A, relating to special assessment of forest land conservation use property, by adding two new Code sections to read as follows:

"48-5A-5.

Pursuant to Article VII, Section I, Paragraph III(f) of the Constitution, the commissioner shall deduct and retain an amount equal to 3 percent of an assistance grant upon distribution of such assistance grant to a county, municipality, or county or independent school district as an administrative fee to provide for the costs of administering Article 13 of Chapter 5 of this title.

48-5A-6.

(a) For 2019, the value of the local assistance grant to any county shall be increased by an amount equal to 80 percent of the difference between the value of the local assistance grant such county received for 2018 and the amount for which such county is eligible to receive in 2019.

(b) For 2020, the value of the local assistance grant to any county shall be increased by an amount equal to 60 percent of the difference between the value of the local assistance grant such county received for 2018 and the amount for which such county is eligible to receive in 2020.

(c) For 2021, the value of the local assistance grant to any county shall be increased by an amount equal to 40 percent of the difference between the value of the local assistance grant such county received for 2018 and the amount for which such county is eligible to receive in 2021.

(d) For 2022, the value of the local assistance grant to any county shall be increased by an amount equal to 20 percent of the difference between the value of the local assistance grant such county received for 2018 and the amount for which such county is eligible to receive in 2022."

SECTION 7.

(a) This Act shall become effective on January 1, 2019, only if an amendment to the Constitution of Georgia is ratified at the November, 2018, general election modifying constitutional prescriptions for forest land conservation use property and related assistance grants, permitting the withholding of a portion of assistance grants to provide for certain state administrative costs, and establishing qualified timberland property as a subclassification of tangible property for purposes of ad valorem taxation.

(b) If such an amendment to the Constitution is not so ratified, then this Act shall not become effective and shall stand repealed by operation of law on January 1, 2019.

SECTION 8.

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

House Resolution 51 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 171st, England of the 116th, McCall of the 33rd, Williams of the 119th, and Greene of the 151st

A RESOLUTION

Proposing an amendment to the Constitution so as to revise provisions subclassifying forest land conservation use property for ad valorem taxation purposes; to revise the prescribed methodology for establishing the value of forest land conservation use property and related assistance grants; to permit increases to assistance grants by general law up to a five-year period; to permit the deduction and retention of a portion of assistance grants related to forest land conservation use property; to permit the subclassification of qualified timberland property for ad valorem taxation purposes; to provide for related matters; to provide for the submission of this amendment for ratification or rejection; and for other purposes.

BE IT RESOLVED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article VII, Section I, Paragraph III of the Constitution is amended by revising subparagraph (f) and by adding a new subparagraph to read as follows:

"(f)(1) The General Assembly shall provide by general law for the definition ~~and~~, methods of assessment, and taxation, such methods to include a formula based on current use, annual productivity, and real property sales data, of 'forest land conservation use property' to include only forest land ~~each tract of which exceeds 200 acres of a qualified owner. Such methods of assessment and taxation shall be subject to the following conditions:~~ of at least 200 acres in aggregate which lies within one or more counties, provided that such forest land is in parcels of at least 100 acres within any given county.

(2)(A) ~~A qualified owner shall consist of any~~ Any individual or individuals or any entity registered to do business in this state~~;~~

~~(B) A qualified owner~~ desiring the benefit of such methods of assessment and taxation for forest land conservation use property shall be required to enter into a covenant to continue the property in forest land use~~;~~.

~~(C)~~(B) All contiguous forest land conservation use property of an owner within a county for which forest land conservation use assessment is sought under this subparagraph shall be in a single covenant~~;~~.

~~(D)~~(C) A breach of such covenant within ~~15~~ ten years shall result in a recapture of the tax savings resulting from such methods of assessment and taxation and may result in other appropriate penalties~~; and~~.

~~(E)~~(D) The General Assembly may provide by general law for a limited exception to the 200 acre requirement in the case of a transfer of ownership of all or a part of the forest land conservation use property during a covenant period to another owner qualified to enter into an original forest land conservation use covenant if the original covenant is continued by both such acquiring owner and the transferor for the remainder of the term, in which event no breach of the covenant shall be deemed to have occurred even if the total size of a tract from which the transfer was made is reduced below 200 acres.

~~(2)~~(3) No portion of an otherwise eligible tract of forest land conservation use property shall be entitled to receive simultaneously special assessment and taxation under this subparagraph and either subparagraph (c) or (e) of this Paragraph.

~~(3)~~(4)(A) The General Assembly shall appropriate an amount for assistance grants to counties, municipalities, and county and independent school districts to offset revenue loss attributable to the implementation of this subparagraph. Such grants shall be made in such manner and shall be subject to such procedures as may be specified by general law. For the years 2019, 2020, 2021, 2022, and 2023, the value of the assistance grants may be increased by general law beyond the amounts prescribed by this subparagraph.

(B)(i) If the forest land conservation use property is located in a county, municipality, or county or independent school district where forest land conservation use value causes an ad valorem tax revenue reduction of 3 percent or less due to the implementation of this subparagraph, in each taxable year in which such reduction occurs, the assistance grants to the county, each municipality located therein, and the county or independent school districts located therein shall be in an amount equal to 50 percent of the amount of such reduction.

~~(C)~~(ii) If the forest land conservation use property is located in a county, municipality, or county or independent school district where forest land conservation use value causes an ad valorem tax revenue reduction of more than 3 percent due to the implementation of this subparagraph, in each taxable year in which such reduction occurs, the assistance grants to the county, each municipality located therein, and the county or independent school districts located therein shall be ~~as follows:~~ for

~~(i) For~~ the first 3 percent of such reduction amount, in an amount equal to 50 percent of the amount of such reduction~~;~~ and, for

~~(ii) For~~ the remainder of such reduction amount, in an amount equal to 100 percent of the amount of such remaining reduction amount.

~~(4) Such revenue reduction shall be calculated by utilizing forest land fair market value. For purposes of this subparagraph, forest land fair market value means the 2008 fair market value of the forest land. Such 2008 valuation may increase from one taxable year to the next by a rate equal to the percentage change in the price index for gross output of state and local government from the prior year to the current year as defined by the National Income and Product Accounts and determined by the United States Bureau of Economic Analysis and indicated by the Price Index for Government Consumption Expenditures and General Government Gross Output (Table 3.10.4).~~

(C)(i) Such revenue reduction shall be determined by subtracting the aggregate forest land conservation use value of qualified properties from the aggregate forest land fair market value of qualified properties for the applicable tax year and the resulting amount shall be multiplied by the millage rate of the county, municipality, or county or independent school district.

~~(5)~~(ii) For purposes of this subparagraph, the forest land conservation use value shall not include the value of the standing timber located on forest land conservation use property.

(iii) For the purposes of this subparagraph, forest land fair market value means the fair market value of the forest land as determined in 2016, provided that such value shall change in 2019 and every three years thereafter to the fair market value of forest land as determined in such year.

(D) Notwithstanding subparagraph (a) of Paragraph VI of Section IX of Article III of this Constitution, the General Assembly may provide by general law for a fee, not to exceed 5 percent, to be deducted from such assistance grants and retained by the state revenue commissioner to provide for the costs to the state of administering the provisions of subparagraph (f.1) of this Paragraph.

(f.1)(1)(A) The General Assembly shall be authorized by general law to establish a separate class of property for ad valorem taxation purposes that includes only tangible real property that has as its primary use the production of trees for the primary purpose of producing timber for commercial uses and that meets such further requirements as may be prescribed by general law. Such property shall be known as 'qualified timberland property.'

(B) The value of qualified timberland property shall be at least 175 percent of such property's forest land conservation use value as determined pursuant to subparagraph (f) of this Paragraph.

(2) The only two purposes authorized by the subclassification of qualified timberland property as provided by this subparagraph shall be to allow the General Assembly by general law to:

(A) Provide that the Department of Revenue shall appraise qualified timberland property at its fair market value using any combination of appraisal methodologies otherwise provided by general law for establishing the fair market value of real property, provided that such methodology is not subject to an exception authorized by subparagraph (b), (c), (d), (e), (f), or (g) of this Paragraph; and

(B) Authorize the General Assembly to provide for a separate system by which to appeal appraisals of and determinations made related to qualified timberland property.″

SECTION 2.

The above proposed amendment to the Constitution shall be published and submitted as provided in Article X, Section I, Paragraph II of the Constitution. The ballot submitting the above proposed amendment shall have written or printed thereon the following:

"( ) YES Shall the Constitution of Georgia be amended so as to revise provisions related to the subclassification for tax purposes of and the prescribed methodology for establishing the value of forest land conservation use property and related assistance grants, to provide that assistance grants related to forest land conservation use property may be increased by general
( ) NO law for a five-year period and that up to 5 percent of assistance grants may be deducted and retained by the state revenue commissioner to provide for certain state administrative costs, and to provide for the subclassification of qualified timberland property for ad valorem taxation purposes?"

All persons desiring to vote in favor of ratifying the proposed amendment shall vote "Yes." All persons desiring to vote against ratifying the proposed amendment shall vote "No." If such amendment shall be ratified as provided in said Paragraph of the Constitution, it shall become a part of the Constitution of this state.

House Bill 374 (AS PASSED HOUSE AND SENATE)

By: Representative Knight of the 130th

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of property, so as to provide for certain changes in proceedings before the county board of equalization; to provide for procedures, conditions, and limitations; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of property, is amended by revising paragraph (2) of subsection (b) of Code Section 48-5-306, relating to the annual notice of current assessment, as follows:

"(2)(A) In addition to the items required under paragraph (1) of this subsection, the notice shall contain a statement of the taxpayer's right to an appeal and an estimate of the current year's taxes for all levying authorities which shall be in substantially the following form:

'The amount of your ad valorem tax bill for this year will be based on the appraised and assessed values specified in this notice. You have the right to appeal these values to the county board of tax assessors. At the time of filing your appeal you must select one of the following options:

(i) An appeal to the county board of equalization with appeal to the superior court;

(ii) To arbitration without an appeal to the superior court; or

(iii) For a parcel of nonhomestead property with a fair market value in excess of ~~$750,000.00~~ $500,000.00 as shown on the taxpayer's annual notice of current assessment under this Code section, or for one or more account numbers of wireless property as defined in subparagraph (e.1)(1)(B) of Code Section 48-5-311 with an aggregate fair market value in excess of ~~$750,000.00~~ $500,000.00 as shown on the taxpayer's annual notice of current assessment under this Code section, to a hearing officer with appeal to the superior court.

If you wish to file an appeal, you must do so in writing no later than 45 days after the date of this notice. If you do not file an appeal by this date, your right to file an appeal will be lost. For further information on the proper method for filing an appeal, you may contact the county board of tax assessors which is located at: (insert address) and which may be contacted by telephone at: (insert telephone number).'

(B) The notice shall also contain the following statements in bold print:

'The estimate of your ad valorem tax bill for the current year is based on the previous or most applicable year's millage rate and the fair market value contained in this notice. The actual tax bill you receive may be more or less than this estimate. This estimate may not include all eligible exemptions.'"

SECTION 2.

Said chapter is further amended by revising subsections (e), (e.1), (f), and (g) of Code Section 48-5-311, relating to creation and duties of county boards of equalization, as follows:

"(e) **Appeal.**

(1)(A) Any taxpayer or property owner as of the last date for filing an appeal may elect to file an appeal from an assessment by the county board of tax assessors to:

(i) The county board of equalization as to matters of taxability, uniformity of assessment, and value, and, for residents, as to denials of homestead exemptions pursuant to paragraph (2) of this subsection;

(ii) An arbitrator as to matters of value pursuant to subsection (f) of this Code section;

(iii) A hearing officer as to matters of value and uniformity of assessment for a parcel of nonhomestead real property with a fair market value in excess of ~~$750,000.00~~ $500,000.00 as shown on the taxpayer's annual notice of current assessment under Code Section 48-5-306, and any contiguous nonhomestead real property owned by the same taxpayer, pursuant to subsection (e.1) of this Code section; or

(iv) A hearing officer as to matters of values or uniformity of assessment of one or more account numbers of wireless property as defined in subparagraph (e.1)(1)(B) of this Code section with an aggregate fair market value in excess of ~~$750,000.00~~ $500,000.00 as shown on the taxpayer's annual notice of current assessment under Code Section 48-5-306, pursuant to subsection (e.1) of this Code section.

(A.1) The commissioner shall establish by rule and regulation a uniform appeal form that the taxpayer may use. Such uniform appeal form shall require the initial assertion of a valuation of the property by the taxpayer.

(B) In addition to the grounds enumerated in subparagraph (A) of this paragraph, any taxpayer having property that is located within a municipality, the boundaries of which

municipality extend into more than one county, may also appeal from an assessment on such property by the county board of tax assessors to the county board of equalization, to a hearing officer, or to arbitration as to matters of uniformity of assessment of such property with other properties located within such municipality, and any uniformity adjustments to the assessment that may result from such appeal shall only apply for municipal ad valorem tax purposes.

(B.1) The taxpayer or his or her agent or representative may submit in support of his or her appeal an appraisal given, signed, and certified as such by a real property appraiser as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board which was performed not later than nine months prior to the date of assessment. The board of tax assessors shall consider the appraisal upon request. Within 45 days of the receipt of the taxpayer's appraisal, the board of tax assessors shall notify the taxpayer or his or her agent or representative of acceptance of the appraisal or shall notify the taxpayer or his or her agent or representative of the reasons for rejection.

(B.2) The taxpayer or his or her agent or representative may submit in support of his or her appeal the most current report of the sales ratio study for the county conducted pursuant to Code Section 48-5-274. The board of tax assessors shall consider such sales ratio study upon request of the taxpayer or his or her agent or representative.

(B.3) Any assertion of value by the taxpayer on the uniform appeal form made to the board of tax assessors shall be subject to later amendment or revision by the taxpayer by submission of written evidence to the board of tax assessors.

(B.4) If more than one property of a taxpayer is under appeal, the board of equalization, arbitrator, or hearing officer, as the case may be, shall, upon request of the taxpayer, consolidate all such appeals in one hearing and shall announce separate decisions as to each parcel or item of property. Any appeal from such a consolidated hearing to the superior court as provided in subsection (g) of this Code section shall constitute a single civil action and, unless the taxpayer specifically so indicates in the taxpayer's notice of appeal, shall apply to all such parcels or items of property.

(B.5) Within ten days of a final determination of value under this Code section and the expiration of the 30 day appeal period provided by subsection (g) of this Code section, or, as otherwise provided by law, with no further option to appeal, the county board of tax assessors shall forward such final determination of value to the tax commissioner.

(C) Appeals to the county board of equalization shall be conducted in the manner provided in paragraph (2) of this subsection. Appeals to a hearing officer shall be conducted in the manner specified in subsection (e.1) of this Code section. Appeals to an arbitrator shall be conducted in the manner specified in subsection (f) of this Code

section. Such appeal proceedings shall be conducted between the hours of 8:00 A.M. and 7:00 P.M. on a business day. Following the notification of the taxpayer of the date and time of such taxpayer's scheduled hearing, the taxpayer shall be authorized to exercise a one-time option of changing the date and time of the taxpayer's scheduled hearing to a day and time acceptable to the taxpayer and the county board of tax assessors. The appeal administrator shall grant additional extensions to the taxpayer or the county board of tax assessors for good cause shown, or by agreement of the parties.

(D) The commissioner, by regulation, shall adopt uniform procedures and standards which shall be followed by county boards of equalization, hearing officers, and arbitrators in determining appeals. Such rules shall be updated and revised periodically and reviewed no less frequently than every five years. The commissioner shall publish and update annually a manual for use by county boards of equalization, arbitrators, and hearing officers.

(2)(A) An appeal shall be effected by e-mailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, by mailing to, or by filing with the county board of tax assessors a notice of appeal within 45 days from the date of mailing the notice pursuant to Code Section 48-5-306. A written objection to an assessment of real property received by a county board of tax assessors stating the location of the real property and the identification number, if any, contained in the tax notice shall be deemed a notice of appeal by the taxpayer under the grounds listed in paragraph (1) of this subsection. A written objection to an assessment of personal property received by a county board of tax assessors giving the account number, if any, contained in the tax notice and stating that the objection is to an assessment of personal property shall be deemed a notice of appeal by the taxpayer under the grounds listed in paragraph (1) of this subsection. The county board of tax assessors shall review the valuation or denial in question, and, if any changes or corrections are made in the valuation or decision in question, the board shall send a notice of the changes or corrections to the taxpayer pursuant to Code Section 48-5-306. Such notice shall also explain the taxpayer's right to appeal to the county board of equalization as provided in subparagraph (C) of this paragraph if the taxpayer is dissatisfied with the changes or corrections made by the county board of tax assessors.

(B) If no changes or corrections are made in the valuation or decision, the county board of tax assessors shall send written notice thereof to the taxpayer, to any authorized agent or representative of the taxpayer to whom the taxpayer has requested that such notice be sent, and to the county board of equalization which notice shall also constitute the taxpayer's appeal to the county board of equalization without the necessity of the

taxpayer's filing any additional notice of appeal to the county board of tax assessors or to the county board of equalization. The county board of tax assessors shall also send or deliver all necessary papers to the county board of equalization. If, however, the taxpayer and the county board of tax assessors execute a signed agreement as to valuation, the appeal shall terminate as of the date of such signed agreement.

(C) If changes or corrections are made by the county board of tax assessors, the board shall notify the taxpayer in writing of such changes. The commissioner shall develop and make available to county boards of tax assessors a suitable form which shall be used in such notification to the taxpayer. The notice shall be sent by regular mail properly addressed to the address or addresses the taxpayer provided to the county board of tax assessors and to any authorized agent or representative of the taxpayer to whom the taxpayer has requested that such notice be sent. If the taxpayer is dissatisfied with such changes or corrections, the taxpayer shall, within 30 days of the date of mailing of the change notice, notify the county board of tax assessors to continue the taxpayer's appeal to the county board of equalization by e-mailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by mailing to or filing with the county board of tax assessors a written notice of continuance. The county board of tax assessors shall send or deliver the notice of appeal and all necessary papers to the county board of equalization.

(D) The written notice to the taxpayer required by this paragraph shall contain a statement of the grounds for rejection of any position the taxpayer has asserted with regard to the valuation of the property. No addition to or amendment of such grounds as to such position shall be permitted before the county board of equalization.

(3)(A) In each year, the county board of tax assessors shall review the appeal and notify the taxpayer <u>(i) if there are no changes or corrections in the valuation or decision, or (ii)</u> of any corrections or changes within 180 days after receipt of the taxpayer's notice of appeal. If the county board of tax assessors fails to respond to the taxpayer within such 180 day period, the property valuation asserted by the taxpayer on the property tax return or the taxpayer's notice of appeal shall become the assessed fair market value for the taxpayer's property for the tax year under appeal. If no such assertion of value was submitted by the taxpayer, the appeal shall be forwarded to the county board of equalization.

(B) In any county in which the number of appeals exceeds a number equal to or greater than 3 percent of the total number of parcels in the county or the sum of the current assessed value of the parcels under appeal is equal to or greater than 3 percent of the gross tax digest of the county, the county board of tax assessors ~~shall~~ <u>may</u> be granted an additional 180 day period to make its determination and notify the taxpayer. ~~The~~

However, as a condition to receiving such an extension, the county board of tax assessors shall, at least 30 days before the expiration of the 180 day period provided under subparagraph (A) of this paragraph, notify each affected taxpayer of the additional 180 day review period provided in this subparagraph by mail or electronic communication, including posting notice on the website of the county board of tax assessors if such a website is available. Such additional period shall commence immediately following the last day of the 180 days provided for under subparagraph (A) of this paragraph. If the county board of tax assessors fails to review the appeal and notify the taxpayer of either no changes or of any corrections or changes not later than the last day of such additional 180 day period, then the most recent property tax valuation asserted by the taxpayer on the property tax return or on appeal shall prevail and shall be deemed the value established on such appeal unless a time extension is granted under subparagraph (C) of this paragraph. If no such assertion of value was submitted by the taxpayer, the appeal shall be forwarded to the county board of equalization.

(C) Upon a sufficient showing of good cause by reason of unforeseen circumstances proven to the commissioner at least 30 days prior to the expiration of the additional 180 day period provided for under subparagraph (B) of this paragraph, the commissioner shall be authorized, in the commissioner's sole discretion, to provide for a time extension beyond the end of such additional 180 day period. The duration of any such time extension shall be specified in writing by the commissioner and, at least 30 days prior to the expiration of the extension provided for under subparagraph (B) of this paragraph, shall be sent to each affected taxpayer and shall also be posted on the website of the county board of tax assessors if such a website is available. If the county board of tax assessors fails to make its review and notify the taxpayer and the taxpayer's attorney not later than 30 days before the last day of such time extension, the most recent property tax valuation asserted by the taxpayer on the property tax return or on the taxpayer's notice of appeal shall prevail and shall be deemed the value established on such appeal. If no such assertion of value was submitted by the taxpayer, the appeal shall be forwarded to the county board of equalization. In addition, the commissioner shall be authorized to require additional training or require such other remediation as the commissioner may deem appropriate for failure to meet the deadline imposed by the commissioner under this subparagraph.

(4) The determination by the county board of tax assessors of questions of factual characteristics of the property under appeal, as opposed to questions of value, shall be prima-facie correct in any appeal to the county board of equalization. However, the

board of tax assessors shall have the burden of proving its opinions of value and the validity of its proposed assessment by a preponderance of evidence.

(5) The county board of equalization shall determine all questions presented to it on the basis of the best information available to the board.

(6)(A) Within 15 days of the receipt of the notice of appeal, the county board of equalization shall set a date for a hearing on the questions presented and shall so notify the taxpayer and the county board of tax assessors in writing. Such notice shall be sent by first-class mail to the taxpayer and to any authorized agent or representative of the taxpayer to whom the taxpayer has requested that such notice be sent. Such notice shall be transmitted by e-mail to the county board of tax assessors if such board has adopted a written policy consenting to electronic service, and, if it has not, then such notice shall be sent to such board by first-class mail or intergovernmental mail. Such written notice shall advise each party that he or she may request a list of witnesses, documents, or other written evidence to be presented at the hearing by the other party~~, which~~. Such request must be made not less than ten days prior to the hearing date, and such information shall be provided to the requesting party not less than seven days prior to the time of the hearing. Any failure to comply with this requirement shall be grounds for an automatic continuance or for exclusion of such witness, documents, or other written evidence. A taxpayer may appear before the board of equalization concerning any appeal in person, by his or her authorized agent or representative, or both. The taxpayer shall specify in writing to the board of equalization the name of any such agent or representative prior to any appearance by the agent or representative before the board.

(B) Within 30 days of the date of notification to the taxpayer of the hearing required in this paragraph but not earlier than 20 days from the date of such notification to the taxpayer, the county board of equalization shall hold such hearing to determine the questions presented.

(C) If more than one property of a taxpayer is under appeal, the board of equalization shall, upon request of the taxpayer, consolidate all such appeals in one hearing and announce separate decisions as to each parcel or item of property. Any appeal from such a consolidated board of equalization hearing to the superior court as provided in this subsection shall constitute a single civil action, and, unless the taxpayer specifically so indicates in his or her notice of appeal, shall apply to all such parcels or items of property.

(D)(i) The board of equalization shall announce its decision on each appeal at the conclusion of the hearing held in accordance with subparagraph (B) of this paragraph before proceeding with another hearing. The decision of the county board of

equalization shall be in writing, shall be signed by each member of the board, shall specifically decide each question presented by the appeal, shall specify the reason or reasons for each such decision as to the specific issues of taxability, uniformity of assessment, value, or denial of homestead exemptions depending upon the specific issue or issues raised by the taxpayer in the course of such taxpayer's appeal, shall state that with respect to the appeal no member of the board is disqualified from acting by virtue of subsection (j) of this Code section, and shall certify the date on which notice of the decision is given to the parties. Notice of the decision shall be delivered by hand to each party, with written receipt, or given to each party by sending a copy of the decision by registered or certified mail or statutory overnight delivery to the appellant and by filing the original copy of the decision with the county board of tax assessors. Each of the three members of the county board of equalization must be present and must participate in the deliberations on any appeal. A majority vote shall be required in any matter. All three members of the board shall sign the decision indicating their vote.

(ii) Except as otherwise provided in subparagraph (g)(4)(B) of this Code section, the county board of tax assessors shall use the valuation of the county board of equalization in compiling the tax digest for the county for the year in question and shall indicate such valuation as the previous year's value on the property tax notice of assessment of such taxpayer for the immediately following year rather than substituting the valuation which was changed by the county board of equalization.

(iii)(I) If the county's tax bills are issued before an appeal has been finally determined, the county board of tax assessors shall specify to the county tax commissioner the lesser of the valuation in the last year for which taxes were finally determined to be due on the property or 85 percent of the current year's value, unless the property in issue is homestead property and has been issued a building permit and structural improvements have occurred, or structural improvements have been made without a building permit, in which case, it shall specify 85 percent of the current year's valuation as set by the county board of tax assessors. Depending on the circumstances of the property, this amount shall be the basis for a temporary tax bill to be issued; provided, however, that a nonhomestead owner of a single property valued at $2 million or more may elect to pay the temporary tax bill which specifies 85 percent of the current year's valuation; or, such owner may elect to pay the amount of the difference between the 85 percent tax bill based on the current year's valuation and the tax bill based on the valuation from the last year for which taxes were finally determined to be due on the property in conjunction with the amount of the tax bill based on valuation from the last year for which taxes were

finally determined to be due on the property, to the tax commissioner's office. Only the amount which represents the difference between the tax bill based on the current year's valuation and the tax bill based on the valuation from the last year for which taxes were finally determined to be due will be held in an escrow account by the tax commissioner's office. Once the appeal is concluded, the escrowed funds shall be released by the tax commissioner's office to the prevailing party. The taxpayer may elect to pay the temporary tax bill in the amount of 100 percent of the current year's valuation if no substantial property improvement has occurred. The county tax commissioner shall have the authority to adjust such tax bill to reflect the 100 percent value as requested by the taxpayer. Such tax bill shall be accompanied by a notice to the taxpayer that the bill is a temporary tax bill pending the outcome of the appeal process. Such notice shall also indicate that upon resolution of the appeal, there may be additional taxes due or a refund issued.

(II) For the purposes of this Code section, any final value that causes a reduction in taxes and creates a refund that is owed to the taxpayer shall be paid by the tax commissioner to the taxpayer, entity, or transferee who paid the taxes with interest, as provided in subsection (m) of this Code section.

(III) For the purposes of this Code section, any final value that causes an increase in taxes and creates an additional billing shall be paid to the tax commissioner as any other tax due along with interest, as provided in subsection (m) of this Code section.

(7) The appeal administrator shall furnish the county board of equalization necessary facilities and administrative help. The appeal administrator shall see that the records and information of the county board of tax assessors are transmitted to the county board of equalization. The county board of equalization shall consider in the performance of its duties the information furnished by the county board of tax assessors and the taxpayer.

(8) If at any time during the appeal process to the county board of equalization ~~and after certification by the county board of tax assessors to the county board of equalization~~, the county board of tax assessors and the taxpayer mutually agree in writing on the fair market value, then the county board of tax assessors, or the county board of equalization, as the case may be, shall enter the agreed amount in all appropriate records as the fair market value of the property under appeal, and the appeal shall be concluded. The provisions in subsection (c) of Code Section 48-5-299 shall apply to the agreed-upon valuation unless otherwise waived by both parties.

(9) Notwithstanding any other provision of law to the contrary, on any real property tax appeal made under this Code section on and after January 1, 2016, the assessed value being appealed may be lowered by the deciding body based upon the evidence presented

but cannot be increased from the amount assessed by the county board of tax assessors. This paragraph shall not apply to any appeal where the taxpayer files an appeal during a time when subsection (c) of Code Section 48-5-299 is in effect for the assessment being appealed.

(e.1) **Appeals to hearing officer.**

(1)(A) For any dispute involving the value or uniformity of a parcel of nonhomestead real property with a fair market value in excess of ~~$750,000.00~~ $500,000.00 as shown on the taxpayer's annual notice of current assessment under Code Section 48-5-306, at the option of the taxpayer, an appeal may be submitted to a hearing officer in accordance with this subsection. If such taxpayer owns nonhomestead real property contiguous to such qualified nonhomestead real property, at the option of the taxpayer, such contiguous property may be consolidated with the qualified property for purposes of the hearing under this subsection.

(B)(i) As used in this subparagraph, the term 'wireless property' means tangible personal property or equipment used directly for the provision of wireless services by a provider of wireless services which is attached to or is located underneath a wireless cell tower or at a network data center location but which is not permanently affixed to such tower or data center so as to constitute a fixture.

(ii) For any dispute involving the values or uniformity of one or more account numbers of wireless property as defined in this subparagraph with an aggregate fair market value in excess of ~~$750,000.00~~ $500,000.00 as shown on the taxpayer's annual notice of current assessment under Code Section 48-5-306, at the option of the taxpayer, an appeal may be submitted to a hearing officer in accordance with this subsection.

(2) Individuals desiring to serve as hearing officers and who are either state certified general real property appraisers or state certified residential real property appraisers as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board for real property appeals or are designated appraisers by a nationally recognized appraiser's organization for wireless property appeals shall complete and submit an application, a list of counties the hearing officer is willing to serve, disqualification questionnaire, and resume and be approved by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board to serve as a hearing officer. Such board shall annually publish a list of qualified and approved hearing officers for Georgia.

(3) The appeal administrator shall furnish any hearing officer so selected the necessary facilities.

(4) An appeal shall be effected by e-mailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by filing with the county

board of tax assessors a notice of appeal to a hearing officer within 45 days from the date of mailing the notice of assessment pursuant to Code Section 48-5-306. A written objection to an assessment of real property or wireless property received by a county board of tax assessors stating the taxpayer's election to appeal to a hearing officer and showing the location of the real property or wireless property contained in the assessment notice shall be deemed a notice of appeal by the taxpayer.

(5) The county board of tax assessors may for no more than 90 days review the taxpayer's written appeal, and if changes or corrections are made by the county board of tax assessors, the board shall notify the taxpayer in writing of such changes. Within 30 days of the county board of tax assessors' mailing of such notice, the taxpayer may notify the county board of tax assessors in writing that the changes or corrections made by the county board of tax assessors are not acceptable, in which case, the county board of tax assessors shall, within 30 days of the date of mailing of such taxpayer's notification, send or deliver all necessary ~~papers~~ documentation to the appeal administrator, in paper or electronic format as agreed upon by the county board of tax assessors and appeal administrator, and mail a copy to the taxpayer or, alternatively, forward the appeal to the board of equalization if so elected by the taxpayer and such election is included in the taxpayer's notification that the changes are not acceptable. If, after review, the county board of tax assessors determines that no changes or corrections are warranted, the county board of tax assessors shall notify the taxpayer of such decision. The taxpayer may elect to forward the appeal to the board of equalization by notifying the county board of tax assessors within 30 days of the mailing of the county board of tax assessor's notice of no changes or corrections. Upon the expiration of 30 days following the mailing of the county board of tax assessors' notice of no changes or corrections, the county board of tax assessors shall certify the notice of appeal and send or deliver all necessary ~~papers~~ documentation to the appeal administrator, in paper or electronic format as agreed upon by the county board of tax assessors and appeal administrator, for the appeal to the hearing officer, or board of equalization if elected by the taxpayer, and mail a copy to the taxpayer. If the county board of tax assessors fails to respond in writing, either with changes or no changes, to the taxpayer within 180 days after receiving the taxpayer's notice of appeal, the property valuation asserted by the taxpayer on the property tax return or the taxpayer's notice of appeal shall become the assessed fair market value for the taxpayer's property for the tax year under appeal.

(6)(A) The appeal administrator shall randomly select from such list a hearing officer who shall have experience or expertise in hearing or appraising the type of property that is the subject of appeal to hear the appeal, unless the taxpayer and the county board of tax assessors mutually agree upon a hearing officer from such list. The appeal

administrator shall notify the taxpayer and the taxpayer's attorney in compliance with subsection (o) of this Code section of the name of the hearing officer and transmit a copy of the hearing officer's disqualification questionnaire and resume provided for under paragraph (2) of this subsection. If no hearing officer is appointed or if no hearing is scheduled within 180 days after the county board of tax assessors receives the taxpayer's notice of appeal, the property valuation asserted by the taxpayer on the property tax return or the taxpayer's notice of appeal shall become the assessed fair market value for the taxpayer's property for the tax year under appeal, and subsection (c) of Code Section 48-5-299 shall apply. The hearing officer, in conjunction with all parties to the appeal, shall set a time and place to hear evidence and testimony from both parties. The hearing shall take place in the county where the property is located, or such other place as mutually agreed to by the parties and the hearing officer. The hearing officer shall provide electronic or written notice to the parties personally or by registered or certified mail or statutory overnight delivery not less than ten days before the hearing. Such written notice shall advise each party that he or she may request a list of witnesses, documents, or other written evidence to be presented at the hearing by ~~a~~ the other party. Such request must be made not less than ten days prior to the hearing date, and such information shall ~~must~~ be provided to the ~~other~~ requesting party not less than seven days prior to the time of the hearing. Any ~~and that any~~ failure to comply with this requirement shall be grounds for an automatic continuance or for exclusion of such witnesses, documents, or other written evidence.

(B) If the appeal administrator, after a diligent search, cannot find a qualified hearing officer who is willing to serve, the appeal administrator shall transfer the certification of the appeal to the county or regional board of equalization and notify the taxpayer and the taxpayer's attorney in compliance with subsection (o) of this Code section and the county board of tax assessors of the transmittal of such appeal.

(7) The hearing officer shall swear in all witnesses, perform the powers, duties, and authority of a county or regional board of equalization, and determine the fair market value of the real property or wireless property based upon the testimony and evidence presented during the hearing. Any issues other than fair market value and uniformity raised in the appeal shall be preserved for appeal to the superior court. The board of tax assessors shall have the burden of proving its opinion of value and the validity of its proposed assessment by a preponderance of evidence. At the conclusion of the hearing, the hearing officer shall notify both parties of the decision verbally and shall either send both parties the decision in writing or deliver the decision by hand to each party, with written receipt.

(8) The taxpayer or the board of tax assessors may appeal the decision of the hearing officer to the superior court as provided in subsection (g) of this Code section.

(9) If, at any time during the appeal under this subsection, the taxpayer and the county board of tax assessors execute a signed written agreement on the fair market value and any other issues raised: the appeal shall terminate as of the date of such signed agreement; the fair market value as set forth in such agreement shall become final; and subsection (c) of Code Section 48-5-299 shall apply.

(9.1) The provisions contained in this subsection may be waived at any time by written consent of the taxpayer and the county board of tax assessors.

(10) Each hearing officer shall be compensated by the county for time expended in ~~considering~~ hearing appeals. The compensation shall be paid at a rate of not less than ~~$75.00~~ $100.00 per hour for the first hour and not less than $25.00 per hour for each hour thereafter as determined by the county governing authority or as may be agreed upon by the parties with the consent of the county governing authority. Compensation pursuant to this paragraph shall be paid from the county treasury or, if the parties agree to pay compensation exceeding the minimum compensation set by this Code section, by a combination of the parties as agreed on by the parties. The hearing officer shall receive such compensation upon certification by the hearing officer of the hours expended in hearing of appeals. The attendance at any training required by the commissioner shall be part of the qualifications of the hearing officer, and any nominal cost of such training shall be paid by the hearing officer.

(11) The commissioner shall promulgate rules and regulations for the proper administration of this subsection, including, but not limited to, qualifications; training, including an eight-hour course on Georgia property law, Georgia evidence law, preponderance of evidence, burden of proof, credibility of the witnesses, and weight of evidence; disqualification questionnaire; selection; removal; an annual continuing education requirement of at least four hours of instruction in recent legislation, current case law, and updates on appraisal and equalization procedures, as prepared and required by the commissioner; and any other matters necessary to the proper administration of this subsection. The failure of any hearing officer to fulfill the requirements of this paragraph shall render such officer ineligible to serve. Such rules and regulations shall also include a uniform appeal form which shall require the initial assertion of a valuation of the property by the taxpayer. Any such assertion of value shall be subject to later revision by the taxpayer based upon written evidence. The commissioner shall seek input from all interested parties prior to such promulgation.

(12) If the county's tax bills are issued before the hearing officer has rendered his or her decision on property which is on appeal, a temporary tax bill shall be issued in the same manner as otherwise required under division (e)(6)(D)(iii) of this Code section.

(13) Upon determination of the final value, the temporary tax bill shall be adjusted as required under division (e)(6)(D)(iii) of this Code section.

(f) **Nonbinding arbitration.**

(1) As used in this subsection, the term 'certified appraisal' means an appraisal or appraisal report given, signed, and certified as such by a real property appraiser as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board.

(2) At the option of the taxpayer, an appeal shall be submitted to nonbinding arbitration in accordance with this subsection.

(3)(A) Following an election by the taxpayer to use the arbitration provisions of this subsection, an arbitration appeal shall be effected by the taxpayer by e-mailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by filing a written notice of arbitration appeal with the county board of tax assessors. The notice of arbitration appeal shall specifically state the grounds for arbitration. The notice shall be filed within 45 days from the date of mailing the notice pursuant to Code Section 48-5-306. Within ten days of receipt of a taxpayer's notice of arbitration appeal, the board of tax assessors shall send to the taxpayer an acknowledgment of receipt of the appeal and a notice that the taxpayer shall, within 45 days of the date of transmittal of the acknowledgment of receipt of the appeal, provide to the county board of tax assessors for consideration a copy of a certified appraisal. Failure of the taxpayer to provide such certified appraisal within such 45 days shall terminate the appeal unless the taxpayer within such 45 day period elects to have the appeal immediately forwarded to the board of equalization. Prior to appointment of the arbitrator and within 45 days of the acknowledgment of the receipt of the appeal, the taxpayer shall provide a copy of the certified appraisal as specified in this paragraph to the county board of tax assessors for consideration. Within 45 days of receiving the taxpayer's certified appraisal, the county board of tax assessors shall either accept the taxpayer's appraisal, in which case that value shall become final, or the county board of tax assessors shall reject the taxpayer's appraisal by sending within ten days of the date of such rejection a written notification by certified mail of such rejection to the taxpayer and the taxpayer's attorney of record in compliance with subsection (o) of this Code section, in which case the county board of tax assessors shall certify within 45 days the appeal to the appeal administrator of the county in which the property is located along with any other ~~papers~~ documentation specified by the person seeking

arbitration under this subsection, including, but not limited to, the staff information from the file used by the county board of tax assessors. In the event the taxpayer is not notified of a rejection of the taxpayer's appraisal within such ten-day period, the taxpayer's appraisal value shall become final. In the event that the county board of tax assessors neither accepts nor rejects the value set out in the certified appraisal within 45 days after the receipt of the certified appraisal, then the certified appraisal shall become the final value. All papers and information certified to the appeal administrator shall become a part of the record on arbitration. At the time of certification of the appeal, the county board of tax assessors shall serve the taxpayer and the taxpayer's attorney of record in compliance with subsection (o) of this Code section, if any, or employee with a copy of the certification along with any other papers specified by the person seeking arbitration along with the civil action file number assigned to the appeal, if any. Within 15 days of filing the certification to the appeal administrator, the presiding or chief judge of the superior court of the circuit in which the property is located shall issue an order authorizing the arbitration.

(B) At any point, the county board of tax assessors and the taxpayer may execute a signed, written agreement establishing the fair market value without entering into or completing the arbitration process. The fair market value as set forth in such agreement shall become the final value.

(C) The arbitration shall be conducted pursuant to the following procedure:

(i) The county board of tax assessors shall, at the time the appeal is certified to the appeal administrator under subparagraph (A) of this paragraph, provide to the taxpayer a notice of a meeting time and place to decide upon an arbitrator, to occur within 60 days after the date of sending the rejection of the taxpayer's certified appraisal. Following the notification of the taxpayer of the date and time of the meeting, the taxpayer shall be authorized to exercise a one-time option of changing the date and time of the meeting to a date and time acceptable to the taxpayer and the county board of tax assessors. If the parties agree, the matter shall be submitted to a single arbitrator chosen by the parties. If the parties cannot agree on the single arbitrator, the arbitrator may be chosen by the presiding or chief judge of the superior court of the circuit in which the property is located within 30 days after the filing of a petition by either party;

(ii) In order to be qualified to serve as an arbitrator, a person shall be classified as a state certified general real property appraiser or state certified residential real property appraiser pursuant to the rules and regulations of the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board and shall have experience or expertise in appraising the type of property that is the subject of the arbitration;

(iii) The arbitrator, within 30 days after his or her appointment, shall set a time and place to hear evidence and testimony from both parties. The arbitrator shall provide written notice to the parties personally or by registered or certified mail or statutory overnight delivery not less than ~~ten~~ 21 days before the hearing. Such written notice shall advise each party that he or she may request a list of witnesses, documents, or other written evidence to be presented at the hearing by ~~a~~ the other party. Such request must be made not less than ten days prior to the hearing date, and such information shall ~~must~~ be provided to the ~~other~~ requesting party not less than seven days prior to the time of the hearing. Any ~~and that any~~ failure to comply with this requirement~~, unless waived by mutual written agreement of such parties,~~ shall be grounds for ~~a~~ an automatic continuance or for exclusion of such witnesses, documents, or other written evidence. The arbitrator, in consultation with the parties, may adjourn or postpone the hearing. Following notification of the taxpayer of the date and time of the hearing, the taxpayer shall be authorized to exercise a one-time option of changing the date and time of the hearing to a date and time acceptable to the taxpayer and the county board of tax assessors. The presiding or chief judge of the superior court of the circuit in which the property is located may direct the arbitrator to proceed promptly with the hearing and the determination of the appeal upon application of any party. The hearing shall occur in the county in which the property is located or such other place as may be agreed upon in writing by the parties;

(iv) At the hearing, the parties shall be entitled to be heard, to present documents, testimony, and other matters, and to cross-examine witnesses. The arbitrator may hear and determine the controversy upon the documents, testimony, and other matters produced notwithstanding the failure of a party duly notified to appear;

(v) The arbitrator shall maintain a record of all pleadings, documents, testimony, and other matters introduced at the hearing. The arbitrator or any party to the proceeding may have the proceedings transcribed by a court reporter;

(vi) The provisions of this paragraph may be waived at any time by written consent of the taxpayer and the board of tax assessors;

(vii) At the conclusion of the hearing, the arbitrator shall render a decision regarding the fair market value of the property subject to nonbinding arbitration;

(viii) In order to determine the fair market value, the arbitrator may consider the final value for the property submitted by the county board of tax assessors at the hearing and the final value submitted by the taxpayer at the hearing. The taxpayer shall be responsible for the cost of any appraisal by the taxpayer's appraiser;

(ix) The arbitrator shall consider the final value submitted by the county board of tax assessors, the final value submitted by the taxpayer, and evidence supporting the values submitted by the county board of tax assessors and the taxpayer. The arbitrator shall determine the fair market value of the property under appeal. The arbitrator shall notify both parties of the decision verbally and shall either send both parties the decision in writing or deliver the decision by hand to each party, with written receipt;

(x) If the taxpayer's value is closest to the fair market value determined by the arbitrator, the county shall be responsible for the fees and costs of such arbitrator. If the value of the board of tax assessors is closest to the fair market value determined by the arbitrator, the taxpayer shall be responsible for the fees and costs of such arbitrator; and

(xi) The board of tax assessors shall have the burden of proving its opinion of value and the validity of its proposed assessment by a preponderance of evidence.

(4) If the county's tax bills are issued before an arbitrator has rendered his or her decision on property which is on appeal, a temporary tax bill shall be issued in the same manner as otherwise required under division (e)(6)(D)(iii) of this Code section.

(5) Upon determination of the final value, the temporary tax bill shall be adjusted as required under division (e)(6)(D)(iii) of this Code section.

(g) **Appeals to the superior court.**

(1) The taxpayer or the county board of tax assessors may appeal decisions of the county board of equalization, hearing officer, or arbitrator, as applicable, to the superior court of the county in which the property lies. By mutual written agreement, the taxpayer and the county board of tax assessors may waive an appeal to the county board of equalization and initiate an appeal under this subsection. A county board of tax assessors shall not appeal a decision of the county board of equalization, arbitrator, or hearing officer, as applicable, changing an assessment by 20 percent or less unless the board of tax assessors gives the county governing authority a written notice of its intention to appeal, and, within ten days of receipt of the notice, the county governing authority by majority vote does not prohibit the appeal. In the case of a joint city-county board of tax assessors, such notice shall be given to the city and county governing authorities, either of which may prohibit the appeal by majority vote within the allowed period of time.

(2) An appeal by the taxpayer as provided in paragraph (1) of this subsection shall be effected by e-mailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by mailing to or filing with the county board of tax assessors a written notice of appeal. An appeal by the county board of tax assessors shall be effected by giving notice to the taxpayer. The notice to the taxpayer shall be dated and shall contain the name and the last known address of the taxpayer. The notice of appeal

shall specifically state the grounds for appeal. The notice shall be mailed or filed within 30 days from the date on which the decision of the county board of equalization, hearing officer, or arbitrator is delivered pursuant to subparagraph (e)(6)(D), paragraph (7) of subsection (e.1), or division (f)(3)(C)(ix) of this Code section. Within 45 days of receipt of a taxpayer's notice of appeal and before certification of the appeal to the superior court, the county board of tax assessors shall send to the taxpayer notice that a settlement conference, in which the county board of tax assessors and the taxpayer shall confer in good faith, will be held at a specified date and time which shall be no later than 30 days from the notice of the settlement conference, and notice of the amount of the filing fee, if any, required by the clerk of the superior court. The taxpayer may exercise a one-time option to reschedule the settlement conference to a different date and time acceptable to the taxpayer~~, but in no event later than 30 days from the date of the notice~~ during normal business hours. After a settlement conference has convened, the parties may agree to continue the settlement conference to a later date. If at the end of the 45 day review period the county board of tax assessors elects not to hold a settlement conference, then the appeal shall terminate and the taxpayer's stated value shall be entered in the records of the board of tax assessors as the fair market value for the year under appeal and the provisions of subsection (c) of Code Section 48-5-299 shall apply to such value. If the taxpayer chooses not to participate in the settlement conference, he or she may not seek and shall not be awarded fees and costs at such time when the appeal is settled in superior court. If at the conclusion of the settlement conference the parties reach an agreement, the settlement value shall be entered in the records of the county board of tax assessors as the fair market value for the tax year under appeal and the provisions of subsection (c) of Code Section 48-5-299 shall apply to such value. If at the conclusion of the settlement conference the parties cannot ~~agree on a fair market value~~ reach an agreement, then written notice shall be provided to the taxpayer that the filing fees must be paid by the taxpayer to the clerk of the superior court within ~~ten~~ 20 days of the date of the conference, with a copy of the check delivered to the county board of tax assessors. Notwithstanding any other provision of law to the contrary, the amount of the filing fee for an appeal under this subsection shall be $25.00. An appeal under this subsection shall not be subject to any other fees or additional costs otherwise required under any provision of Title 15 or under any other provision of law. Immediately following payment of such $25.00 filing fee by the taxpayer to the clerk of the superior court, the clerk shall remit the proceeds thereof to the governing authority of the county which shall deposit the proceeds into the general fund of the county. Within 30 days of receipt of proof of payment to the clerk of the superior court, the county board of tax assessors shall certify to the clerk of the superior court the notice of appeal and any other papers specified by

the person appealing including, but not limited to, the staff information from the file used by the county board of tax assessors, the county board of equalization, the hearing officer, or the arbitrator. All papers and information certified to the clerk shall become a part of the record on appeal to the superior court. At the time of certification of the appeal, the county board of tax assessors shall serve the taxpayer and his or her attorney of record, if any, with a copy of the notice of appeal and with the civil action file number assigned to the appeal. Such service shall be effected in accordance with subsection (b) of Code Section 9-11-5. No discovery, motions, or other pleadings may be filed by the county board of tax assessors in the appeal until such service has been made.

(3) The appeal shall constitute a de novo action. The board of tax assessors shall have the burden of proving its opinions of value and the validity of its proposed assessment by a preponderance of evidence. Upon a failure of the board of tax assessors to meet such burden of proof, the court may, upon motion or sua sponte, authorize the finding that the value asserted by the board of tax assessors is unreasonable and authorize the determination of the final value of the property.

(4)(A) The appeal shall be placed on the court's next available jury or bench trial calendar, at the taxpayer's election, following the filing of the appeal unless continued by the court. If only questions of law are presented in the appeal, the appeal shall be heard as soon as practicable before the court sitting without a jury. Each hearing before the court sitting without a jury at the taxpayer's election shall be held within 30 days following the date on which the appeal is filed with the clerk of the superior court.

(B)(i) The county board of tax assessors shall use the valuation of the county board of equalization, the hearing officer, or the arbitrator, as applicable, in compiling the tax digest for the county.

(ii)(I) If the final determination of value on appeal is less than the valuation thus used, the tax commissioner shall be authorized to adjust the taxpayer's tax bill to reflect the final value for the year in question.

(II) If the final determination of value on appeal causes a reduction in taxes and creates a refund that is owed to the taxpayer, it shall be paid by the tax commissioner to the taxpayer, entity, or transferee who paid the taxes with interest, as provided in subsection (m) of this Code section.

(III) If the final determination of value on appeal is 85 percent or less of the valuation set by the county board of equalization, hearing officer, or arbitrator as to any real property, the taxpayer, in addition to the interest provided for in subsection (m) of this Code section, shall recover costs of litigation and reasonable attorney's fees incurred in the action. Any appeal of an award of attorney's fees by the county shall be specifically approved by the governing authority of the county.

(iii) If the final determination of value on appeal is greater than the valuation set by the county board of equalization, hearing officer, or arbitrator, as applicable, causes an increase in taxes, and creates an additional billing, it shall be paid to the tax commissioner as any other tax due along with interest, as provided in subsection (m) of this Code section.″

SECTION 3.

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

House Bill 729 (AS PASSED HOUSE AND SENATE)

By: Representatives Harrell of the 106th, Frye of the 118th, Corbett of the 174th, Bentley of the 139th, and Teasley of the 37th

A BILL TO BE ENTITLED

AN ACT

To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to repeal certain provisions relating to state ad valorem tax; to clarify a certain provision regarding the application of the intangible recording tax; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 48 of the Official Code of Georgia Annotated, relating revenue and taxation, is amended by repealing Code Section 48-5-8, relating to the manner and time of making the state ad valorem tax levy, as follows:

"48-5-8.

~~(a) Subject to the conditions specified in subsection (b) of this Code section, the levy for state taxation shall be made by the Governor with the assistance of the commissioner. Each year, as soon as the value of the taxable property is substantially known by the commissioner, the commissioner shall assist the Governor in making the state levy. Immediately after the Governor has made the state levy, the commissioner shall send to each tax collector and tax commissioner written or printed notices of the Governor's order.~~

~~(b)(1) For taxable years beginning on or after January 1, 2011, and prior to January 1, 2012, the levy under subsection (a) of this Code Section shall be 0.25 mills.~~

~~(2) For taxable years beginning on or after January 1, 2012, and prior to January 1, 2013, the levy under subsection (a) of this Code Section shall be 0.2 mills.~~

~~(3) For taxable years beginning on or after January 1, 2013, and prior to January 1, 2014, the levy under subsection (a) of this Code Section shall be 0.15 mills.~~

~~(4) For taxable years beginning on or after January 1, 2014, and prior to January 1, 2015, the levy under subsection (a) of this Code Section shall be 0.1 mills.~~

~~(5) For taxable years beginning on or after January 1, 2015, and prior to January 1, 2016, the levy under subsection (a) of this Code Section shall be 0.05 mills.~~

~~(6)(A) For taxable years beginning on or after January 1, 2016, there shall be no levy for state taxation under subsection (a) of this Code section.~~

~~(B) Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by this subsection and shall continue to be governed by the provisions of this Code section as it existed immediately prior to May 12, 2010.~~

~~(C) This subsection shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to May 12, 2010.~~

~~(c) Each fiscal authority issuing an ad valorem property tax bill shall place a prominent notice on each taxpayer's ad valorem tax bill in substantially the following form:~~

~~'This gradual reduction and elimination of the state property tax and the reduction in your tax bill this year is the result of property tax relief passed by the Governor and the House of Representatives and the Georgia State Senate.'~~ Reserved.″

SECTION 2.

Said title is further amended by revising subsection (a) of Code Section 48-6-65, relating to the extension, transfer, assignment, modification, or renewal of certain instruments, as follows:

″(a) No tax other than as provided for in this article shall be required to be paid on any instrument which is an extension, transfer, assignment, modification, or renewal of, or which only adds additional security for, any original indebtedness or part of original indebtedness secured by an instrument subject to the tax imposed by Code Section 48-6-61 when:

(1) It affirmatively appears that the tax as provided by this article has been paid on the original security instrument recorded; provided, however, that the tax required by Code Section 48-6-61 shall be due on any portion of the instrument which is an additional advance of indebtedness secured by a previously recorded instrument, without regard to whether the original security instrument has been assigned; or

(2) The original instrument or the holder of the original instrument was exempt from the tax provided for in Code Section 48-6-61 by virtue of any other law.″

SECTION 3.

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

House Bill 820 (AS PASSED HOUSE AND SENATE)

By: Representatives Beskin of the 54th, Jones of the 47th, Martin of the 49th, Price of the 48th, Willard of the 51st, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to property tax exemptions and deferral, so as to provide for a new homestead exemption from ad valorem taxes for municipal purposes in an amount equal to the amount by which the current year assessed value of a homestead exceeds the adjusted base year value of such homestead; to provide for definitions; to specify the terms and conditions of the exemption and the procedures relating thereto; to provide for applicability; to provide for related matters; to provide for compliance with constitutional requirements; to provide for a referendum, effective dates, and automatic repeal; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to property tax exemptions and deferral, is amended by adding a new Code section to read as follows:

"48-5-44.1.

(a) For purposes of this Code section, the term:

(1) 'Ad valorem taxes' means all ad valorem taxes for municipal purposes levied by, for, or on behalf of any municipality in this state, but excluding any ad valorem taxes to pay interest on and to retire municipal bonded indebtedness.

(2) 'Adjusted base year value' means the previous adjusted base year value adjusted annually by 2.6 percent plus any change in homestead value, provided that no such change in homestead value shall be duplicated as to the same addition or improvement.

(3) 'Change in homestead value' means value, including any final determination of value on appeal pursuant to Code Section 48-5-311 derived from additions or improvements to, or the removal of real property of, the homestead after the lowest base year value is determined.

(4) 'Homestead' means homestead as defined and qualified in Code Section 48-5-40 with the additional qualification that it shall include only the primary residence and not more than five contiguous acres of land immediately surrounding such residence.

(5) 'Lowest base year value' means:

(A) Among the 2016, 2017, and 2018 taxable years, the lowest assessed value, including any final determination of value on appeal pursuant to Code Section 48-5-311 of the homestead, with such assessed value being multiplied by 1.0423, which number represents inflation rate data for December, 2015, through December, 2017, with respect to an exemption under this Code section which is first granted to a person on such person's homestead in the 2019 taxable year or who thereafter reapplies for and is granted such exemption in the 2020 taxable year, or thereafter, solely because of a change in ownership to a joint tenancy with right of survival; or

(B) In all other cases, the lower of the assessed value, including any final determination of value on appeal pursuant to Code Section 48-5-311 of the homestead, from the taxable year immediately preceding the taxable year in which the exemption under this Code section is first granted to the most recent owner of such homestead or the assessed value, including any final determination of value on appeal pursuant to Code Section 48-5-311 of the homestead, from the taxable year in which the exemption under this Act is first granted to the most recent owner of such homestead, with respect to an exemption under this Code section which is first granted to a person on such person's homestead in the 2020 taxable year or who thereafter reapplies for and is granted such exemption in the 2021 taxable year, or thereafter, solely because of a change in ownership to a joint tenancy with right of survival.

(6) 'Previous adjusted base year' means:

(A) With respect to an exemption under this Code section that is first granted to a person on such person's homestead, the lowest base year value; or

(B) In all other cases, the adjusted base year value as calculated in the taxable year immediately preceding the current year.

(b) When a resident of this state resides in a municipal corporation that is located in more than one county, that levies a sales tax for the purposes of a metropolitan area system of public transportation, and that has within its boundaries an independent school system, the homestead of each such resident actually occupied by the owner as a residence and homestead shall be exempted from ad valorem taxes for municipal purposes in an amount equal to the amount by which the current year assessed value, including any final determination of value on appeal pursuant to Code Section 48-5-311 of such homestead exceeds the adjusted base year value of the homestead. The value of such property in excess of such exempted amount shall remain subject to taxation.

(c) The surviving spouse of the person who has been granted the exemption provided for in subsection (b) of this Code section shall continue to receive such exemption so long as such surviving spouse continues to occupy the home as a residence and homestead.

(d) A person shall not receive the homestead exemption granted by subsection (b) of this Code section unless such person or person's agent files an application with the tax receiver or tax commissioner of his or her respective municipality charged with the duty of receiving returns of property for taxation giving such information relative to receiving such exemption as will enable such tax receiver or tax commissioner to make a determination regarding the initial and continuing eligibility of such person for such exemption or has already filed for and is receiving a homestead exemption and such existing application provides sufficient information to make such determination of eligibility. Such tax receiver or tax commissioner shall provide application forms for this purpose.

(e) The exemption shall be claimed and returned as provided in Code Section 48-5-50.1. Such exemption shall be automatically renewed from year to year so long as the owner occupies the residence as a homestead. After a person or a person's agent has filed the proper application as provided in subsection (d) of this Code section, it shall not be necessary to make application thereafter for any year and the exemption shall continue to be allowed to such person. It shall be the duty of any person granted the homestead exemption under subsection (b) of this Code section to notify the tax receiver or tax commissioner of the municipality in the event such person for any reason becomes ineligible for such exemption.

(f)(1) Except as otherwise provided in paragraph (2) of this subsection, the homestead exemption granted by subsection (b) of this Code section shall be in addition to and not in lieu of any other homestead exemption applicable to ad valorem taxes for municipal purposes.

(2) The homestead exemption granted by subsection (b) of this Code section shall be in lieu of and not in addition to any other base year assessed value or adjusted base year value homestead exemption provided by local Act which is applicable to ad valorem taxes for municipal purposes.

(g) The exemption granted by subsection (b) of this Code section shall apply to all taxable years beginning on or after January 1, 2019.

(h) Any municipal corporation described in subsection (b) of this Code section shall be exempt from the provisions of subsections (c) and (e) of Code Section 48-5-32.1."

SECTION 2.

In accordance with the requirements of Article VII, Section II, Paragraph II(a)(1) of the Constitution of the State of Georgia, this Act shall not become law unless it receives the requisite two-thirds' majority vote in both the Senate and the House of Representatives.

SECTION 3.

The Secretary of State shall call and conduct an election as provided in this section for the purpose of submitting this Act to the electors of the entire state for approval or rejection. The Secretary of State shall conduct such election on November 6, 2018, and shall issue the call and conduct such election as provided by general law. The Secretary of State shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of each county in the state. The ballot shall have written or printed thereon the words:

"( ) YES Do you approve a new homestead exemption in a municipal corporation that
( ) NO is located in more than one county, that levies a sales tax for the purposes of a metropolitan area system of public transportation, and that has within its boundaries an independent school system, from ad valorem taxes for municipal purposes in the amount of the difference between the current year assessed value of a home and the adjusted base year value, provided that the lowest base year value will be adjusted yearly by 2.6 percent?"

All persons desiring to vote for approval of the Act shall vote "Yes," and all persons desiring to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on such question are for approval of the Act, Section 1 of this Act shall become of full force and effect on January 1, 2019. If the Act is not so approved or if the election is not conducted as provided in this section, Section 1 of this Act shall not become effective and this Act shall be automatically repealed on the first day of January immediately following such election date. It shall be the duty of each county election superintendent to certify the results thereof to the Secretary of State.

SECTION 4.

Except as otherwise provided in Section 3 of this Act, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 5.

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

Senate Bill 317

By: Senators Albers of the 56th, Millar of the 40th, Beach of the 21st, Shafer of the 48th, James of the 35th and others

AS PASSED

A BILL TO BE ENTITLED
AN ACT

To provide for a new homestead exemption from Fulton County school district ad valorem taxes for educational purposes in an amount equal to the amount by which the current year assessed value of a homestead exceeds the adjusted base year assessed value of such homestead; to provide for definitions; to specify the terms and conditions of the exemption and the procedures relating thereto; to provide for related matters; to provide for applicability; to provide for a referendum, effective dates, and automatic repeal; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

(a) As used in this Act, the term:

(1) "Property taxes for educational purposes" means all ad valorem taxes for educational purposes levied by, for, or on behalf of the Fulton County school district, but excluding any ad valorem taxes to pay interest on and to retire educational bonded indebtedness.

(2) "Adjusted base year value" means the previous adjusted base year value adjusted annually by the lesser of 3 percent or the inflation rate, plus any change in homestead value, provided that no such change in homestead value shall be duplicated as to the same addition or improvement.

(3) "Change in homestead value" means value, including any final determination of value on appeal pursuant to Code Section 48-5-311 of the O.C.G.A., as amended, derived from additions or improvements to, or the removal of real property of, the homestead after the lowest base year value is determined.

(4) "Homestead" means homestead as defined and qualified in Code Section 48-5-40 of the O.C.G.A., as amended, with the additional qualification that it shall include only the primary residence and not more than five contiguous acres of land immediately surrounding such residence.

(5) "Inflation rate" means the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967-100, or a successor index as reported by the United States Department of Labor Bureau of Labor statistics.

(6) "Lowest base year value" means:

(A) Among the 2016, 2017, and 2018 taxable years, the lowest assessed value, including any final determination of value on appeal pursuant to Code Section 48-5-311 of the O.C.G.A., as amended, of the homestead, with such assessed value being multiplied by 1.0423, which number represents inflation rate data for December, 2015, through December, 2017, with respect to an exemption under this Act which is first granted to a person on that person's homestead in the 2019 taxable year or who thereafter reapplies for and is granted such exemption in the 2020 taxable year, or thereafter, solely because of a change in ownership to a joint tenancy with right of survival; or

(B) In all other cases, the lower of the assessed value, including any final determination of value on appeal pursuant to Code Section 48-5-311 of the O.C.G.A., as amended, of the homestead, from the taxable year immediately preceding the taxable year in which the exemption under this Act is first granted to the most recent owner of such homestead or the assessed value, including any final determination of value on appeal pursuant to Code Section 48-5-311 of the O.C.G.A., as amended, of the homestead, from the taxable year in which the exemption under this Act is first granted to the most recent owner of such homestead, with respect to an exemption under this Act which is first granted to a person on that person's homestead in the 2020 taxable year or who thereafter reapplies for and is granted such exemption in the 2021 taxable year, or thereafter, solely because of a change in ownership to a joint tenancy with right of survival.

(7) "Previous adjusted base year value" means:

(A) With respect to an exemption under this Act that is first granted to a person on that person's homestead, the lowest base year value; or

(B) In all other cases, the adjusted base year value as calculated in the taxable year immediately preceding the current year.

(b) Each resident of the Fulton County school district is granted an exemption on that person's homestead from Fulton County school district property taxes for educational purposes in an amount equal to the amount by which the current year assessed value, including any final determination of value on appeal pursuant to Code Section 48-5-311 of the O.C.G.A., as amended, of that homestead exceeds the adjusted base year value of the homestead. The value of that property in excess of such exempted amount shall remain subject to taxation.

(c) The surviving spouse of the person who has been granted the exemption provided for in subsection (b) of this section shall continue to receive the exemption provided under subsection (b) of this section, so long as that surviving spouse continues to occupy the home as a residence and homestead.

(d) A person shall not receive the homestead exemption granted by subsection (b) of this section unless the person or person's agent files an application with the tax commissioner of Fulton County giving such information relative to receiving such exemption as will enable the governing authority, or its designee, to make a determination regarding the initial and continuing eligibility of such owner for such exemption. The tax commissioner of Fulton County shall provide application forms for this purpose.

(e) The exemption shall be claimed and returned as provided in Code Section 48-5-50.1 of the O.C.G.A., as amended. The exemption shall be automatically renewed from year to year so long as the owner occupies the residence as a homestead. After a person has filed the proper application as provided in subsection (d) of this section, it shall not be necessary to make application thereafter for any year and the exemption shall continue to be allowed to such person. It shall be the duty of any person granted the homestead exemption under subsection (b) of this section to notify the tax commissioner of Fulton County in the event that person for any reason becomes ineligible for that exemption.

(f) The exemption granted by subsection (b) of this section shall not apply to or affect state ad valorem taxes, municipal or independent school district ad valorem taxes for educational purposes, or county ad valorem taxes for county purposes. The homestead exemption granted by subsection (b) of this section shall be in addition to and not in lieu of any other homestead exemption applicable to property taxes for educational purposes.

(g) The exemption granted by subsection (b) of this section shall apply to all taxable years beginning on or after January 1, 2019.

SECTION 2.

The county election superintendent of Fulton County shall call and conduct an election as provided in this section for the purpose of submitting this Act to the electors of the Fulton County school district for approval or rejection. The county election superintendent shall conduct such election on November 6, 2018, and shall issue the call and conduct such election as provided by general law. The county election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of Fulton County. The ballot shall have written or printed thereon the words:

"( ) YES Do you approve a new homestead exemption from Fulton County school district property taxes for educational purposes in the amount of the difference between the current year assessed value of a home and its lowest base year value, provided that the lowest base year value will be adjusted yearly by the lesser of 3 percent or the inflation rate?"

( ) NO

All persons desiring to vote for approval of the Act shall vote "Yes," and those persons desiring to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on such question are for approval of the Act, Section 1 of this Act shall become of full force and effect on January 1, 2019. If the Act is not so approved or if the election is not conducted as provided in this section, Section 1 of this Act shall not become effective and this Act shall be automatically repealed on the first day of January immediately following that election date. The expense of such election shall be borne by Fulton County. It shall be the county election superintendent's duty to certify the result thereof to the Secretary of State.

SECTION 3.

Except as otherwise provided in Section 2 of this Act, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 4.

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

House Bill 888 (AS PASSED HOUSE AND SENATE)

By: Representatives Knight of the 130th, Harrell of the 106th, Rhodes of the 120th, Efstration of the 104th, and Rogers of the 10th

A BILL TO BE ENTITLED

AN ACT

To amend Part 1 of Article 2 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to tax exemptions from property tax, so as to change certain reporting and proof of filing requirements; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 1 of Article 2 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to tax exemptions from property tax, is amended by revising Code Section 48-5-48.1, relating to the tangible personal property inventory exemption, as follows:

"48-5-48.1.

(a) Any person, firm, or corporation seeking a level 1 freeport exemption from ad valorem taxation of certain tangible personal property inventory when such exemption has been authorized by the governing authority of any county or municipality after approval of the electors of such county or municipality pursuant to the authority of the Constitution of Georgia or Code Section 48-5-48.2 shall file a written application and ~~schedule~~ summary of property with the county board of tax assessors on forms furnished by such board. Such application shall be filed in the year in which exemption from taxation is sought no later than the date on which the tax receiver or tax commissioner of the county in which the property is located closes the books for the return of taxes.

(b) The application for the level 1 freeport exemption shall provide for:

(1) A ~~schedule~~ summary, as prescribed by the department, of the inventory of goods in the process of manufacture or production which shall include all partly finished goods and raw materials held for direct use or consumption in the ordinary course of the taxpayer's manufacturing or production business in the State of Georgia;

(2) A ~~schedule~~ summary, as prescribed by the department, of the inventory of finished goods manufactured or produced within the State of Georgia in the ordinary course of the

taxpayer's manufacturing or production business when held by the original manufacturer or producer of such finished goods;

(3) A ~~schedule~~ summary, as prescribed by the department, of the inventory of finished goods which on January 1 are stored in a warehouse, dock, or wharf, whether public or private, and which are destined for shipment outside the State of Georgia and the inventory of finished goods which are shipped into the State of Georgia from outside this state and which are stored for transshipment to a final destination outside this state. The information required by Code Section 48-5-48.2 to be contained in the official books and records of the warehouse, dock, or wharf where such property is being stored, which official books and records are required to be open to the inspection of taxing authorities of this state and political subdivisions thereof, shall not be required to be included as a part of or to accompany the application for such exemption; and

(4) A ~~schedule~~ summary, as prescribed by the department, of the stock in trade of a fulfillment center which on January 1 is stored in the fulfillment center. The information required by Code Section 48-5-48.2 to be contained in the official books and records of the fulfillment center where such property is being stored, which official books and records are required to be open to the inspection of the taxing authorities of this state and political subdivisions thereof, shall not be required to be included as a part of or to accompany the application for such exemption.

(c)(1) For purposes of this subsection, the term 'file properly' shall mean and include the timely filing of the completed application ~~and complete schedule of the inventory~~ for which exemption is sought on or before the due date specified in subsection (a) of this Code section. Any clerical error, including, but not limited to, a typographical error, scrivener's error, or any unintentional immaterial error or omission in the application shall not be construed as a failure to file properly.

(2) The failure to file properly the completed application ~~and schedule~~ shall constitute a waiver of the exemption on the part of the person, firm, or corporation failing to make the application for such exemption for that year as follows:

(A) The failure to report any inventory for which such exemption is sought in the ~~schedule~~ summary provided for in the application shall constitute a waiver of the exemption on the part of the person, firm, or corporation failing to so report for that taxable year in an amount equal to the difference between fair market value of the inventory as reported and the fair market value finally determined to be applicable to the inventory for which the exemption is sought; and

(B) The failure to file timely such completed application ~~and schedule~~ shall constitute a waiver of the exemption until the first day of the month following the month such completed application ~~and schedule are~~ is filed properly with the county tax assessor;

provided, however, that unless ~~the~~ such completed application ~~and schedule are~~ is filed on or before June 1 of such year, the exemption shall be waived for that entire year.

(d) Upon receiving the application required by this Code section, the county board of tax assessors shall determine the eligibility of all types of tangible personal property listed on the application. If any property has been listed which the board believes is not eligible for the exemption, the board shall issue a letter notifying the applicant, not later than 180 days after receiving the application, that all or a portion of the application has been denied. The denial letter shall list the type and total fair market value of all property listed on the application for which the exemption has been approved and the type and total fair market value of all property listed on the application for which the exemption has been denied. The applicant shall have the right to appeal from the denial of the exemption for any property listed and such appeal shall proceed as provided in Code Section 48-5-311. Except as otherwise provided in subparagraph (c)(2)(A) of this Code section, the county board of assessors shall not send a second letter of notification denying the exemption of all or a portion of such property listed on the application on new grounds that could and should have been discerned at the time the initial denial letter was issued. If, however, the county board of tax assessors fails to issue a letter of denial within 180 days after receiving the taxpayer's application, then the freeport exemption sought in the application shall be deemed accepted in its entirety.

(e) If the level 1 freeport exemption has been granted to a taxpayer for a taxable year, the county board of tax assessors shall issue a notice of renewal to the taxpayer for the immediately following taxable year. Such notice of renewal shall be issued not later than January 15 of such immediately following taxable year to facilitate the filing of a timely completed application ~~and schedule~~ by the taxpayer for such taxable year.″

SECTION 2.

Said part is further amended by revising Code Section 48-5-48.2, relating to the level 1 freeport exemption and referendum, as follows:

″48-5-48.2.

(a) This Code section shall be known and may be cited as the 'Level 1 Freeport Exemption.'

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

(1) 'Destined for shipment to a final destination outside this state' means, for purposes of a level 1 freeport exemption, that portion or percentage of an inventory of finished goods which the taxpayer can establish, through a historical sales or shipment analysis, either of which utilizes information from the preceding calendar year, or other reasonable, documented method, is reasonably anticipated to be shipped to a final destination outside

this state. Such other reasonable, documented method may only be utilized in the case of a new business, in the case of a substantial change in scope of an existing business, or in other unusual situations where a historical sales or shipment analysis does not adequately reflect future anticipated shipments to a final destination outside this state. It is not necessary that the actual final destination be known as of January 1 in order to qualify for the exemption.

(2) 'Finished goods' means, for purposes of a level 1 freeport exemption, goods, wares, and merchandise of every character and kind but shall not include unrecovered, unextracted, or unsevered natural resources or raw materials or goods in the process of manufacture or production or the stock in trade of a retailer.

(3) 'Foreign merchandise in transit' means, for purposes of a level 1 freeport exemption, any goods which are in international commerce where the title has passed to a foreign purchaser and the goods are temporarily stored in this state while awaiting shipment overseas.

(4) 'Fulfillment center' means, for purposes of a level 1 freeport exemption, a business location in Georgia which is used to pack, ship, store, or otherwise process tangible personal property sold by electronic, Internet, telephonic, or other remote means, provided that such a business location does not allow customers to purchase or receive goods onsite at such business location.

(5) 'Raw materials' means, for purposes of a level 1 freeport exemption, any material, whether crude or processed, that can be converted by manufacture, processing, or a combination thereof into a new and useful product but shall not include unrecovered, unextracted, or unsevered natural resources.

(6) 'Stock in trade of a fulfillment center' means, for purposes of a level 1 freeport exemption, goods, wares, and merchandise held by one in the business of making sales of such goods when such goods are held or stored at a fulfillment center.

(7) 'Stock in trade of a retailer' means, for purposes of a level 1 freeport exemption, finished goods held by one in the business of making sales of such goods at retail in this state, within the meaning of Chapter 8 of this title, when such goods are held or stored at a business location from which such retail sales are regularly made. Goods stored in a warehouse, dock, or wharf, including a warehouse or distribution center which is part of or adjoins a place of business from which retail sales are regularly made, shall not be considered stock in trade of a retailer to the extent that the taxpayer can establish, through a historical sales or shipment analysis, either of which utilizes information from the preceding calendar year, or other reasonable, documented method, the portion or percentage of such goods which is reasonably anticipated to be shipped outside this state for resale purposes.

(c) The governing authority of any county or municipality may, subject to the approval of the electors of such political subdivision, exempt from ad valorem taxation, including all such taxes levied for educational purposes and for state purposes, all or any combination of the following types of tangible personal property:

(1) Inventory of goods in the process of manufacture or production which shall include all partly finished goods and raw materials held by the taxpayer or the taxpayer's designated agent for direct use or consumption in the ordinary course of the taxpayer's manufacturing or production business in this state. The exemption provided for in this paragraph shall apply only to tangible personal property which is substantially modified, altered, combined, or changed in the ordinary course of the taxpayer's manufacturing, processing, or production operations in this state. For purposes of this paragraph, the following activities shall constitute substantial modification in the ordinary course of manufacturing, processing, or production operations:

(A) The cleaning, drying, pest control treatment, or segregation by grade of grain, peanuts or other oil seeds, or cotton;

(B) The remanufacture of aircraft engines or aircraft engine parts or components, meaning the substantial overhauling or rebuilding of aircraft engines or aircraft engine parts or components; ~~and~~

(C) The blending of fertilizer bulk materials into a custom mixture, whether performed at a commercial fertilizer blending plant, retail outlet, or any application site; and

(D) The substantial assembly of finished parts;

(2) Inventory of finished goods manufactured or produced within this state in the ordinary course of the taxpayer's manufacturing or production business when held by the original manufacturer or producer of such finished goods. The exemption provided for in this paragraph shall be for a period not exceeding 12 months from the date such property is produced or manufactured;

(3) Inventory of finished goods which, on January 1, are stored in a warehouse, dock, or wharf, whether public or private, and which are destined for shipment to a final destination outside this state and inventory of finished goods which are shipped into this state from outside this state and stored for transshipment to a final destination outside this state, including foreign merchandise in transit. The exemption provided for in this paragraph shall be for a period not exceeding 12 months from the date such property is stored in this state. Such period shall be determined based on application of a first-in, first-out method of accounting for the inventory. The official books and records of the warehouse, dock, or wharf where such property is being stored shall contain a full, true, and accurate inventory of all such property, including the date of the receipt of the property, the date of the withdrawal of the property, the point of origin of the property,

and the point of final destination of the same, if known. The official books and records of any such warehouse, dock, or wharf, whether public or private, pertaining to any such property for which a freeport exemption has been claimed shall be at all times open to the inspection of all taxing authorities of this state and of any political subdivision of this state; or

(4) Stock in trade of a fulfillment center which, on January 1, is stored in a fulfillment center and which is made available to remote purchasers who may make such purchases by electronic, Internet, telephonic, or other remote means, and where such stock in trade of a fulfillment center will be shipped from the fulfillment center and delivered to the purchaser at a location other than the location of the fulfillment center. The exemption provided for in this paragraph shall be for a period not exceeding 12 months from the date such property is stored in this state. Such period shall be determined based on application of a first-in, first-out method of accounting for the inventory. The official books and records of the fulfillment center where such property is being stored shall contain a full, true, and accurate inventory of all such property, including the date of the receipt of the property and the date of the withdrawal of the property. The official books and records of any such fulfillment center pertaining to any such property for which a freeport exemption has been claimed shall be at all times open to the inspection of all taxing authorities of this state and of any political subdivision of this state.

(d) Whenever the governing authority of any county or municipality wishes to exempt such tangible property from ad valorem taxation, as provided in this Code section, the governing authority thereof shall notify the election superintendent of such political subdivision, and it shall be the duty of said election superintendent to issue the call for an election for the purpose of submitting to the electors of the political subdivision the question of whether such exemption shall be granted. The referendum ballot shall specify as separate questions the type or types of property as defined in this Code section which are being proposed to be exempted from taxation. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540.

(e) The governing authority of any county or municipality wherein an exemption has been approved by the voters as provided in this Code section may, by appropriate resolution, a copy of which shall be immediately transmitted to the state revenue commissioner, exempt from taxation 20 percent, 40 percent, 60 percent, 80 percent, or all of the value of such tangible personal property as defined in this Code section; provided, however, that once an exemption has been granted, no reduction in the percent of the value of such property to be exempted may be made until and unless such exemption is revoked or repealed as provided in this Code section. An increase in the percent of the value of the property to be

exempted may be accomplished by appropriate resolution of the governing authority of such county or municipality, and a copy thereof shall be immediately transmitted to the state revenue commissioner, provided that such increase shall be in increments of 20 percent, 40 percent, 60 percent, or 80 percent of the value of such tangible personal property as defined in this Code section, within the discretion of such governing authority.

(f)(1) If more than one-half of the votes cast on such question are in favor of such exemption, then such exemption may be granted by the governing authority commencing on the first day of any ensuing calendar year; otherwise, such exemption may not be granted. This paragraph is intended to clearly provide that following approval of such exemption in such referendum, such exemption may be granted on the first day of any calendar year following the year in which such referendum was conducted. This paragraph shall not be construed to imply that the granting of such exemption could not previously be delayed to any such calendar year.

(2) Exemptions may only be revoked by a referendum election called and conducted as provided in this Code section, provided that the call for such referendum shall not be issued within five years from the date such exemptions were first granted and, if the results of said election are in favor of the revocation of such exemptions, then such revocation shall be effective only at the end of a five-year period from the date of such referendum.

(g) Level 1 freeport exemptions effected pursuant to this Code section may be granted either in lieu of or in addition to level 2 freeport exemptions under Code Section 48-5-48.6.

(h) The commissioner shall by regulation adopt uniform procedures and forms for the use of local officials in the administration of this Code section."

SECTION 3.

Said part is further amended by revising Code Section 48-5-48.5, relating to the application for the level 2 freeport exemption, as follows:

"48-5-48.5.

(a) Any person, firm, or corporation seeking a level 2 freeport exemption from ad valorem taxation of certain tangible personal property inventory when such exemption has been authorized by the governing authority of any county or municipality after approval of the electors of such county or municipality pursuant to the authority of the Constitution of Georgia and Code Section 48-5-48.6 shall file a written application and ~~schedule~~ summary, as prescribed by the department, of property with the county board of tax assessors on forms furnished by such board. Such application shall be filed in the year in which exemption from taxation is sought no later than the date on which the tax receiver or tax

commissioner of the county in which the property is located closes the books for the return of taxes.

(b) The application for the level 2 freeport exemption shall provide for a ~~schedule~~ summary, as prescribed by the department, of the inventory of finished goods held by one in the business of making sales of such goods in this state.

(c)(1) For purposes of this subsection, the term 'file properly' shall mean and include the timely filing of the application and complete ~~schedule~~ summary, as prescribed by the department, of the inventory for which exemption is sought on or before the due date specified in subsection (a) of this Code section. Any clerical error, including, but not limited to, a typographical error, scrivener's error, or any unintentional immaterial error or omission in the application shall not be construed as a failure to file properly.

(2) The failure to file properly the application and ~~schedule~~ summary, as prescribed by the department, shall constitute a waiver of the exemption on the part of the person, firm, or corporation failing to make the application for such exemption for that year as follows:

(A) The failure to report any inventory for which such exemption is sought in the ~~schedule~~ summary, as prescribed by the department, provided for in the application shall constitute a waiver of the exemption on the part of the person, firm, or corporation failing to so report for that taxable year in an amount equal to the difference between fair market value of the inventory as reported and the fair market value finally determined to be applicable to the inventory for which the exemption is sought; and

(B) The failure to file timely such application and ~~schedule~~ summary, as prescribed by the department, shall constitute a waiver of the exemption until the first day of the month following the month such application and ~~schedule~~ summary, as prescribed by the department, are filed properly with the county tax assessor; provided, however, that unless the application and schedule are filed on or before June 1 of such year, the exemption shall be waived for that entire year.

(d) Upon receiving the application required by this Code section, the county board of tax assessors shall determine the eligibility of all types of tangible personal property listed on the application. If any property has been listed which the board believes is not eligible for the exemption, the board shall issue a letter notifying the applicant that all or a portion of the application has been denied. The denial letter shall list the type and total fair market value of all property listed on the application for which the exemption has been approved and the type and total fair market value of all property listed on the application for which the exemption has been denied. The applicant shall have the right to appeal from the denial of the exemption for any property listed, and such appeal shall proceed as provided in Code Section 48-5-311. Except as otherwise provided in subparagraph (c)(2)(A) of this Code section, the county board of assessors shall not send a second letter of notification denying

the exemption of all or a portion of such property listed on the application on new grounds that could and should have been discerned at the time the initial denial letter was issued.

(e) If the level 2 freeport exemption has been granted to a taxpayer for a taxable year, the county board of tax assessors shall issue a notice of renewal to the taxpayer for the immediately following taxable year. Such notice of renewal shall be issued not later than January 15 of such immediately following taxable year to facilitate the filing of a timely application and ~~schedule~~ summary, as prescribed by the department, by the taxpayer for such taxable year."

SECTION 4.

Said part is further amended by adding a new Code section to read as follows:

"48-5-48.7.

(a) Any document required to be filed under Code Section 48-5-48.1 or 48-5-48.5 shall be considered properly and timely filed if the postal date on the mailed document, whether metered or stamped, is on or before the date on which the tax receiver or tax commissioner of the county in which the property is located closes the book for the return of taxes.

(b) Any document properly and timely filed pursuant to subsection (a) of this Code section and incorrectly determined to be untimely filed, upon sufficient proof thereof, shall entitle the applicant to a credit against future ad valorem assessments from the county which improperly denied the applicant the exemption under Code Section 48-5-48.1 or 48-5-48.5."

SECTION 5.

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

SECTION 6.

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

House Resolution 1317

By: Representatives Welch of the 110th, Reeves of the 34th, and Powell of the 171st

A RESOLUTION

Creating the House Study Committee on Reforming Real Property Taxation; and for other purposes.

WHEREAS, the process of appraising the fair market value of and assessing real property for taxation in Georgia is constitutionally required to be uniform; and

WHEREAS, the people of Georgia require accurate, regular appraisals of their real property for purposes of ad valorem taxation; and

WHEREAS, the people of Georgia deserve an impartial, efficient means by which to appeal appraisals of their real property that is subject to ad valorem taxation; and

WHEREAS, the present system of ad valorem taxation of real property in this state can be made more efficient, accurate, and impartial; and

WHEREAS, real property taxation in Georgia needs a holistic revision by state lawmakers.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES:

(1) **Creation of House study committee.** There is created the House Study Committee on Reforming Real Property Taxation.

(2) **Members and officers.** The committee shall be composed of six members of the House of Representatives to be appointed by the Speaker of the House of Representatives. The Speaker shall also appoint an additional five members of the committee as follows:

(A) The state revenue commissioner, or his or her designee;

(B) The director of the Georgia Real Estate Commission, or his or her designee;

(C) The director of the Georgia Real Estate Appraisers Board, or his or her designee;

(D) The chief judge of the Georgia Tax Tribunal, or his or her designee; and

(E) A county tax commissioner.

The Speaker shall designate a member of the committee as chairperson of the committee.

(3) **Powers and duties.** The committee shall undertake a study of the conditions, needs, issues, and problems mentioned above or related thereto and recommend any action or legislation which the committee deems necessary or appropriate.

(4) **Meetings.** The chairperson shall call all meetings of the committee. The committee may conduct such meetings at such places and at such times as it may deem necessary or convenient to enable it to exercise fully and effectively its powers, perform its duties, and accomplish the objectives and purposes of this resolution.

(5) **Allowances, expenses, and funding.**

(A) Members of the committee who are members of the General Assembly shall receive the allowances provided for in Code Section 28-1-8 of the Official Code of Georgia Annotated.

(B) Members of the committee who are state officials, other than members of the General Assembly, or who are state employees shall receive no compensation for their services on the committee, but they may be reimbursed for expenses incurred by them in the performance of their duties as members of the committee in the same manner as they are reimbursed for expenses in their capacities as state officials or employees.

(C) The allowances authorized by this resolution shall not be received by any member of the committee for more than five days unless additional days are authorized. Funds necessary to carry out the provisions of this resolution shall come from funds appropriated to the House of Representatives; except that funds for the reimbursement of the expenses of state officials, other than members of the General Assembly, and for the reimbursement of the expenses of state employees shall come from funds appropriated to or otherwise available to their respective agencies.

(6) **Report.**

(A) In the event the committee adopts any specific findings or recommendations that include suggestions for proposed legislation, the chairperson shall file a report of the same prior to the date of abolishment specified in this resolution, subject to subparagraph (C) of this paragraph.

(B) In the event the committee adopts a report that does not include suggestions for proposed legislation, the chairperson shall file the report, subject to subparagraph (C) of this paragraph.

(C) No report shall be filed unless the same has been approved prior to the date of abolishment specified in this resolution by majority vote of a quorum of the committee. A report so approved shall be signed by the chairperson of the committee and filed with the Clerk of the House of Representatives.

(D) In the absence of an approved report, the chairperson may file with the Clerk of the House of Representatives a copy of the minutes of the meetings of the committee in lieu thereof.

(7) **Abolishment.** The committee shall stand abolished on December 1, 2018.

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

To amend Article 1 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to general provisions regarding ad valorem taxation of property, so as to change certain requirements for proof of bona fide conservation use; to provide for payment of attorney's fees and interest in certain situations; to provide conditions upon which family owned farmed entities may elect to discontinue a qualifying use of bona fide conservation use property while incurring a reduced penalty; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to general provisions regarding ad valorem taxation of property, is amended by revising subsections (a), (b), (j), (k.1), (l), and (q) of Code Section 48-5-7.4, relating to bona fide conservation use property, as follows:

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

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

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

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

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

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

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

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

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

(i) One or more natural or naturalized citizens;

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

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

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

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

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

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

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

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

(i) The nature of the terrain;

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

(iii) The past usage of the land;

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

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

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

(i) Raising, harvesting, or storing crops;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2.

This Act shall become effective on July 1, 2018.

SECTION 3.

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

House Bill 150 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 32nd, Rogers of the 10th, Efstration of the 104th, Rhodes of the 120th, and Ridley of the 6th

A BILL TO BE ENTITLED

AN ACT

To amend Code Section 32-10-64 and Title 48 of the Official Code of Georgia Annotated, relating to general toll powers, police powers, and rules and regulations of the State Road and Tollway Authority and revenue and taxation, respectively, so as to provide for setoff of debt owed on unpaid toll violations from tax refunds by the Department of Revenue; to provide for the use of the Consumer Price Index for the calculation of motor fuel excise tax; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 32-10-64 of the Official Code of Georgia Annotated, relating to general toll powers, police powers, and rules and regulations of the State Road and Tollway Authority, is amended by revising paragraph (1) of subsection (c) as follows:

"(1) No motor vehicle shall be driven or towed through a toll collection facility, where appropriate signs have been erected to notify traffic that it is subject to the payment of tolls beyond such sign, without payment of the proper toll. In the event of nonpayment of the proper toll, as evidenced by video or electronic recording, the registered owner of such vehicle shall be liable to make prompt payment to the authority of the proper toll and an administrative fee of up to $25.00 per violation to recover the cost of collecting the toll. The authority or its authorized agent shall provide notice to the registered owner of a vehicle, and a reasonable time to respond to such notice, of the authority's finding of a violation of this subsection. The authority or its authorized agent may provide subsequent notices to the registered owner of a vehicle if such owner fails to respond to the initial notice. The administrative fee may increase with each notice, provided that such fee shall not exceed a cumulative total of $25.00 per violation. Upon failure of the registered owner of a vehicle to pay the proper toll and administrative fee to the authority after notice thereof and within the time designated in such notice, the authority may proceed to seek collection of the proper toll and the administrative fee as debts owing to

the authority, in such manner as the authority deems appropriate and as permitted under law. If the authority finds multiple failures by a registered owner of a vehicle to pay the proper toll and administrative fee after notice thereof and within the time designated in such notices, the authority may refer the matter to the Office of State Administrative Hearings. The scope of any hearing held by the Office of State Administrative Hearings shall be limited to consideration of evidence relevant to a determination of whether the registered owner has failed to pay, after notice thereof and within the time designated in such notice, the proper toll and administrative fee. The only affirmative defense that may be presented by the registered owner of a vehicle at such a hearing is theft of the vehicle, as evidenced by presentation at the hearing of a copy of a police report showing that the vehicle has been reported to the police as stolen prior to the time of the alleged violation. A determination by the Office of State Administrative Hearings of multiple failures to pay by a registered owner of a vehicle shall subject such registered owner to imposition of, in addition to any unpaid tolls and administrative fees, a civil monetary penalty payable to the authority of not more than $70.00 per violation. Upon failure by a registered owner to pay to the authority, within 30 days of the date of notice thereof, the amount determined by the Office of State Administrative Hearings as due and payable for multiple violations of this subsection, the motor vehicle registration of such registered owner shall be immediately suspended by operation of law. The authority shall give notice to the Department of Revenue of such suspension. Such suspension shall continue until the proper toll, administrative fee, and civil monetary penalty as have been determined by the Office of State Administrative Hearings are paid to the authority. <u>The authority may seek to collect the debt owed through setoff by the Department of Revenue under procedures set forth in Article 7 of Chapter 7 of Title 48.</u> Actions taken by the authority under this subsection shall be made in accordance with policies and procedures approved by the members of the authority.″

SECTION 2.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended in Code Section 48-7-161, relating to definitions relative to setoff debt collection by the Department of Revenue, by revising paragraph (1) as follows:

″(1) 'Claimant agency' means and includes, in the order of priority set forth below:

(A) The Department of Human Services and the Department of Behavioral Health and Developmental Disabilities with respect to collection of debts under Article 1 of Chapter 11 of Title 19, Code Section 49-4-15, and Chapter 9 of Title 37;

(B) The Georgia Student Finance Authority with respect to the collection of debts arising under Part 3 of Article 7 of Chapter 3 of Title 20;

(C) The Georgia Higher Education Assistance Corporation with respect to the collection of debts arising under Part 2 of Article 7 of Chapter 3 of Title 20;

(D) The Georgia Board for Physician Workforce with respect to the collection of debts arising under Part 6 of Article 7 of Chapter 3 of Title 20;

(E) The Department of Labor with respect to the collection of debts arising under Code Sections 34-8-254 and 34-8-255 and Article 5 of Chapter 8 of Title 34, with the exception of Code Sections 34-8-158 through 34-8-161; provided, however, that the Department of Labor establishes that the debtor has been afforded required due process rights by such Department of Labor with respect to the debt and all reasonable collection efforts have been exhausted;

(F) The Department of Community Supervision with respect to probation fees arising under Code Section 42-8-34 and restitution or reparation ordered by a court as a part of the sentence imposed on a person convicted of a crime who is in the legal custody of the Department of Corrections or the Department of Community Supervision;

(G) The Department of Juvenile Justice with respect to restitution imposed on a juvenile for a delinquent act which would constitute a crime if committed by an adult; ~~and~~

(H) The Georgia Lottery Corporation with respect to proceeds arising under Code Section 50-27-21; and

(I) The State Road and Tollway Authority with respect to collection of amounts determined by the Office of State Administrative Hearings as due and payable for violations of subsection (c) of Code Section 32-10-64.″

SECTION 3.

Said title is further amended in Code Section 48-9-3, relating to levy of excise tax and rate, taxation of motor fuels not commonly sold or measured by the gallon and rate, prohibition on motor fuel tax by political subdivisions, exceptions, and exempted sales, by revising subparagraph (a)(1.1)(C) as follows:

″(C) Once the preliminary excise tax rate is established, it shall be multiplied by the annual percentage of increase or decrease in the Consumer Price Index. The resulting calculation shall be added to the preliminary excise tax rate, and the result of such calculation shall be the new excise tax rate for motor fuels for the next calendar year. The Consumer Price Index shall no longer be used after July 1, ~~2018~~ 2022.″

SECTION 4.

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

House Bill 329 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 171st, Kelley of the 16th, Williamson of the 115th, Harrell of the 106th, Blackmon of the 146th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 5C of Title 48 of the Official Code of Georgia Annotated, relating to alternative ad valorem tax on motor vehicles, so as to change the manner for determining fair market value of motor vehicles subject to the tax; to provide for the fair market value determination of kit cars; to change the manner of distribution of the proceeds of such tax; to provide for fees of the tag agent; to provide for the promulgation of a standardized form; to provide for the submission of title applications and title ad valorem tax fees by dealers; to provide for penalties for failure to timely submit title applications and title ad valorem tax fees; to provide for the tax amounts on vehicles which were registered in other states; to provide for tax amount on certain vehicles; to provide for certain refunds; to provide for transfers as a result of a divorce decree or court order; to amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, so as to provide for an expiration period for temporary license plates; to require that applications be submitted to the county where the vehicle will be registered; to provide for extensions of the registration period under certain circumstances; to provide for conditional titles for certain motor vehicles; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 5C of Title 48 of the Official Code of Georgia Annotated, relating to alternative ad valorem tax on motor vehicles, is amended by revising Code Section 48-5C-1, relating to definitions, exemption from taxation, allocation and disbursement of proceeds collected by tag agents, fair market value of vehicle appealable, and report, as follows:

"48-5C-1.

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

(1) 'Fair market value of the motor vehicle' means:

(A) For a used motor vehicle, the average of the current fair market value and the current wholesale value of a motor vehicle for a vehicle listed in the current motor vehicle ad valorem assessment manual utilized by the state revenue commissioner and based upon a nationally recognized motor vehicle industry pricing guide for fair market and wholesale market values in determining the taxable value of a motor vehicle under Code Section 48-5-442, and, in the case of a used car dealer, less any reduction for the trade-in value of another motor vehicle;

(B) For a used motor vehicle which is not ~~so~~ listed in such current motor vehicle ad valorem assessment manual, the value from the bill of sale or the value from a reputable used car market guide designated by the commissioner, whichever is greater, and, in the case of a used car dealer, less any reduction for the trade-in value of another motor vehicle;

(C) Upon written application and supporting documentation submitted by an applicant under this Code section, a county tag agent may deviate from the fair market value as defined in subparagraph (A)~~, or~~ (B), or (D) of this paragraph based upon mileage and condition of the used vehicle. Supporting documentation may include, but not be limited to, bill of sale, odometer statement, and values from reputable pricing guides. The fair market value as determined by the county tag agent pursuant to this subparagraph shall be appealable as provided in subsection (e) of this Code section;

(D) For a new motor vehicle, the greater of the retail selling price ~~or, in the case of a lease of a new motor vehicle, the agreed upon value of the vehicle pursuant to the lease agreement~~ or the average of the current fair market value and the current wholesale value of a motor vehicle for a vehicle listed in the current motor vehicle ad valorem assessment manual utilized by the state revenue commissioner in determining the taxable value of a motor vehicle under Code Section 48-5-442, less any reduction for the trade-in value of another motor vehicle and any rebate ~~or any cash discounts provided by the selling dealer and taken at the time of sale~~. The retail selling price ~~or agreed upon value~~ shall include any charges for labor, freight, delivery, dealer fees~~,~~ and similar charges, tangible accessories, ~~and~~ dealer add-ons, and mark-ups, but shall not include any federal retailers' excise tax or extended warranty, service contract, ~~or~~ maintenance agreement, or similar products itemized on the dealer's invoice to the customer or any finance, insurance, and interest charges for deferred payments billed separately. No reduction for the trade-in value of another motor vehicle shall be taken unless the name of the owner and the vehicle identification number of such trade-in motor vehicle are shown on the bill of sale; ~~or~~

(E) For a ~~new~~ motor vehicle that is leased~~,~~:

(i) In the case of a motor vehicle that is leased to a lessee for use primarily in the lessee's trade or business and for which the lease agreement contains a provision for the adjustment of the rental price as described in Code Section 40-3-60, the agreed upon value of the motor vehicle less any reduction for the trade-in value of another motor vehicle and any rebate; or

(ii) In the case of a motor vehicle that is leased other than described in division (i) of this subparagraph, the total of the base payments pursuant to the lease agreement plus any down payments.

The term 'any down payments' as used in this subparagraph shall mean cash collected from the lessee at the inception of the lease which shall include cash supplied as a capital cost reduction; shall not include rebates, noncash credits, or net trade allowances; and shall include any upfront payments collected from the lessee at the inception of the lease except for taxes or fees imposed by law and monthly lease payments made in advance; or

(F) For a kit car which is assembled by the purchaser from parts supplied by a manufacturer, the greater of the retail selling price of the kit or the average of the current fair market value and the current wholesale value of the motor vehicle if listed in the current motor vehicle ad valorem assessment manual utilized by the state revenue commissioner and based upon a nationally recognized motor vehicle industry pricing guide for fair market and wholesale market values in determining the taxable value of a motor vehicle under Code Section 48-5-442. A kit car shall not include a rebuilt or salvage vehicle.

(2) 'Immediate family member' means spouse, parent, child, sibling, grandparent, or grandchild.

(3) 'Loaner vehicle' means a motor vehicle owned by a dealer which is withdrawn temporarily from dealer inventory for exclusive use as a courtesy vehicle loaned at no charge for a period not to exceed 30 days within a 366 day period to any one customer whose motor vehicle is being serviced by such dealer.

(4) 'Rental charge' means the total value received by a rental motor vehicle concern for the rental or lease for 31 or fewer consecutive days of a rental motor vehicle, including the total cash and nonmonetary consideration for the rental or lease, including, but not limited to, charges based on time or mileage and charges for insurance coverage or collision damage waiver but excluding all charges for motor fuel taxes or sales and use taxes.

(5) 'Rental motor vehicle' means a motor vehicle designed to carry 15 or fewer passengers and used primarily for the transportation of persons that is rented or leased without a driver.

(6) 'Rental motor vehicle concern' means a person or legal entity which owns or leases five or more rental motor vehicles and which regularly rents or leases such vehicles to the public for value.

(7) 'Trade-in value' means the value of the motor vehicle as stated in the bill of sale for a vehicle which has been traded in to the dealer in a transaction involving the purchase of another vehicle from the dealer.

(b)(1)(A) Except as otherwise provided in this subsection, any motor vehicle for which a title is issued in this state on or after March 1, 2013, shall be exempt from sales and use taxes to the extent provided under paragraph (95) of Code Section 48-8-3 and shall not be subject to the ad valorem tax as otherwise required under Chapter 5 of this title. Any such motor vehicle shall be titled as otherwise required under Title 40 but shall be subject to a state title fee and a local title fee which shall be alternative ad valorem taxes as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution. Motor vehicles registered under the International Registration Plan shall not be subject to state and local title ad valorem tax fees but shall continue to be subject to apportioned ad valorem taxation under Article 10 of Chapter 5 of this title.

(B)(i) ~~As used in this subparagraph, the term:~~

~~(I) 'Local base amount' means $1 billion.~~

~~(II) 'Local current collection amount' means the total amount of sales and use taxes on the sale of motor vehicles under Chapter 8 of this title and motor vehicle local ad valorem tax proceeds under this Code section and Chapter 5 of this title which were collected during the calendar year which immediately precedes the tax year in which the title ad valorem tax adjustments are required to be made under this subparagraph.~~

~~(III) 'Local target collection amount' means an amount equal to the local base amount added to the product of 2 percent of the local base amount multiplied by the number of years since 2012 with a maximum amount of $1.2 billion.~~

~~(IV) 'State base amount' means $535 million.~~

~~(V) 'State current collection amount' means the total amount of sales and use taxes on the sale of motor vehicles under Chapter 8 of this title and motor vehicle state ad valorem tax proceeds under this Code section and Chapter 5 of this title which were collected during the calendar year which immediately precedes the tax year in which the state and local title ad valorem tax rate is to be reviewed for adjustment under division (xiv) of this subparagraph. Notwithstanding the other provisions of this subdivision to the contrary, the term 'state current collection amount' for the 2014 calendar year for the purposes of the 2015 review under division (xiv) of this subparagraph shall be adjusted so that such amount is equal to the amount of motor~~

~~vehicle state ad valorem tax proceeds that would have been collected under this Code section in 2014 if the combined state and local title ad valorem tax rate was 7 percent of the fair market value of the motor vehicle less any trade-in value plus the total amount of motor vehicle state ad valorem tax proceeds collected under Chapter 5 of this title during 2014.~~

~~(VI) 'State target collection amount' means an amount equal to the state base amount added to the product of 2 percent of the state base amount multiplied by the number of years since 2012~~ Reserved.

(ii) The combined state and local title ad valorem tax shall be at a rate equal to~~:~~

~~(I) For the period commencing March 1, 2013, through December 31, 2013, 6.5 percent of the fair market value of the motor vehicle;~~

~~(II) For the 2014 tax year, 6.75 percent of the fair market value of the motor vehicle; and~~

~~(III) Except as provided in division (xiv) of this subparagraph, for the 2015 and subsequent tax years,~~ 7 percent of the fair market value of the motor vehicle.

(iii) ~~For the period commencing March 1, 2013, through December 31, 2013, the state title ad valorem tax shall be at a rate equal to 57 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 43 percent of the tax rate specified in division (ii) of this subparagraph.~~ Beginning on July 1, 2019, the state and local title ad valorem tax proceeds each month shall be distributed by each county remitting 35 percent of the funds to the state revenue commissioner as provided in subparagraph (c)(2)(A) of this Code section and distributing 65 percent of the funds as provided in paragraph (3) of subsection (c) of this Code section.

~~(iv) For the 2014 tax year, the state title ad valorem tax shall be at a rate equal to 55 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 45 percent of the tax rate specified in division (ii) of this subparagraph.~~

~~(v) For the 2015 tax year, the state title ad valorem tax shall be at a rate equal to 55 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 45 percent of the tax rate specified in division (ii) of this subparagraph.~~

~~(vi) For the 2016 tax year, except as otherwise provided in division (xiii) of this subparagraph, the state title ad valorem tax shall be at a rate equal to 53.5 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 46.5 percent of the tax rate specified in division (ii) of this subparagraph.~~

~~(vii) For the 2017 tax year, except as otherwise provided in divisions (xiii) and (xiv) of this subparagraph, the state title ad valorem tax shall be at a rate equal to 44 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 56 percent of the tax rate specified in division (ii) of this subparagraph.~~

~~(viii) For the 2018 tax year, except as otherwise provided in division (xiii) of this subparagraph, the state title ad valorem tax shall be at a rate equal to 40 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 60 percent of the tax rate specified in division (ii) of this subparagraph.~~

~~(ix) For the 2019 tax year, except as otherwise provided in divisions (xiii) and (xiv) of this subparagraph, the state title ad valorem tax shall be at a rate equal to 36 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 64 percent of the tax rate specified in division (ii) of this subparagraph.~~

~~(x) For the 2020 tax year, except as otherwise provided in division (xiii) of this subparagraph, the state title ad valorem tax shall be at a rate equal to 34 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 66 percent of the tax rate specified in division (ii) of this subparagraph.~~

~~(xi) For the 2021 tax year, except as otherwise provided in division (xiii) of this subparagraph, the state title ad valorem tax shall be at a rate equal to 30 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 70 percent of the tax rate specified in division (ii) of this subparagraph.~~

~~(xii) For the 2022 and all subsequent tax years, except as otherwise provided in division (xiii) of this subparagraph for tax years 2022, 2023, and 2024 and except as otherwise provided in division (xiv) of this subparagraph for tax year 2023, the state title ad valorem tax shall be at a rate equal to 28 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 72 percent of the tax rate specified in division (ii) of this subparagraph.~~

~~(xiii) Beginning in 2016, by not later than January 15 of each tax year through the 2022 tax year, the state revenue commissioner shall determine the local target collection amount and the local current collection amount for the preceding calendar year. If such local current collection amount is equal to or within 1 percent of the local target collection amount, then the state title ad valorem tax rate and the local title ad valorem tax rate for such tax year shall remain at the rate specified in this~~

~~subparagraph for that year. If the local current collection amount is more than 1 percent greater than the local target collection amount, then the local title ad valorem tax rate for such tax year shall be reduced automatically by operation of this division by such percentage amount as may be necessary so that, if such rate had been in effect for the calendar year under review, the local current collection amount would have produced an amount equal to the local target collection amount, and the state title ad valorem tax rate for such tax year shall be increased by an equal amount to maintain the combined state and local title ad valorem tax rate at the rate specified in division (ii) of this subparagraph. If the local current collection amount is more than 1 percent less than the local target collection amount, then the local title ad valorem tax rate for such tax year shall be increased automatically by operation of this division by such percentage amount as may be necessary so that, if such rate had been in effect for the calendar year under review, the local current collection amount would have produced an amount equal to the local target collection amount, and the state title ad valorem tax rate for such tax year shall be reduced by an equal amount to maintain the combined state and local title ad valorem tax rate at the rate specified in division (ii) of this subparagraph. In the event of an adjustment of such ad valorem tax rates, by not later than January 31 of such tax year, the state revenue commissioner shall notify the tax commissioner of each county in this state of the adjusted rate amounts. The effective date of such adjusted rate amounts shall be January 1 of such tax year.~~

~~(xiv) In tax years 2015, 2018, and 2022, by not later than July 1 of each such tax year, the state revenue commissioner shall determine the state target collection amount and the state current collection amount for the preceding calendar year. If such state current collection amount is greater than, equal to, or within 1 percent of the state target collection amount after making the adjustment, if any, required in division (xiii) of this subparagraph, then the combined state and local title ad valorem tax rate provided in division (ii) of this subparagraph shall remain at the rate specified in such division. If the state current collection amount is more than 1 percent less than the state target collection amount after making the adjustment, if any, required by division (xiii) of this subparagraph, then the combined state and local title ad valorem tax rate provided in division (ii) of this subparagraph shall be increased automatically by operation of this division by such percentage amount as may be necessary so that, if such rate had been in effect for the calendar year under review, the state current collection amount would have produced an amount equal to the state target collection amount, and the state title ad valorem tax rate and the local title ad valorem tax rate for the tax year in which such increase in the combined state and local title ad valorem tax rate shall become effective shall be adjusted from the rates~~

~~specified in this subparagraph or division (xiii) of this subparagraph for such tax year such that the proceeds from such increase in the combined state and local title ad valorem tax rate shall be allocated in full to the state. In the event of an adjustment of the combined state and local title ad valorem tax rate, by not later than August 31 of such tax year, the state revenue commissioner shall notify the tax commissioner of each county in this state of the adjusted combined state and local title ad valorem tax rate for the next calendar year. The effective date of such adjusted combined state and local title ad valorem tax rate shall be January 1 of the next calendar year. Notwithstanding the provisions of this division, the combined state and local title ad valorem tax rate shall not exceed 9 percent.~~

~~(xv)~~(iv) The state revenue commissioner shall promulgate such rules and regulations as may be necessary and appropriate to implement and administer this Code section, including, but not limited to, rules and regulations regarding appropriate public notification of ~~any changes in~~ rate amounts ~~and the effective date of such changes~~ and rules and regulations regarding appropriate enforcement and compliance procedures and methods for the implementation and operation of this Code section. The state revenue commissioner shall promulgate a standardized form to be used by all dealers of new and used vehicles in this state in order to ease the administration of this Code section. The state revenue commissioner may promulgate and implement rules and regulations as may be necessary to permit seller financed sales of used vehicles to be assessed 2.5 percentage points less than the rate specified in division (ii) of this subparagraph.

(C) The application for title and the state and local title ad valorem tax fees provided for in subparagraph (A) of this paragraph shall be paid to the tag agent in the county where the motor vehicle is to be registered and shall be paid at the time the application for a certificate of title is submitted or, in the case of an electronic title transaction, at the time when the electronic title transaction is finalized. In an electronic title transaction, the state and local title ad valorem tax fees shall be remitted electronically directly to the county tag agent. A dealer of new or used motor vehicles ~~may accept~~ shall make such application for title and state and local title ad valorem tax fees on behalf of the purchaser of a new or used motor vehicle for the purpose of submitting or, in the case of an electronic title application, finalizing such title application and remitting state and local title ad valorem tax fees. The state and local title ad valorem tax fees provided for in this chapter shall be imposed on the purchaser, including a lessor, that acquires title to the motor vehicle; provided, however, that a lessor that pays such state and local title ad valorem tax fees may seek reimbursement for such state and local title ad valorem tax fees from the lessee.

(D) There shall be a penalty imposed on any person who, in the determination of the commissioner, falsifies any information in any bill of sale used for purposes of determining the fair market value of the motor vehicle. Such penalty shall not exceed $2,500.00 as a state penalty and shall not exceed $2,500.00 as a local penalty as determined by the commissioner. Such determination shall be made within 60 days of the commissioner receiving information of a possible violation of this paragraph.

(E) Except in the case in which an extension of the registration period has been granted by the county tag agent under Code Section 40-2-20, a dealer of new or used motor vehicles that ~~accepts~~ makes an application for title and collects state and local title ad valorem tax fees from a purchaser of a new or used motor vehicle and does not submit or, in the case of an electronic title transaction, finalize such application for title and remit such state and local title ad valorem tax fees to the county tag agent within 30 days following the date of purchase shall be liable to the county tag agent for an amount equal to 5 percent of the amount of such state and local title ad valorem tax fees. An additional penalty equal to 10 percent of the amount of such state and local title ad valorem tax fees shall be imposed if such payment is not transmitted within 60 days following the date of purchase. An additional penalty equal to 15 percent of the amount of such state and local title ad valorem tax fees shall be imposed if such payment is not transmitted within 90 days following the date of purchase, and an additional penalty equal to 20 percent of the amount of such state and local title ad valorem tax fees shall be imposed if such payment is not transmitted within 120 days following the date of purchase. An additional penalty equal to 25 percent of the amount of such state and local title ad valorem tax fees shall be imposed for each subsequent 30 day period in which the payment is not transmitted.

(F) A dealer of new or used motor vehicles that ~~accepts~~ makes an application for title and collects state and local title ad valorem tax fees from a purchaser of a new or used motor vehicle and converts such fees to his or her own use shall be guilty of theft by conversion and, upon conviction, shall be punished as provided in Code Section 16-8-12.

(2) A person or entity acquiring a salvage title pursuant to subsection (b) of Code Section 40-3-36 shall not be subject to the fee specified in paragraph (1) of this subsection but shall be subject to a state title ad valorem tax fee in an amount equal to 1 percent of the fair market value of the motor vehicle. Such state title ad valorem tax fee shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(c)(1) The amount of proceeds collected by tag agents each month as state and local title ad valorem tax fees, state salvage title ad valorem tax fees, administrative fees, penalties,

and interest pursuant to subsection (b) of this Code section shall be allocated and disbursed as provided in this subsection.

(2) For the 2013 tax year and in each subsequent tax year, the amount of such funds shall be disbursed within 20 days following the end of each calendar month as follows:

(A) State title ad valorem tax fees, state salvage title ad valorem tax fees, administrative fees, penalties, and interest shall be remitted to the state revenue commissioner who shall deposit such proceeds in the general fund of the state less an amount to be retained by the tag agent not to exceed 1 percent of the total amount otherwise required to be remitted under this subparagraph to defray the cost of administration. Such retained amount shall be remitted to the collecting county's general fund. Failure by the tag agent to disburse within such 20 day period shall result in a forfeiture of such administrative fee plus interest on such amount at the rate specified in Code Section 48-2-40; and

(B) Local title ad valorem tax fees, administrative fees, penalties, and interest shall be designated as local government ad valorem tax funds. The tag agent shall then distribute the proceeds as specified in paragraph (3) of this subsection, less an amount to be retained by the tag agent not to exceed 1 percent of the total amount otherwise required to be remitted under this subparagraph to defray the cost of administration. Such retained amount shall be remitted to the collecting county's general fund. Failure by the tag agent to disburse within such 20 day period shall result in a forfeiture of such administrative fee plus interest on such amount at the rate specified in Code Section 48-2-40.

(3) ~~The local~~ Beginning July 1, 2019, the portion of the title ad valorem tax fee proceeds ~~required under this subsection~~ to be retained by the county pursuant to division (b)(1)(B)(iii) of this Code section shall be distributed as follows:

(A) ~~The tag agent of the county shall within 20 days following the end of each calendar month allocate and distribute to the county governing authority and to municipal governing authorities, the board of education of the county school district, the board of education of any independent school district located in such county, the water and sewerage authority for which the county has levied an ad valorem tax in accordance with a local constitutional amendment, and in a county in which a sales and use tax is levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the governing body of the transportation authority created by the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. L. 1965, p. 2243, as amended, and the amendment to the Constitution set out at Ga. L. 1964, p. 1008, an amount of those proceeds necessary to offset any reduction in (i) ad valorem tax on motor vehicles collected under Chapter 5~~

~~of this title in the taxing jurisdiction of each governing authority, school district, and water and sewerage authority from the amount of ad valorem taxes on motor vehicles collected under Chapter 5 of this title in each such governing authority, school district, and water and sewerage authority during the same calendar month of 2012 and (ii) with respect to the transportation authority, the monthly average portion of the sales and use tax levied for purposes of a metropolitan area system of public transportation applicable to any motor vehicle titled in a county which levied such tax in 2012. Such amount of tax may be determined by the commissioner for counties which levied such tax in 2012, and any counties which subsequently levy a tax pursuant to a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the governing body of the transportation authority created by the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. L. 1965, p. 2243, as amended, and the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the Commissioner may determine what amount of sales and use tax would have been collected in 2012, had such tax been levied. This reduction shall be calculated, with respect to (i) above, by subtracting the amount of ad valorem tax on motor vehicles collected under Chapter 5 of this title in each such taxing jurisdiction from the amount of ad valorem tax on motor vehicles collected under Chapter 5 of this title in that taxing jurisdiction in the same calendar month of 2012. In the event that the local title ad valorem tax fee proceeds are insufficient to fully offset such reduction in ad valorem taxes on motor vehicles or the portion of the sales and use tax described in (ii) above, the tag agent shall allocate a proportionate amount of the proceeds to each governing authority, the board of education of each such school district, the water and sewerage authority, and the transportation authority, and any remaining shortfall shall be paid from the following month's local title ad valorem tax fee proceeds. In the event that a shortfall remains, the tag agent shall continue to first allocate local title ad valorem tax fee proceeds to offset such shortfalls until the shortfall has been fully repaid; and** The tag agent of the county shall within 20 days following the end of each calendar month allocate and distribute to the water and sewerage authority for which the county has levied an ad valorem tax in accordance with a local constitutional amendment, and in a county in which a sales and use tax is levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the governing body of the transportation authority created by the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. L. 1965, p. 2243, as amended, and the amendment to the Constitution set out at Ga. L. 1964, p. 1008, an amount of those proceeds necessary to offset any reduction in:

(i) Ad valorem taxes on motor vehicles collected under Chapter 5 of this title on behalf of such water and sewerage authority during calendar year 2012; and

(ii) With respect to the transportation authority, the monthly average portion of the sales and use tax levied for purposes of a metropolitan area system of public transportation applicable to any motor vehicle titled in a county which levied such tax in 2012.

Such amount of tax under division (ii) of this subparagraph may be determined by the commissioner for counties which levied such tax in 2012, and in any counties which subsequently levy a tax pursuant to a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the governing body of the transportation authority created by the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. L. 1965, p. 2243, as amended, and the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the commissioner may determine what amount of sales and use tax would have been collected in calendar year 2012, had such tax been levied. The amount of the reduction to be offset under this subparagraph with respect to division (i) of this subparagraph shall be calculated by the county governing authority by subtracting the amount of title ad valorem tax on motor vehicles collected under Chapter 5 of this title on behalf of such water and sewerage authority in the current calendar month from one-twelfth of the amount of such ad valorem tax on motor vehicles collected on behalf of such water and sewerage authority in calendar year 2012. The amount of the reduction to be offset under this subparagraph with respect to division (ii) of this subparagraph shall be calculated by the county governing authority by subtracting the amount of sales tax collected or determined to have been collected on such motor vehicles by the state revenue commissioner in the current calendar month in any such county from one-twelfth of the amount of sales and use tax collected, or determined to have been collected, on such motor vehicles, by the state revenue commissioner in calendar year 2012 in such county. In the event that the local title ad valorem tax proceeds are insufficient to offset fully such reduction in ad valorem taxes on motor vehicles or the portion of the sales and use tax described in division (ii) of this subparagraph, the tag agent shall allocate a proportionate amount of the proceeds to such water and sewerage authority and the transportation authority, as appropriate, and any remaining shortfall shall be paid from the following month's local title ad valorem tax fee proceeds. In the event that a shortfall remains, the tag agent shall continue to first allocate local title ad valorem tax fee proceeds to offset such shortfalls until the shortfall has been fully repaid;

(B) ~~Of the proceeds remaining following the allocation and distribution under subparagraph (A) of this paragraph, the tag agent shall allocate and distribute to the~~

~~county governing authority and to municipal governing authorities, the board of education of the county school district, and the board of education of any independent school district located in such county the remaining amount of those proceeds in the manner provided in this subparagraph. Such proceeds shall be deposited in the general fund of such governing authority or board of education and shall not be subject to any use or expenditure requirements provided for under any of the following described local sales and use taxes but shall be authorized to be expended in the same manner as authorized for the ad valorem tax revenues on motor vehicles under Chapter 5 of this title which would otherwise have been collected for such governing authority or board of education. Of such remaining proceeds:~~

~~(i) An amount equal to one-third of such proceeds shall be distributed to the board of education of the county school district and the board of education of each independent school district located in such county in the same manner as required for any local sales and use tax for educational purposes levied pursuant to Part 2 of Article 3 of Chapter 8 of this title currently in effect. If such tax is not currently in effect, such proceeds shall be distributed to such board or boards of education in the same manner as if such tax were in effect;~~

~~(ii)(I) Except as otherwise provided in this division, an amount equal to one-third of such proceeds shall be distributed to the governing authority of the county and the governing authority of each qualified municipality located in such county in the same manner as specified under the distribution certificate for the joint county and municipal sales and use tax under Article 2 of Chapter 8 of this title currently in effect.~~

~~(II) If such tax were never in effect, such proceeds shall be distributed to the governing authority of the county and the governing authority of each qualified municipality located in such county on a pro rata basis according to the ratio of the population that each such municipality bears to the population of the entire county.~~

~~(III) If such tax is currently in effect as well as a local option sales and use tax for educational purposes levied pursuant to a local constitutional amendment, an amount equal to one-third of such proceeds shall be distributed in the same manner as required under subdivision (I) of this division and an amount equal to one-third of such proceeds shall be distributed to the board of education of the county school district.~~

~~(IV) If such tax is not currently in effect and a local option sales and use tax for educational purposes levied pursuant to a local constitutional amendment is currently in effect, such proceeds shall be distributed to the board of education of~~

~~the county school district and the board of education of any independent school district in the same manner as required under that local constitutional amendment.~~

~~(V) If such tax is not currently in effect and a homestead option sales and use tax under Article 2A of Chapter 8 of this title is in effect, such proceeds shall be distributed to the governing authority of the county, each qualified municipality, and each existing municipality in the same proportion as otherwise required under Code Section 48-8-104; and~~

~~(iii)(I) An amount equal to one-third of such proceeds shall be distributed to the governing authority of the county and the governing authority of each qualified municipality located in such county in the same manner as specified under an intergovernmental agreement or as otherwise required under the county special purpose local option sales and use tax under Part 1 of Article 3 of Chapter 8 of this title currently in effect; provided, however, that this subdivision shall not apply if subdivision (III) of division (ii) of this subparagraph is applicable.~~

~~(II) If such tax were in effect but expired and is not currently in effect, such proceeds shall be distributed to the governing authority of the county and the governing authority of each qualified municipality located in such county in the same manner as if such tax were still in effect according to the intergovernmental agreement or as otherwise required under the county special purpose local sales and use tax under Part 1 of Article 3 of Chapter 8 of this title for the 12 month period commencing at the expiration of such tax. If such tax is not renewed prior to the expiration of such 12 month period, such amount shall be distributed in accordance with subdivision (I) of division (ii) of this subparagraph; provided, however, that if a tax under Article 2 of Chapter 8 of this title is not in effect, such amount shall be distributed in accordance with subdivision (II) of division (ii) of this subparagraph.~~

~~(III) If such tax is not currently in effect in a county in which a tax is levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment, such proceeds shall be distributed in such county, in the same manner as ad valorem tax on motor vehicles collected under Chapter 5 of this title in the taxing jurisdiction of each governing authority and school district from the amount of ad valorem taxes on motor vehicles collected under Chapter 5 of this title in each such governing authority and school district during the same calendar month of 2012.~~

~~(IV) If such tax were never in effect, such proceeds shall be distributed in the same manner as specified under the distribution certificate for the joint county and~~

~~municipal sales and use tax under Article 2 of Chapter 8 of this title currently in effect; provided, however, that if such tax under such article is not in effect, such proceeds shall be distributed to the governing authority of the county and the governing authority of each qualified municipality located in such county on a pro rata basis according to the ratio of the population that each such municipality bears to the population of the entire county.~~ As to the proceeds remaining after the distribution provided for in subparagraph (A) of this paragraph, with regard to the proceeds associated with and collected on motor vehicle titles for motor vehicles registered in the unincorporated areas of the county, the tag agent of the county shall within 20 days following the end of each calendar month allocate and distribute 51 percent of such proceeds to the county governing authority and distribute 49 percent of such proceeds to the board of education of the county school district; and

(C) As to the proceeds remaining after the distribution provided for in subparagraph (A) of this paragraph, with regard to the proceeds associated with and collected on motor vehicle titles for motor vehicles registered in the incorporated areas of the county, the tag agent of the county shall within 20 days following the end of each calendar month allocate such proceeds by the municipality from which the proceeds were derived and then, for each such municipality, distribute 28 percent of such proceeds to the county governing authority and 23 percent of such proceeds to the governing authority of such municipality, and the remaining 49 percent of such proceeds shall be distributed to the board of education of the county school district; provided, however, that, if there is an independent school district in such municipality, then such remaining 49 percent of such proceeds shall be distributed to the board of education of the independent school district.

(d)(1)(A) Upon the death of an owner of a motor vehicle which has not become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member or immediate family members of such owner who receive such motor vehicle pursuant to a will or under the rules of inheritance shall, subsequent to the transfer of title of such motor vehicle, continue to be subject to ad valorem tax under Chapter 5 of this title and shall not be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section unless the immediate family member or immediate family members make an affirmative written election to become subject to paragraph (1) of subsection (b) of this Code section. In the event of such election, such transfer shall be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section.

(B) Upon the death of an owner of a motor vehicle which has become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member or

immediate family members of such owner who receive such motor vehicle pursuant to a will or under the rules of inheritance shall be subject to a state title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle and a local title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle. Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(2)(A) Upon the transfer from an immediate family member of a motor vehicle which has not become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member or immediate family members who receive such motor vehicle shall, subsequent to the transfer of title of such motor vehicle, continue to be subject to ad valorem tax under Chapter 5 of this title and shall not be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section unless the immediate family member or immediate family members make an affirmative written election to become subject to paragraph (1) of subsection (b) of this Code section. In the event of such election, such transfer shall be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section.

(B) Upon the transfer from an immediate family member of a motor vehicle which has become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member who receives such motor vehicle shall transfer title of such motor vehicle to such recipient family member and shall be subject to a state title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle and a local title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle. Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(C) Any title transfer under this paragraph shall be accompanied by an affidavit of the transferor and transferee that such persons are immediate family members to one another. There shall be a penalty imposed on any person who, in the determination of the state revenue commissioner, falsifies any material information in such affidavit. Such penalty shall not exceed $2,500.00 as a state penalty and shall not exceed $2,500.00 as a local penalty as determined by the state revenue commissioner. Such determination shall be made within 60 days of the state revenue commissioner receiving information of a possible violation of this paragraph.

(3) Any individual who:

(A) Is required by law to register a motor vehicle or motor vehicles in this state which were registered in the state in which such person formerly resided; and

(B) Is required to file an application for a certificate of title under Code Section 40-3-21 or 40-3-32

shall ~~only~~ be required to pay state and local title ad valorem tax fees in ~~the~~ an amount equal to 3 percent of the fair market value of the motor vehicle ~~of 50 percent of the amount which would otherwise be due and payable under this subsection at the time of filing the application for a certificate of title, and the remaining 50 percent shall be paid within 12 months~~.

(4) The state and local title ad valorem tax fees provided for under this Code section shall not apply to corrected titles, replacement titles under Code Section 40-3-31, or titles reissued to the same owner pursuant to Code Sections 40-3-50 through 40-3-56.

(5) Any motor vehicle subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section shall continue to be subject to the title, license plate, revalidation decal, and registration requirements and applicable fees as otherwise provided in Title 40 in the same manner as motor vehicles which are not subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section.

(6) Motor vehicles owned or leased by or to the state or any county, consolidated government, municipality, county or independent school district, or other government entity in this state shall not be subject to the state and local title ad valorem tax fees provided for under paragraph (1) of subsection (b) of this Code section; provided, however, that such other government entity shall not qualify for the exclusion under this paragraph unless it is exempt from ad valorem tax and sales and use tax pursuant to general law.

(7)(A) Any motor vehicle which is exempt from sales and use tax pursuant to paragraph (30) of Code Section 48-8-3 shall be exempt from state and local title ad valorem tax fees under this subsection.

(B) Any motor vehicle which is exempt from ad valorem taxation pursuant to Code Section 48-5-478, 48-5-478.1, 48-5-478.2, or 48-5-478.3 shall be exempt from state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section.

(7.1)(A) As used in this paragraph, the term 'for-hire charter bus or motor coach' means a motor vehicle designed for carrying more than 15 passengers and used for the transportation of persons for compensation.

(B) In the case of for-hire charter buses or motor coaches, the person applying for a certificate of title shall be required to pay title ad valorem tax fees in the amount of

50 percent of the amount which would otherwise be due and payable under this subsection at the time of filing the application for a certificate of title, and the remaining 50 percent shall be paid within 12 months following the filing of such application.

(8) There shall be a penalty imposed on the transfer of all or any part of the interest in a business entity that includes primarily as an asset of such business entity one or more motor vehicles, when, in the determination of the state revenue commissioner, such transfer is done to evade the payment of state and local title ad valorem tax fees under this subsection. Such penalty shall not exceed $2,500.00 as a state penalty per motor vehicle and shall not exceed $2,500.00 as a local penalty per motor vehicle, as determined by the state revenue commissioner, plus the amount of the state and local title ad valorem tax fees. Such determination shall be made within 60 days of the state revenue commissioner receiving information that a transfer may be in violation of this paragraph.

(9) Any owner of any motor vehicle who fails to submit within 30 days of the date such owner is required by law to register such vehicle in this state an application for a first certificate of title under Code Section 40-3-21 or a certificate of title under Code Section 40-3-32 shall be required to pay a penalty in the amount of 10 percent of the state title ad valorem tax fees and 10 percent of the local title ad valorem tax fees required under this Code section and, if such state and local title ad valorem tax fees and the penalty are not paid within 60 days following the date such owner is required by law to register such vehicle, interest at the rate of ~~1.0~~ 1 percent per month shall be imposed on the state and local title ad valorem tax fees due under this Code section, unless a temporary permit has been issued by the tax commissioner. The tax commissioner shall grant a temporary permit in the event the failure to timely apply for a first certificate of title is due to the failure of a lienholder to comply with Code Section 40-3-56, regarding release of a security interest or lien, and no penalty or interest shall be assessed. Such penalty and interest shall be in addition to the penalty and fee required under Code Section 40-3-21 or 40-3-32, as applicable.

(10) The owner of any motor vehicle for which a title was issued in this state on or after January 1, 2012, and prior to March 1, 2013, shall be authorized to opt in to the provisions of this subsection at any time prior to February 28, 2014, upon compliance with the following requirements:

(A)(i) The total amount of Georgia state and local title ad valorem tax fees which would be due from March 1, 2013, to December 31, 2013, if such vehicle had been titled in 2013 shall be determined; and

(ii) The total amount of Georgia state and local sales and use tax and Georgia state and local ad valorem tax under Chapter 5 of this title which were due and paid in 2012 for that motor vehicle and, if applicable, the total amount of such taxes which were due and paid for that motor vehicle in 2013 and 2014 shall be determined; and

(B)(i) If the amount derived under division (i) of subparagraph (A) of this paragraph is greater than the amount derived under division (ii) of subparagraph (A) of this paragraph, the owner shall remit the difference to the tag agent. Such remittance shall be deemed local title ad valorem tax fee proceeds; or

(ii) If the amount derived under division (i) of subparagraph (A) of this paragraph is less than the amount derived under division (ii) of subparagraph (A) of this paragraph, no additional amount shall be due and payable by the owner.

Upon certification by the tag agent of compliance with the requirements of this paragraph, such motor vehicle shall not be subject to ad valorem tax as otherwise required under Chapter 5 of this title in the same manner as otherwise provided in paragraph (1) of subsection (b) of this Code section.

(11)(A) In the case of rental motor vehicles owned by a rental motor vehicle concern, the state title ad valorem tax fee shall be in an amount equal to .625 percent of the fair market value of the motor vehicle, and the local title ad valorem tax fee shall be in an amount equal to .625 percent of the fair market value of the motor vehicle, but only if in the immediately prior calendar year the average amount of sales and use tax attributable to the rental charge of each such rental motor vehicle was at least $400.00 as certified by the state revenue commissioner. If, in the immediately prior calendar year, the average amount of sales and use tax attributable to the rental charge of each such rental motor vehicle was not at least $400.00, this paragraph shall not apply and such vehicles shall be subject to the state and local title ad valorem tax fees prescribed in division (b)(1)(B)(ii) of this Code section.

(B) Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(12) A loaner vehicle shall not be subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section for a period of time not to exceed 366 days commencing on the date such loaner vehicle is withdrawn temporarily from inventory. Immediately upon the expiration of such 366 day period, if the dealer does not return the loaner vehicle to inventory for resale, the dealer shall be responsible for remitting state and local title ad valorem tax fees in the same manner as otherwise required of an owner under paragraph (9) of this subsection and shall be subject to the same penalties and interest as an owner for noncompliance with the requirements of paragraph (9) of this subsection.

(13) Any motor vehicle which is donated to a nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code ~~for the purpose of being transferred to another person~~ shall, when titled in the name of such nonprofit organization, not be subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section but shall be subject to state and local title ad valorem tax fees ~~otherwise applicable to salvage titles under paragraph (2) of subsection (b) of this Code section~~ in the amount of 1 percent of the fair market value of the motor vehicle. Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(14)(A) A lessor of motor vehicles that leases motor vehicles for more than 31 consecutive days to lessees residing in this state shall register with the department. The department shall collect an annual fee of $100.00 for such registrations. Failure of a lessor to register under this subparagraph shall subject such lessor to a civil penalty of $2,500.00.

(B) A lessee residing in this state who leases a motor vehicle under this paragraph shall register such motor vehicle with the tag agent in such lessee's county of residence within 30 days of the commencement of the lease of such motor vehicle or beginning residence in this state, whichever is later.

(C) A lessor that leases a motor vehicle under this paragraph to a lessee residing in this state shall apply for a certificate of title in this state within 30 days of the commencement of the lease of such motor vehicle.

(15) There shall be no liability for any state or local title ad valorem tax fees in any of the following title transactions:

(A) The addition or substitution of lienholders on a motor vehicle title so long as the owner of the motor vehicle remains the same;

(B) The acquisition of a bonded title by a person or entity pursuant to Code Section 40-3-28 if the title is to be issued in the name of such person or entity;

(C) The acquisition of a title to a motor vehicle by a person or entity as a result of the foreclosure of a mechanic's lien pursuant to Code Section 40-3-54 if such title is to be issued in the name of such lienholder;

(D) The acquisition of a title to an abandoned motor vehicle by a person or entity pursuant to Chapter 11 of Title 40 if such person or entity is a manufacturer or dealer of motor vehicles and the title is to be issued in the name of such person or entity;

(E) The obtaining of a title to a stolen motor vehicle by a person or entity pursuant to Code Section 40-3-43;

(F) The obtaining of a title by and in the name of a motor vehicle manufacturer, licensed distributor, licensed dealer, or licensed rebuilder for the purpose of sale or

resale or to obtain a corrected title, provided that the manufacturer, distributor, dealer, or rebuilder shall submit an affidavit in a form promulgated by the commissioner attesting that the transfer of title is for the purpose of accomplishing a sale or resale or to correct a title only;

(G) The obtaining of a title by and in the name of the holder of a security interest when a motor vehicle has been repossessed after default in accordance with Part 6 of Article 9 of Title 11 if such title is to be issued in the name of such security interest holder;

(H) The obtaining of a title by a person or entity for purposes of correcting a title, changing an odometer reading, or removing an odometer discrepancy legend, provided that, subject to subparagraph (F) of this paragraph, title is not being transferred to another person or entity; ~~and~~

(I) The obtaining of a title by a person who pays state and local title ad valorem tax fees on a motor vehicle and subsequently moves out of this state but returns and applies to retitle such vehicle in this state;

(J) The transfer of a title made as a result of a business reorganization when the owners, partners, members, or stockholders of the business being reorganized maintain the same proportionate interest or share in the newly formed business reorganization;

(K) The transfer of a title from a company to an owner of the company for the purpose of such individual obtaining a prestige or special license plate for the motor vehicle; and

(L) The transfer of a title from an owner of a company to the company.

(16) It shall be unlawful for a person to fail to obtain a title for and register a motor vehicle in accordance with the provisions of this chapter. Any person who knowingly and willfully fails to obtain a title for or register a motor vehicle in accordance with the provisions of this chapter shall be guilty of a misdemeanor.

(17)(A) Any person who purchases a 1963 through 1985 model year motor vehicle for which such person obtains a title shall be subject to this Code section, but the state title ad valorem tax fee shall be in an amount equal to ~~.50~~ 0.5 percent of the fair market value of such motor vehicle, and the local title ad valorem tax fee shall be in an amount equal to ~~.50~~ 0.5 percent of the fair market value of such motor vehicle.

(B) The owner of a 1962 or earlier model year motor vehicle who obtains a conditional title pursuant to Code Section 40-3-21.1 for such motor vehicle shall be authorized to opt in to the provisions of this subsection upon the payment of a state title ad valorem tax fee in an amount equal to 0.5 percent of the fair market value of such motor vehicle and a local title ad valorem tax fee in an amount equal to 0.5 percent of the fair market value of such motor vehicle. Upon certification by the tag agent of compliance with the requirements of this subparagraph, such motor vehicle shall not be subject to ad

valorem tax as otherwise required under Chapter 5 of this title in the same manner as otherwise provided in paragraph (1) of subsection (b) of this Code section.

(18)(A) Upon the transfer of title as the result of a divorce decree or court order of a motor vehicle which has not become subject to paragraph (1) of subsection (b) of this Code section, the person who receives such motor vehicle shall, subsequent to the transfer of title of such motor vehicle, continue to be subject to the ad valorem tax under Chapter 5 of this title and shall not be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section unless such person makes an affirmative written election to become subject to paragraph (1) of subsection (b) of this Code section. In the event of such election, such transfer shall be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section.

(B) Upon the transfer of title as the result of a divorce decree or court order of a motor vehicle which has become subject to paragraph (1) of subsection (b) of this Code section, the person who receives such motor vehicle shall, at the time of the transfer of title of such motor vehicle, be subject to a state title ad valorem tax fee in an amount equal to one-half of 1 percent of the fair market value of the motor vehicle and a local title ad valorem tax fee in an amount equal to one-half of 1 percent of the fair market value of the motor vehicle. Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(C) Any title transfer under this paragraph shall be accompanied by an affidavit of the transferee that such transfer is pursuant to a divorce decree or court order, and the transferee shall attach such decree or order to the affidavit. There shall be a penalty imposed on any person who, in the determination of the state revenue commissioner, falsifies any material information in such affidavit. Such penalty shall not exceed $2,500.00 as a state penalty and shall not exceed $2,500.00 as a local penalty as determined by the state revenue commissioner. Such determination shall be made within 60 days of the state revenue commissioner receiving information of a possible violation of this paragraph.

(e) The fair market value of any motor vehicle subject to this Code section shall be appealable in the same manner as otherwise authorized for a motor vehicle subject to ad valorem taxation under Code Section 48-5-450; provided, however, that the person appealing the fair market value shall first pay the full amount of the state and local title ad valorem tax prior to filing any appeal. If the appeal is successful, the amount of the tax owed shall be recalculated and, if the amount paid by the person appealing the

determination of fair market value is greater than the recalculated tax owed, the person shall be promptly given a refund of the difference.

(f) Beginning in 2014, on or before January 31 of each year, the department shall provide a report to the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee showing the state and local title ad valorem tax fee revenues collected pursuant to this chapter and the motor vehicle ad valorem tax proceeds collected pursuant to Chapter 5 of this title during the preceding calendar year.

(g) A motor vehicle dealer shall be authorized to apply to the county tag agent of the county in which such motor vehicle is registered for a refund of state and local title ad valorem taxes on behalf of the person who purchased a motor vehicle from such dealer. Such dealer shall promptly pay to such purchaser any refund received by the dealer which is owed to the purchaser, and in any event, such payment shall be made no later than ten days following the receipt of such refund by the dealer. The county tag agent shall approve or deny the request for refund within 30 days after the filing of the application for refund. If the county tag agent denies the refund, the county tag agent shall specify the reasons for such denial. The motor vehicle dealer shall be authorized to appeal such denial to the commissioner within 30 days following such denial.″

SECTION 2.

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is amended by revising subsection (b) of Code Section 40-2-8, relating to the operation of unregistered vehicles, as follows:

″(b)(1) Any vehicle operated in the State of Georgia which is required to be registered and which does not have attached to the rear thereof a numbered license plate and current revalidation decal affixed to a corner or corners of the license plate as designated by the commissioner, if required, shall be stored at the owner's risk and expense by any law enforcement officer of the State of Georgia, unless such operation is otherwise permitted by this chapter.

(2)(A) It shall be a misdemeanor to operate any vehicle required to be registered in the State of Georgia without a valid numbered license plate properly validated, unless such operation is otherwise permitted under this chapter; and provided, further, that the purchaser of a new vehicle or a used vehicle from a dealer of new or used motor vehicles who displays a temporary plate issued as provided by subparagraph (B) of this paragraph may operate such vehicle on the public highways and streets of this state without a current valid license plate during the period within which the purchaser is required by Code Section 40-2-20. An owner acquiring a motor vehicle from an entity that is not a new or used vehicle dealer shall register such vehicle as provided for in

Code Section 40-2-29 unless such vehicle is to be registered under the International Registration Plan pursuant to Article 3A of this chapter.

(B)(i) Any dealer of new or used motor vehicles shall issue to the purchaser of a vehicle at the time of sale thereof, unless such vehicle is to be registered under the International Registration Plan, a temporary plate as provided for by department rules or regulations which may bear the dealer's name and location and shall bear ~~the~~ an expiration date ~~of the period within which the purchaser is required by Code Section 40-2-20 to register such vehicle~~ 45 days from the date of purchase. The expiration date of such a temporary plate may be revised and extended by the county tag agent upon application by the dealer, the purchaser, or the transferee if an extension of the purchaser's initial registration period has been granted as provided by Code Section 40-2-20. Such temporary plate shall not resemble a license plate issued by this state and shall be issued without charge or fee. The requirements of this subparagraph ~~do~~ shall not apply to a dealer whose primary business is the sale of salvage motor vehicles and other vehicles on which total loss claims have been paid by insurers.

(ii) All temporary plates issued by dealers to purchasers of vehicles shall be of a standard design prescribed by regulation promulgated by the department. The department may provide by rule or regulation for the sale and distribution of such temporary plates by third parties in accordance with paragraph (3) of this subsection.

(3) All sellers and distributors of temporary license plates shall maintain an inventory record of temporary license plates by number and name of the dealer.

(4) The purchaser and operator of a vehicle shall not be subject to the penalties set forth in this Code section during the period allowed for the registration of such vehicle. If the owner of such vehicle presents evidence that such owner has properly applied for the registration of such vehicle, but that the license plate or revalidation decal has not been delivered to such owner, then the owner shall not be subject to the penalties enumerated in this subsection."

SECTION 3.

Said title is further amended by revising subsection (c) of Code Section 40-2-29, relating to registration and license plate requirement, license fee to accompany application, temporary operating permit, and penalties, as follows:

"(c) A person unable to fully comply with the requirements of subsection (a) of this Code section shall register such vehicle and receive a temporary operating permit that will be valid until the end of the initial registration period as provided for in paragraph (.1) of subsection (a) of Code Section 40-2-21. The commissioner may provide by rule or

regulation for one 30 day extension of such initial registration period which may be granted by the county tag agent if the transferor has not provided such purchaser or other transferee owner with a title to the motor vehicle more than five business days prior to the expiration of such initial registration period. The county tag agent shall grant an extension of the initial registration period when the transferor, purchaser, or transferee can demonstrate by affidavit in a form provided by the commissioner that title has not been provided to the purchaser or transferee due to the failure of a security interest holder or lienholder to timely release a security interest or lien in accordance with Code Section 40-3-56."

SECTION 4.

Said title is further amended by revising Code Section 40-3-21, relating to the application for the first certificate of title, as follows:

"40-3-21.

(a) The application for the first certificate of title of a vehicle in this state shall be made ~~by the owner to the commissioner or~~ to the commissioner's duly authorized county tag agent on the prescribed form. Except as provided in subsection (b) of this Code section, the application ~~must~~ shall be submitted to ~~the commissioner or~~ the appropriate authorized county tag agent by the owner of the vehicle within 30 days from the date of purchase of the vehicle or from the date the owner is otherwise required by law to register the vehicle in this state. If the owner does not submit the application within that time, the owner of the vehicle shall be required to pay a penalty of $10.00 in addition to the ordinary title fee provided for by this chapter. If the documents submitted in support of the title application are rejected, the party submitting the documents shall have 60 days from the date of rejection to resubmit the documents required by the commissioner ~~or the authorized county tag agent~~ for the issuance of a certificate of title. Should the documents not be properly resubmitted within the 60 day period, there shall be an additional $10.00 penalty assessed, and the owner of the vehicle shall be required to remove immediately the license plate of the vehicle and return the same to ~~the commissioner or~~ the authorized county tag agent. The license plate shall be deemed to have expired at 12:00 Midnight of the sixtieth day following the initial rejection of the documents submitted, if the documents have not been resubmitted as required under this subsection. Such application shall contain:

(1) The full legal name, driver's license number, residence, and mailing address of the owner;

(2) A description of the vehicle, including, so far as the following data exist: its make, model, identifying number, type of body, the number of cylinders, and whether new, used, or a demonstrator and, for a manufactured home, the manufacturer's statement or

certificate of origin and the full serial number for all manufactured homes sold in this state on or after July 1, 1994;

(3) The date of purchase by the applicant and, except as provided in paragraph (2) of subsection (c) of this Code section, the name and address of the person from whom the vehicle was acquired and the names and addresses of the holders of all security interests and liens in order of their priority; and

(4) Any further information the commissioner reasonably requires to identify the vehicle and to enable the commissioner or the authorized county tag agent to determine whether the owner is entitled to a certificate of title and the existence or nonexistence of security interests in the vehicle and liens on the vehicle.

(b)(1) As used in this subsection, the term 'digital signature' means a digital or electronic method executed or adopted by a party with the intent to be bound by or to authenticate a record, which is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to data in such a manner that if the data are changed, the digital or electronic signature is invalidated.

(2) If the application refers to a vehicle purchased from a dealer, it shall contain the name and address of the holder of any security interest created or reserved at the time of the sale by the dealer. The application shall be signed by the owner and, unless the dealer's signature appears on the certificate of title or manufacturer's statement of origin submitted in support of the title application, the dealer, provided that as an alternative to a handwritten signature, the commissioner may authorize use of a digital signature ~~as~~ so long as appropriate security measures are implemented which assure security and verification of the digital signature process, in accordance with regulations promulgated by the commissioner. The dealer shall ~~promptly mail or deliver~~ mail, deliver, or electronically submit the application to the ~~commissioner or the county tag agent of the county in which the seller is located, of the county in which the sale takes place, of the county in which the vehicle is delivered, or of the county wherein the vehicle owner resides so as to have the application submitted to the commissioner or such~~ authorized county tag agent in the county where the vehicle will be registered within 30 days from the date of the sale of the vehicle. If the application is not submitted within that time, the dealer, or in nondealer sales the transferee, shall be required to pay a penalty of $10.00 in addition to the ordinary title fee paid by the transferee provided for in this chapter. If the documents submitted in support of the title application are rejected, the dealer submitting the documents shall have 60 days from the date of initial rejection to resubmit the documents required by the commissioner ~~or authorized county tag agent~~ for the issuance of a certificate of title. Should the documents not be properly resubmitted within 60 days, there shall be an additional penalty of $10.00 assessed against the dealer.

The willful failure of a dealer to obtain a certificate of title for a purchaser shall be grounds for suspension or revocation of the dealer's state issued license and registration for the sale of motor vehicles.

(c)(1) If the application refers to a vehicle last previously registered in another state or country, the application shall contain or be accompanied by:

(A) Any certificate of title issued by the other state or country; and

(B) Any other information and documents the commissioner ~~or authorized county tag agent~~ reasonably requires to establish the ownership of the vehicle and the existence or nonexistence of security interests in it and liens against it.

(2) If the application refers to a vehicle last previously registered in another state and if the applicant is the last previously registered owner in such state, the application need not contain the name and address of the person from whom the vehicle was acquired."

SECTION 5.

Said title is further amended by adding a new Code section to read as follows:

"40-3-21.1.

For a 1962 or earlier model year motor vehicle, the owner of such motor vehicle may apply to the commissioner through the county tag agent for a conditional title for such motor vehicle. The application shall be made under oath on a form prescribed by the commissioner for such purpose. Such form shall require the applicant to provide such information as the commissioner shall determine, including all liens and other encumbrances known to the applicant at the time of application, which the commissioner shall cause to be listed on the conditional title upon its issuance. Upon receipt of the application, the commissioner or the commissioner's duly authorized county tag agent shall file such application and, when satisfied as to its genuineness and regularity and that the applicant is entitled to the issuance of a conditional certificate of title under the provisions of this chapter, shall issue a conditional certificate of title for the motor vehicle. The conditional certificate of title shall be clearly marked as such and shall contain a disclaimer that states that the title may not reflect all liens or other encumbrances affecting the motor vehicle. The commissioner may impose a fee for the issuance of a conditional title which shall not exceed $20.00. The duly authorized county tag agent shall retain 50 percent of such fee for the general fund of the county and shall transmit the remaining 50 percent to the department for deposit into the state treasury."

SECTION 6.

Said title is further amended by revising subsection (b) of Code Section 40-3-32, relating to the transfer of vehicles, as follows:

"(b) Except as provided in Code Section 40-3-33, the transferee, promptly after delivery to him or her of the vehicle and certificate of title, shall execute the application for a new certificate of title on the form the commissioner prescribes and cause the application and the certificate of title to be mailed or delivered to the ~~commissioner or his appropriate~~ authorized county tag agent in the county where the vehicle will be registered together with the application for change of registration for the vehicle, so that the title application shall be received within 30 days from the date of the transfer of the vehicle. If the title application is not received within that time, the owner shall be required to pay a penalty of $10.00 in addition to the ordinary title fee provided for by this chapter. If the documents submitted in support of the title application are rejected, the party submitting the documents shall have 60 days from the date of initial rejection to resubmit the documents required by the commissioner for the issuance of title. If the documents are not properly resubmitted within 60 days, there shall be an additional $10.00 penalty assessed, and the owner of the vehicle shall be required to remove immediately the license plate of the vehicle and return the same to the ~~commissioner~~ authorized county tag agent. The license plate shall be deemed to have expired at 12:00 Midnight of the sixtieth day following the initial rejection of the documents, if the documents have not been resubmitted as required under this subsection."

SECTION 7.

This Act shall become effective on July 1, 2019.

SECTION 8.

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

House Bill 918 (AS PASSED HOUSE AND SENATE)

By: Representatives Efstration of the 104th, Rogers of the 10th, Rhodes of the 120th, Powell of the 171st, Williamson of the 115th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to define the terms "Internal Revenue Code" and "Internal Revenue Code of 1986" and thereby incorporate certain provisions of the federal law into Georgia law; to double the standard deduction amounts; to lower the personal and corporate income tax rates; to revise provisions relating to assignment of corporate income tax credits; to provide for no liability for state or local title ad valorem tax fees in a replacement title transaction for a vehicle not less than 15 years old; to provide for related matters; to provide for effective dates and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1-1.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by revising paragraph (14) of Code Section 48-1-2, relating to definitions regarding revenue and taxation, as follows:

"(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years beginning on or after January 1, ~~2016~~ 2017, the provisions of the United States Internal Revenue Code of 1986, as amended, provided for in federal law enacted on or before ~~January 1, 2017~~ February 9, 2018, except that ~~Section 85(c),~~ Section 108(i), Section 163(e)(5)(F), ~~Section 164(a)(6), Section 164(b)(6),~~ Section 168(b)(3)(I), Section 168(e)(3)(B)(vii), Section 168(e)(3)(E)(ix), Section 168(e)(8), Section 168(k) ~~(but not excepting Section 168(k)(2)(A)(i), Section 168(k)(2)(D)(i), and Section 168(k)(2)(E))~~, Section 168(m), Section 168(n), ~~Section 172(b)(1)(H), Section 172(b)(1)(J), Section 172(j),~~ Section 179(d)(1)(B)(ii), Section 179(f), Section 199, Section 381(c)(20), Section 382(d)(3), Section 810(b)(4), Section 1400L, Section 1400N(d)(1), Section 1400N(f), Section 1400N(j), Section 1400N(k), and Section 1400N(o) of the Internal Revenue Code

of 1986, as amended, shall be treated as if they were not in effect, and except that Section 168(e)(7), Section 172(b)(1)(F), and Section 172(i)(1)~~, and Section 1221~~ of the Internal Revenue Code of 1986, as amended, shall be treated as they were in effect before the 2008 enactment of federal Public Law 110-343, and except that Section 163(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as it was in effect before the 2009 enactment of federal Public Law 111-5, and except that Section 13(e)(4) of 2009 federal Public Law 111-92 shall be treated as if it was not in effect, and except that Section 118, Section 163(j), and Section 382(k)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as they were in effect before the 2017 enactment of federal Public Law 115-97, and except that the limitations provided in Section 179(b)(1) shall be $250,000.00 for tax years beginning in 2010, shall be $250,000.00 for tax years beginning in 2011, shall be $250,000.00 for tax years beginning in 2012, shall be $250,000.00 for tax years beginning in 2013, and shall be $500,000.00 for tax years beginning in 2014, and except that the limitations provided in Section 179(b)(2) shall be $800,000.00 for tax years beginning in 2010, shall be $800,000.00 for tax years beginning in 2011, shall be $800,000.00 for tax years beginning in 2012, shall be $800,000.00 for tax years beginning in 2013, and shall be $2 million for tax years beginning in 2014, and provided that Section 1106 of federal Public Law 112-95 as amended by federal Public Law 113-243 shall be treated as if it is in effect, except the phrase 'Code Section 48-2-35 (or, if later, November 15, 2015)' shall be substituted for the phrase 'section 6511(a) of such Code (or, if later, April 15, 2015),' and notwithstanding any other provision in this title, no interest shall be refunded with respect to any claim for refund filed pursuant to Section 1106 of federal Public Law 112-95, and provided that subsection (b) of Section 3 of federal Public Law 114-292 shall be treated as if it is in effect, except the phrase 'Code Section 48-2-35' shall be substituted for the phrase 'section 6511(a) of the Internal Revenue Code of 1986' and the phrase 'such section' shall be substituted for the phrase 'such subsection.' In the event a reference is made in this title to the Internal Revenue Code or the Internal Revenue Code of 1954 as it existed on a specific date prior to ~~January 1, 2017~~ February 9, 2018, the term means the provisions of the Internal Revenue Code or the Internal Revenue Code of 1954 as it existed on the prior date. Unless otherwise provided in this title, any term used in this title shall have the same meaning as when used in a comparable provision or context in the Internal Revenue Code of 1986, as amended. For taxable years beginning on or after January 1, ~~2016~~ 2017, provisions of the Internal Revenue Code of 1986, as amended, which were as of ~~January 1, 2017~~ February 9, 2018, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes."

SECTION 1-2.

Said title is further amended by revising paragraph (1) of subsection (b) of Code Section 48-7-20, relating to individual income tax rates, as follows:

"(b)(1) The tax imposed pursuant to subsection (a) of this Code section shall be computed in accordance with the following tables:

SINGLE PERSON

If Georgia Taxable Net Income Is:	The Tax Is:
Not over $750.00	1%
Over $750.00 but not over $2,250.00	$7.50 plus 2% of amount over $750.00
Over $2,250.00 but not over $3,750.00	$37.50 plus 3% of amount over $2,250.00
Over $3,750.00 but not over $5,250.00	$82.50 plus 4% of amount over $3,750.00
Over $5,250.00 but not over $7,000.00	$142.50 plus 5% of amount over $5,250.00
Over $7,000.00	$230.00 plus ~~6%~~ 5.75% of amount over $7,000.00

MARRIED PERSON FILING A SEPARATE RETURN

If Georgia Taxable Net Income Is:	The Tax Is:
Not over $500.00	1%
Over $500.00 but not over $1,500.00	$5.00 plus 2% of amount over $500.00
Over $1,500.00 but not over $2,500.00	$25.00 plus 3% of amount over $1,500.00
Over $2,500.00 but not over $3,500.00	$55.00 plus 4% of amount over $2,500.00
Over $3,500.00 but not over $5,000.00	$95.00 plus 5% of amount over $3,500.00
Over $5,000.00	$170.00 plus ~~6%~~ 5.75% of amount over $5,000.00

HEAD OF HOUSEHOLD AND MARRIED PERSONS
FILING A JOINT RETURN

If Georgia Taxable Net Income Is:	The Tax Is:
Not over $1,000.00	1%
Over $1,000.00 but not over $3,000.00	$10.00 plus 2% of amount over $1,000.00
Over $3,000.00 but not over $5,000.00	$50.00 plus 3% of amount over $3,000.00
Over $5,000.00 but not over $7,000.00	$110.00 plus 4% of amount over $5,000.00
Over $7,000.00 but not over $10,000.00	$190.00 plus 5% of amount over $7,000.00
Over $10,000.00	$340.00 plus ~~6%~~ 5.75% of amount over $10,000.00″

SECTION 1-3.

Said title is further amended by revising paragraph (1) of subsection (b) of Code Section 48-7-20, relating to individual income tax rates, as follows:

″(b)(1) The tax imposed pursuant to subsection (a) of this Code section shall be computed in accordance with the following tables:

SINGLE PERSON

If Georgia Taxable Net Income Is:	The Tax Is:
Not over $750.00	1%
Over $750.00 but not over $2,250.00	$7.50 plus 2% of amount over $750.00
Over $2,250.00 but not over $3,750.00	$37.50 plus 3% of amount over $2,250.00
Over $3,750.00 but not over $5,250.00	$82.50 plus 4% of amount over $3,750.00
Over $5,250.00 but not over $7,000.00	$142.50 plus 5% of amount over $5,250.00

Over $7,000.00 . . . . . $230.00 plus ~~5.75%~~ 5.5% of amount over $7,000.00

MARRIED PERSON FILING A SEPARATE RETURN

If Georgia Taxable Net Income Is:	The Tax Is:
Not over $500.00	1%
Over $500.00 but not over $1,500.00	$5.00 plus 2% of amount over $500.00
Over $1,500.00 but not over $2,500.00	$25.00 plus 3% of amount over $1,500.00
Over $2,500.00 but not over $3,500.00	$55.00 plus 4% of amount over $2,500.00
Over $3,500.00 but not over $5,000.00	$95.00 plus 5% of amount over $3,500.00
Over $5,000.00	$170.00 plus ~~5.75%~~ 5.5% of amount over $5,000.00

HEAD OF HOUSEHOLD AND MARRIED PERSONS FILING A JOINT RETURN

If Georgia Taxable Net Income Is:	The Tax Is:
Not over $1,000.00	1%
Over $1,000.00 but not over $3,000.00	$10.00 plus 2% of amount over $1,000.00
Over $3,000.00 but not over $5,000.00	$50.00 plus 3% of amount over $3,000.00
Over $5,000.00 but not over $7,000.00	$110.00 plus 4% of amount over $5,000.00
Over $7,000.00 but not over $10,000.00	$190.00 plus 5% of amount over $7,000.00
Over $10,000.00	$340.00 plus ~~5.75%~~ 5.5% of amount over $10,000.00″

SECTION 1-4.

Said title is further amended by revising subsection (a) of Code Section 48-7-21, relating to taxation of corporations, as follows:

"(a) Every domestic corporation and every foreign corporation shall pay annually an income tax equivalent to ~~6~~ 5.75 percent of its Georgia taxable net income. Georgia taxable net income of a corporation shall be the corporation's taxable income from property owned or from business done in this state. A corporation's taxable income from property owned or from business done in this state shall consist of the corporation's taxable income as defined in the Internal Revenue Code of 1986, with the adjustments provided for in subsection (b) of this Code section and allocated and apportioned as provided in Code Section 48-7-31."

SECTION 1-5.

Said title is further amended by revising subsection (a) of Code Section 48-7-21, relating to taxation of corporations, as follows:

"(a) Every domestic corporation and every foreign corporation shall pay annually an income tax equivalent to ~~5.75~~ 5.5 percent of its Georgia taxable net income. Georgia taxable net income of a corporation shall be the corporation's taxable income from property owned or from business done in this state. A corporation's taxable income from property owned or from business done in this state shall consist of the corporation's taxable income as defined in the Internal Revenue Code of 1986, with the adjustments provided for in subsection (b) of this Code section and allocated and apportioned as provided in Code Section 48-7-31."

SECTION 1-6.

Said title is further amended by revising subparagraphs (b)(8)(A) and (b)(10.1)(A) of Code Section 48-7-21, relating to taxation of corporations, as follows:

"(A) A corporation from sources outside the United States as defined in the Internal Revenue Code of 1986. For purposes of this subparagraph, dividends received by a corporation from sources outside of the United States shall include amounts treated as a dividend and income deemed to have been received under provisions of the Internal Revenue Code of 1986 by such corporation if such amounts could have been subtracted from taxable income under this paragraph, had such amounts actually been received but shall not include income specified in Section 951A of the Internal Revenue Code of 1986. The deduction provided by Section 250 shall apply to the extent the same income was included in Georgia taxable net income. The deduction, exclusion, or subtraction provided by Section 245A, Section 965, or any other section of the Internal

Revenue Code of 1986 shall not apply to the extent income has been subtracted pursuant to this subparagraph. Amounts to be subtracted under this subparagraph shall include the following unless excluded by this paragraph, as defined by the Internal Revenue Code of 1986:

(i) Qualified electing fund income;

(ii) Subpart F income; and

(iii) Income attributable to an increase in United States property by a controlled foreign corporation.

The amount subtracted under this subparagraph shall be reduced by any expenses directly attributable to the dividend income; and"

"(A) For any taxable year in which the taxpayer takes a federal net operating loss deduction on its federal income tax return, the amount of such deduction shall be added back to federal taxable income, and Georgia taxable net income for such taxable year shall be computed from the taxpayer's federal taxable income as so adjusted. There shall be allowed as a separate deduction from Georgia taxable net income so computed an amount equal to the aggregate of the Georgia net operating loss carryovers to such year, plus the Georgia net operating loss carrybacks to such year if such carrybacks are allowed by the Internal Revenue Code of 1986. Any limitations included in the Internal Revenue Code of 1986 on the amount of net operating loss that can be used in a taxable year shall be applied for purposes of this Code section; provided, however, that such limitations, including, but not limited to, the 80 percent limitation, shall be applied to Georgia taxable net income;"

SECTION 1-7.

Said title is further amended by revising paragraph (1) of subsection (a) of Code Section 48-7-27, relating to computation of taxable income of individuals, to read as follows:

"(1) Either the sum of all itemized nonbusiness deductions used in computing federal taxable income if the taxpayer used itemized nonbusiness deductions in computing federal taxable income or, if the taxpayer could not or did not itemize nonbusiness deductions, then a standard deduction as provided for in the following subparagraphs:

(A) In the case of a single taxpayer or a head of household, ~~$2,300.00~~ $4,600.00;

(B) In the case of a married taxpayer filing a separate return, ~~$1,500.00~~ $3,000.00;

(C) In the case of a married couple filing a joint return, ~~$3,000.00~~ $6,000.00;

(D) An additional deduction of $1,300.00 for the taxpayer if the taxpayer has attained the age of 65 before the close of the taxpayer's taxable year. An additional deduction of $1,300.00 for the spouse of the taxpayer shall be allowed if a joint return is made by

the taxpayer and the taxpayer's spouse and the spouse has attained the age of 65 before the close of the taxable year; and

(E) An additional deduction of $1,300.00 for the taxpayer if the taxpayer is blind at the close of the taxable year. An additional deduction of $1,300.00 for the spouse of the taxpayer shall be allowed if a joint return is made by the taxpayer and the taxpayer's spouse and the spouse is blind at the close of the taxable year. For the purposes of this subparagraph, the determination of whether the taxpayer or the spouse is blind shall be made at the close of the taxable year except that, if either the taxpayer or the spouse dies during the taxable year, the determination shall be made as of the time of the death;"

SECTION 1-8.

Said title is further amended by adding a new paragraph to subsection (b) of Code Section 48-7-27, relating to computation of taxable income of corporations, to read as follows:

"(14) Georgia net operating losses shall be treated in the same manner as provided in paragraph (10.1) of subsection (b) of Code Section 48-7-21 but shall be based on the income as computed pursuant to this Code section. Any limitations included in the Internal Revenue Code of 1986 on the amount of net operating loss that can be used in a taxable year shall be applied for purposes of this Code section; provided, however, that such limitations, including, but not limited to, the 80 percent limitation, shall be applied to Georgia taxable net income."

SECTION 1-9.

Said title is further amended by revising subsection (c) and adding a new subsection to Code Section 48-7-42, relating to affiliated entities and assignment of corporate income tax credits, to read as follows:

"(c) The recipient of a tax credit assigned under subsection (b) of this Code section shall attach a statement to its return identifying the assignor of the tax credit, in addition to providing any other information required to be provided by a claimant of the assigned tax credit. With the exception of the transferable credits in Code Sections 48-7-29.8, 48-7-29.12, 48-7-40.26, and 48-7-40.26A, the recipient of a tax credit assigned under subsection (b) of this Code section shall also be eligible to take any credit against payments due under Code Section 48-7-103, subject to the same requirements as the assignor of such credit at the time of the assignment."

"(g) For the purposes of all credits provided for by this chapter, the sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for the succeeding transferee in such transaction or event, but any unused credit eligible to be

applied against income tax liability under this article may be transferred and continued by such transferee and applied against the transferee's income tax liability under this article."

PART II

SECTION 2-1.

Said title is further amended in Chapter 5C, relating to the alternative ad valorem tax on motor vehicles, by revising paragraph (15) of subsection (d) of Code Section 48-5C-1, relating to definitions, exemption from taxation, allocation and disbursement of proceeds collected by tag agents, fair market value of vehicle appealable, and report, as follows:

"(15) There shall be no liability for any state or local title ad valorem tax fees in any of the following title transactions:

(A) The addition or substitution of lienholders on a motor vehicle title so long as the owner of the motor vehicle remains the same;

(B) The acquisition of a bonded title by a person or entity pursuant to Code Section 40-3-28 if the title is to be issued in the name of such person or entity;

(C) The acquisition of a title to a motor vehicle by a person or entity as a result of the foreclosure of a mechanic's lien pursuant to Code Section 40-3-54 if such title is to be issued in the name of such lienholder;

(D) The acquisition of a title to an abandoned motor vehicle by a person or entity pursuant to Chapter 11 of Title 40 if such person or entity is a manufacturer or dealer of motor vehicles and the title is to be issued in the name of such person or entity;

(E) The obtaining of a title to a stolen motor vehicle by a person or entity pursuant to Code Section 40-3-43;

(F) The obtaining of a title by and in the name of a motor vehicle manufacturer, licensed distributor, licensed dealer, or licensed rebuilder for the purpose of sale or resale or to obtain a corrected title, provided that the manufacturer, distributor, dealer, or rebuilder shall submit an affidavit in a form promulgated by the commissioner attesting that the transfer of title is for the purpose of accomplishing a sale or resale or to correct a title only;

(G) The obtaining of a title by and in the name of the holder of a security interest when a motor vehicle has been repossessed after default in accordance with Part 6 of Article 9 of Title 11 if such title is to be issued in the name of such security interest holder;

(H) The obtaining of a title by a person or entity for purposes of correcting a title, changing an odometer reading, or removing an odometer discrepancy legend, provided that, subject to subparagraph (F) of this paragraph, title is not being transferred to another person or entity; ~~and~~

(I) The obtaining of a title by a person who pays state and local title ad valorem tax fees on a motor vehicle and subsequently moves out of this state but returns and applies to retitle such vehicle in this state; and

(J) The obtaining of a replacement title on a vehicle that is not less than 15 years old upon sufficient proof provided to the commissioner that such title no longer exists."

PART III

SECTION 3-1.

(a) Sections 1-1, 1-6, and 1-8 of this Act shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval and such sections shall be applicable to all taxable years beginning on or after January 1, 2017.

(b) Sections 1-2 and 1-4 of this Act shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2019. Sections 1-2 and 1-4 of this Act shall expire by operation of law on the last moment of December 31, 2025, and revert to the language of paragraph (1) of subsection (b) of Code Section 48-7-20 and subsection (a) of Code Section 48-7-21, respectively, as they existed on the day immediately preceding the effective date of this Act.

(c) Sections 1-3 and 1-5 of this Act shall become effective upon passage of a joint resolution that is signed by the Governor ratifying such sections by both houses of the Georgia General Assembly on or after January 13, 2020, and upon such passage shall be applicable to all taxable years beginning on or after January 1, 2020. Should Sections 1-3 and 1-5 of this Act become effective as prescribed in the foregoing, both sections shall expire by operation of law on the last moment of December 31, 2025, and revert to the language of paragraph (1) of subsection (b) of Code Section 48-7-20 and subsection (a) of Code Section 48-7-21, respectively, as they existed on the day immediately preceding the effective date of this Act.

(d) Section 1-7 of this Act shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2018. Section 1-7 of this Act shall expire by operation of law on the last moment of December 31, 2025, and revert to the language of paragraph (1) of subsection (a) of Code Section 48-7-27 as it existed on the day immediately preceding the effective date of this Act.

(e) Section 1-9 of this Act shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval. The revisions to subsection (c) of Code Section 48-7-42 contained in Section 1-9 of this Act shall be applicable to tax credits that are assigned in taxable years beginning on or after January 1,

2018. New subsection (g) of Code Section 48-7-42 contained in Section 1-9 of this Act shall be applicable to sales, mergers, acquisitions, or bankruptcies occurring in taxable years beginning on or after January 1, 2018.

(f) Part II of this Act shall become effective July 1, 2018.

(g) Part III of this Act shall become effective upon its approval by the Governor or upon becoming law without such approval.

SECTION 3-2.

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

House Bill 761 (AS PASSED HOUSE AND SENATE)

By: Representatives Ridley of the 6th, Burns of the 159th, Powell of the 32nd, Meadows of the 5th, Harrell of the 106th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Code Section 40-3-33 of the Official Code of Georgia Annotated, relating to transfer of vehicle to or from a dealer, records to be kept by dealers, and electronic filing, so as to provide for the filing of certificates of title by dealers; to provide for the filing of a title application in the county in which a dealer is located; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 40-3-33 of the Official Code of Georgia Annotated, relating to transfer of vehicle to or from a dealer, records to be kept by dealers, and electronic filing, is amended by revising subsection (d) and adding a new subsection (e) as follows:

"(d) ~~On and after January 1, 2018, all~~ All applications for a certificate of title by a motor vehicle dealer shall be submitted to the department electronically. Any motor vehicle dealer who sells no more than ten motor vehicles per month on average as certified by the commissioner may apply on a form prescribed by the commissioner for a waiver from mandatory electronic filing of title applications as required by this subsection. The department ~~may~~ shall adopt rules and regulations to administer this subsection.

(e) Any dealer which sells a motor vehicle to a person who is not a resident of the county in which the dealer is located may file an application for title for such motor vehicle with the county tag agent in the county in which the dealer is located."

SECTION 2.

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

SECTION 3.

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

House Bill 898 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 32nd, Ridley of the 6th, Trammell of the 132nd, and Hatchett of the 150th

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, so as to revise provisions relative to fleet vehicles and fleet vehicle registration plans; to provide for definitions; to provide for fleet enrollment procedures; to provide for procedures for registering and licensing vehicles enrolled in a fleet; to provide for license plates; to remove revalidation decal requirements for vehicles in a fleet vehicle registration plan; to provide for the transfer of license plates between vehicles registered under a fleet vehicle registration plan; to provide for termination of participation in a fleet vehicle registration plan program; to revise provisions relating to a special license plate for the personal vehicles of firefighters; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, is amended by revising Article 2A, relating to fleet vehicles, as follows:

"ARTICLE 2A

40-2-50.

As used in this article, the term:

(1) 'Fleet' means ~~1,000~~ 100 or more motor vehicles.

(2) 'Fleet registration plan' means the method of registering the motor vehicles of a fleet as provided in this article.

40-2-51.

(a)~~(1)~~ A corporation or firm which has an established place of business in this state or which is controlled by a parent corporation which has an established place of business in this state and which owns or operates under a lease agreement a fleet which is not required to be registered under the International Registration Plan in accordance with Article 3A of this chapter may enroll in the fleet registration plan and register and obtain licenses to operate the motor vehicles in such fleet as provided in this article.

~~(2) The provisions of this article for fleet enrollment, registration, and licensing shall not apply to any corporation or firm which leases or rents motor vehicles to other persons for use thereby.~~

(b)(1) Applications for enrollment of a fleet under the fleet registration plan may be submitted to the department in the form and manner prescribed ~~thereby during the period of December 1 of the prior registration year to February 15 of the year for which the license plates are to be issued. Motor vehicles of a fleet shall be enrolled separately by classes and by counties where the vehicles are to be registered~~ by the commissioner.

(2)~~(A)~~ An applicant for enrollment of a fleet under the fleet registration plan shall pay a fleet enrollment fee of ~~$200.00~~ $50.00 for initial enrollment of the fleet.

~~(B) If the applicant for enrollment of a fleet or the parent corporation or firm thereof has not had an established place of business in this state for a period of ten consecutive years or more, the applicant shall post a $25,000.00 surety bond at the time of applying for enrollment.~~

(3) If the department determines that the applicant is eligible for fleet registration and proper application has been made, the department shall enroll the fleet, indicate the amount of license fees due for the fleet, ~~validate the enrollment form or forms for the applicable county or counties, and mail the validated original enrollment form or forms with fees indicated to the applicant. Such enrollment shall be valid for a period which is concurrent with that period for which regular license plates are issued for use under Code Section 40-2-31. Thereafter, the department shall, prior to December 1 of each year of the enrollment period, mail the enrollee a statement of the amount of license fees due and payable during the forthcoming registration period for such fleet~~ and assign a unique registration account number to the applicant.

40-2-52.

(a) ~~After~~ Within 30 days of receipt of a validated fleet enrollment form, the owner or operator of the enrolled fleet shall register and obtain licenses to operate the motor vehicles ~~thereof during the period of December 1 of the prior registration year to February 15 of the year for which the license plates are to be issued~~ by submitting properly completed

certificates of title for each vehicle in a fleet and any supporting documents required by the commissioner. The owner or operator of the enrolled fleet which acquires a vehicle after approval of fleet enrollment shall submit the properly completed certificates of title and required supporting documentation for any additional vehicles within 30 days from the date of acquisition of such vehicle.

(b) ~~An applicant for registration of a vehicle of an enrolled fleet shall submit a validated original fleet enrollment form to the county tag agent in each county in which vehicles enrolled under the fleet registration plan are to be registered.~~ All certificates of title by the owner or operator of an enrolled fleet required under this article shall be submitted to the department electronically and in a manner prescribed by the commissioner.

(c) Any applicable state and local title and ad valorem taxes required pursuant to Code Section 48-5C-1 shall be paid for any new motor vehicle to be included in an enrolled fleet.

~~(c)~~(d) The provisions of Article 2 of this chapter for registering and licensing motor vehicles generally which are not inconsistent with the provisions of this article shall apply to the registration and licensing of each vehicle of an enrolled fleet.

40-2-53.

(a)~~(1)~~ Upon electronic submission ~~by the applicant of a validated original fleet enrollment form and compliance with~~ of all applicable requirements ~~for registration and licensing of motor vehicles,~~ of this article, the department shall send notification of such to the county tag agent. Upon receipt of such notification from the department, the county tag agent shall issue to the applicant a fleet motor vehicle license plate for each vehicle of the fleet to be registered and licensed in such county.

~~(2) The county tag agent shall mark the validated original fleet enrollment form as 'taxes paid' or 'tax exempt,' as applicable, and return such form to the registrant.~~

~~(3) The registrant shall submit to the department the validated original fleet enrollment form which has been marked as provided in paragraph (2) of this subsection.~~

(b) Fleet motor vehicle license plates shall be similar in design to ~~and issued for the same period as~~ regular license plates issued under Code Section 40-2-31, except that such fleet motor vehicle license plates shall contain such words or symbols, in addition to the numbers and letters otherwise prescribed by law, so as to distinctively identify the motor vehicles on which they are placed as fleet motor vehicles. ~~It shall be a requirement that a county name decal shall be affixed and displayed on license plates issued under this Code section.~~ Such motor vehicle license plates shall contain the word 'FLEET' in the location of and in lieu of the revalidation decal required under Code Section 40-2-8 so as to distinctly identify the motor vehicle as part of an enrolled fleet.

(c)~~(1)~~ License plates issued under this Code section shall be renewed annually ~~with a generic fleet revalidation decal~~ upon payment of a renewal fee to the department. Such fee shall be the same amount that would be charged for a revalidation decal for such vehicle.

~~(2) The bond required under subsection (b) of Code Section 40-2-51 shall be required at the time of any renewal of such license plates if at the time of such renewal the registrant or the parent corporation or firm thereof has not had an established place of business in this state for a period of ten consecutive years or more.~~

(d) License plates issued under this Code section ~~shall~~ may be transferred between vehicles ~~in the same manner as provided by Code Section 40-2-80 for special license plates issued under Article 3 of this chapter~~ of the same class upon electronic submission to the department of the information required under Code Section 40-2-51 for any vehicle added to an enrolled fleet and the payment of the required registration fees for such additional vehicle.

40-2-54.

~~(a) If a fleet registrant or the parent corporation or firm thereof has not had an established place of business in this state for a period of ten consecutive years or more, the department or its designated agent shall annually conduct an audit of such fleet registrant to ensure compliance with the requirements of this article which may include, without limitation, examination of records of all vehicles in a fleet, additions to or deletions from a fleet since the most recent such audit, and proof of proper payment of or exemption from ad valorem taxes on fleet vehicles. The fleet registrant shall bear the cost of or reimburse the department for the expenses of any audit required by this subsection.~~

~~(b)~~(a) The department or its designated agent may perform an audit of any fleet registrant to ensure compliance with the requirements of this article which may include, without limitation, examination of records of all vehicles in a fleet, additions to or deletions from a fleet since the most recent such audit, and proof of proper payment of or exemption from ad valorem taxes on fleet vehicles.

(b) The department is authorized to promulgate such rules and regulations as the department shall find necessary to implement the provisions of this article.

40-2-55.

An enrollment of a fleet in the fleet registration plan shall be terminated by the department in the event:

~~(1) The department determines on the basis of an audit that fees for registration and licensing are not paid as required for 20 percent or more of the vehicles in any class of vehicles in the fleet or of those vehicles of the fleet registered in a county;~~

~~(2)~~(1) The department determines on the basis of an audit that fees for registration and licensing are not paid as required for 5 percent or more of the total vehicles in the fleet which are registered in this state;

~~(3)~~(2) Of the conviction of the fleet registrant for any unlawful use of any license plate issued for a fleet vehicle;

~~(4)~~(3) Of the failure of the fleet registrant to pay title and ad valorem taxes as required for any fleet vehicle; or

~~(5)~~(4) Of the failure of the fleet registrant to pay enrollment fees as required~~; or~~

~~(6) Of the forfeiture of the surety bond required under Code Section 40-2-52 or 40-2-53~~.″

SECTION 2.

Said chapter is further amended by revising paragraph (9) of subsection (l) of Code Section 40-2-86.1, relating to special license plates promoting certain beneficial projects and supporting certain worthy agencies, funds, or nonprofit corporations and special license plates for qualified motor vehicles or drivers, as follows:

″(9)(A) A special license plate for owners of a private passenger car or truck used for personal transportation, who are firefighters certified pursuant to Article 1 of Chapter 4 of Title 25 and who are members of fire departments certified pursuant to Article 2 of Chapter 3 of Title 25 and motor vehicle owners who are ~~certified~~ firefighters of legally organized volunteer fire departments which have been certified pursuant to Article 2 of Chapter 3 of Title 25. Such license plate shall be inscribed with such letters, numbers, words, symbols, or a combination thereof as determined by the commissioner to identify the owner as a ~~certified~~ firefighter. The chiefs of the various fire departments shall furnish to the commissioner a list of the certified firefighters and volunteer firefighters of their fire departments who reside in Georgia which list shall be updated as necessary. The funds raised by the sale of this license plate shall be deposited in the general fund.

(B) Should a certified firefighter or volunteer firefighter who has been issued a special and distinctive license plate be separated from such firefighter's department for any reason other than retirement from employment, the ~~chief of such fire department shall obtain the separated member's license plate at the time of the separation and shall forward same to the commissioner along with a certificate to the effect that such person has been separated, and thereupon the commissioner~~ separated firefighter shall, within 14 days of such separation, return such special and distinctive license plate to the local tag office which issued such license plate. Upon receipt of such special and distinctive license plate, a local tag agent shall reissue a regular license plate and the appropriate revalidation decal for the applicable registration period, at no additional charge, to such

former ~~certified~~ firefighter to replace the special and distinctive license plate. Should a ~~certified~~ firefighter return to service with the same or another fire department, the chief of such fire department shall ~~likewise~~ secure the regular license plate of such person and return same to the commissioner, along with a certificate to the effect that such person has become a member of the fire department, and the effective date thereof, whereupon the commissioner shall, upon application and upon the payment of a $35.00 manufacturing fee and all other applicable registration and licensing fees at the time of registration, reissue a special and distinctive license plate to such new member to replace the returned regular license plate. ~~Upon such request for a change in plate for a certified firefighter who is separated from a fire department, the chief of the fire department shall furnish such member with a copy of the chief's letter to the commissioner requesting the appropriate change in plate, which copy of such letter may be used by such member pending the issuance of the new plate.~~

(C) Motor vehicle owners who were firefighters certified pursuant to Article 1 of Chapter 4 of Title 25 or were members of fire departments certified pursuant to Article 2 of Chapter 3 of Title 25 and who retired from employment as such shall continue to be eligible for the firefighter license plates issued under this paragraph the same as if they continued to be certified and employed as firefighters. Whenever such a certified firefighter who has been issued a special and distinctive license plate is retired from employment with such firefighter's department, the chief of such fire department shall forward to the commissioner a certificate to the effect that such person has been retired.

(D) The spouse of a deceased firefighter shall continue to be eligible to be issued a distinctive special firefighter's license plate as provided in this paragraph so long as such person does not remarry.″

SECTION 3.

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

House Bill 978 (AS PASSED HOUSE AND SENATE)

By: Representatives Nimmer of the 178th, Coomer of the 14th, Carpenter of the 4th, Corbett of the 174th, Rhodes of the 120th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 8 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to school buses, so as to revise the enforcement of civil monetary penalties regarding violations of the duties of a driver when meeting or overtaking a school bus; to revise penalty fees; to revise definitions; to provide for procedures and enforcement; to provide for enforcement penalties through the Department of Revenue; to provide for dedication of fees collected from local civil monetary penalties; to amend Article 2 of Chapter 14 of Title 40 of the Official Code of Georgia Annotated, relating to speed detection devices, so as to provide for automated traffic enforcement safety devices in school zones; to provide for definitions; to provide for the operation of automated traffic enforcement safety devices by agents or registered or certified peace officers; to provide for automated traffic enforcement safety device testing exceptions and procedures; to provide for automated traffic enforcement safety device use warning signs; to provide for further exceptions for when case may be made and conviction had for exceeding posted speed limit by less than ten miles per hour; to provide for an exception for the ratio of speeding fines to an agency budget; to provide for civil enforcement of violations recorded by automated traffic enforcement safety devices; to provide for enforcement penalties through the Department of Revenue; to provide for rules, regulations, and terms of use for automated traffic enforcement safety devices; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 8 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to school buses, is amended by revising Code Section 40-6-163, relating to duty of driver of vehicle meeting or overtaking school bus, reporting of violations, and enforcement, as follows:

"40-6-163.

(a) Except as provided in subsection (b) of this Code section, the driver of a vehicle meeting or overtaking from either direction any school bus stopped on the highway shall stop before reaching such school bus when there are in operation on the school bus the visual signals as specified in Code Sections 40-8-111 and 40-8-115, and such driver shall not proceed until the school bus resumes motion or the visual signals are no longer actuated.

(b) The driver of a vehicle upon a highway with separate roadways or a divided highway, including, but not limited to, a highway divided by a turn lane, need not stop upon meeting or passing a school bus which is on a different roadway or on another half of a divided highway, or upon a controlled-access highway when the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

(c) Every school bus driver who observes a violation of subsection (a) of this Code section is authorized and directed to record specifically the vehicle description, license number of the offending vehicle, and time and place of occurrence on forms furnished by the Department of Public Safety. Such report shall be submitted within 15 days of the occurrence of the violation to the local law enforcement agency which has law enforcement jurisdiction where the alleged offense occurred.

(d)(1) As used in this subsection, the term:

(A) 'Agent' means a person or entity who is authorized by a law enforcement agency or governing body to administer the procedures contained herein and:

(i) Provides services to such law enforcement agency or governing body;

(ii) Operates, maintains, leases, or licenses a video recording device; or

(iii) Is authorized by such law enforcement agency or governing body to review and assemble the recorded images.

(B) 'Owner' means the registrant of a motor vehicle, except that such term shall not include a motor vehicle rental company when a motor vehicle registered by such company is being operated by another person under a rental agreement with such company.

~~(B)~~(C) 'Recorded images' means images recorded by a video recording device mounted on a school bus with a clear view of vehicles passing the bus on either side and showing the date and time the recording was made and an electronic symbol showing the activation of amber lights, flashing red lights, stop arms, and brakes.

~~(C)~~(D) 'Video recording device' means a camera capable of recording digital images showing the date and time of the images so recorded.

(2) Subsection (a) of this Code section may be enforced by using recorded images as provided in this subsection.

(3) For the purpose of enforcement pursuant to this subsection:

(A) The ~~driver~~ owner of a motor vehicle shall be liable for a civil monetary penalty to the governing body of the law enforcement agency provided for in subparagraph (d)(3)(B) of this Code Section if such vehicle is found, as evidenced by recorded images, to have been operated in disregard or disobedience of subsection (a) of this Code section and such disregard or disobedience was not otherwise authorized by law. The amount of such ~~fine~~ civil monetary penalty shall be ~~$300.00 for a first offense, $750.00 for a second offense, and $1,000.00 for each subsequent offense in a five-year period~~ $250.00;

(B) The law enforcement agency authorized to enforce the provisions of this Code section shall send by ~~regular~~ first class mail addressed to the owner of the motor vehicle ~~postmarked~~ not later than ten days after ~~the date of the alleged violation~~ obtaining the name and address of the owner of the motor vehicle:

(i) A citation for the alleged violation, which shall include the date and time of the violation, the location of the infraction, the amount of the civil monetary penalty imposed, and the date by which the civil monetary penalty shall be paid;

(ii) An image taken from the recorded image showing the vehicle involved in the infraction;

(iii) A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency authorized to enforce this Code section and stating that, based upon inspection of recorded images, the owner's motor vehicle was operated in disregard or disobedience of subsection (a) of this Code section and that such disregard or disobedience was not otherwise authorized by law;

(iv) A statement of the inference provided by subparagraph (D) of this paragraph and of the means specified therein by which such inference may be rebutted;

(v) Information advising the owner of the motor vehicle of the manner and time in which liability as alleged in the citation may be contested in court; and

(vi) A warning that failure to pay the civil monetary penalty or to contest liability in a timely manner shall waive any right to contest liability and result in a civil monetary penalty;

(C) Proof that a motor vehicle was operated in disregard or disobedience of subsection (a) of this Code section shall be evidenced by recorded images. A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency and stating that, based upon inspection of recorded images, a motor vehicle was operated in disregard or disobedience of subsection (a) of this Code section and that

such disregard or disobedience was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein; and

(D) Liability under this subsection shall be determined based upon preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant to this subsection was operated in violation of subsection (a) of this Code section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that such owner of the vehicle was the driver of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:

(i) Testifies under oath in open court or submits to the court a sworn notarized statement that he or she was not the operator of the vehicle at the time of the alleged violation and identifies the name of the operator of the vehicle at the time of the alleged violation; or

(ii) Presents to the court a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation.

(4) A violation for which a civil penalty is imposed pursuant to this subsection shall not be considered a moving traffic violation for the purpose of points assessment under Code Section 40-5-57. Such violation shall be deemed noncriminal, and imposition of a civil penalty pursuant to this subsection shall not be deemed a conviction and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for any insurance purposes in the provision of motor vehicle insurance coverage.

(5) ~~If a person summoned by regular mail fails to appear on the date of return set out in the citation and has not paid the penalty for the violation or filed a police report or notarized statement pursuant to subparagraph (D) of paragraph (3) of this subsection, the person shall then be summoned a second time by certified mail with a return receipt requested. The second summons shall include all information required in subparagraph (B) of paragraph (3) of this subsection for the initial summons and shall include a new date of return. If a person summoned by certified mail again fails to appear on the date of return set out in the second citation and has failed to pay the penalty or file an appropriate document for rebuttal, the person summoned shall have waived the right to contest the violation and shall be liable for the civil monetary penalty provided in paragraph (3) of this subsection.~~ If a person is mailed a citation by first class mail pursuant to subparagraph (B) of paragraph (3) of this subsection, such person may pay the penalty or request a court date. Any citation executed pursuant to this paragraph shall provide to the person issued the citation at least 30 business days from the mailing of the citation to inspect information collected by the video recording device in connection with

the violation. If the person requesting a court date fails to appear on the date and time of such hearing or if a person has not paid the penalty for the violation or filed a police report or notarized statement pursuant to subparagraph (D) of paragraph (3) of this subsection, such person shall then be sent a second citation by first class mail. The second citation shall include all information required in subparagraph (B) of paragraph (3) of this subsection for the initial citation and shall include a hearing date and time. If a person fails to appear on the date and time of such hearing set out in the second citation or if the person has failed to pay the penalty or file an appropriate document for rebuttal, the person issued the second citation shall have waived the right to contest the violation and shall be liable for the civil monetary penalty provided in paragraph (3) of this subsection.

(6) Any court having jurisdiction over violations of subsection (a) of this Code section shall have jurisdiction over cases arising under this subsection ~~and shall be authorized to impose the civil monetary penalty provided by this subsection~~. Any person receiving a notice pursuant to subparagraph (B) of this paragraph shall have the right to contest such liability for the civil monetary penalty in the magistrate court or other court of competent jurisdiction for a traffic violation. Except as otherwise provided in this subsection, the provisions of law governing jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of penalties otherwise applicable to violations of subsection (a) of this Code section shall apply to enforcement under this subsection except as provided in subparagraph (A) of paragraph (3) of this subsection; provided, however, that any appeal from superior or state court shall be by application in the same manner as that provided by Code Section 5-6-35.

(7) If a violation has not been contested and the assessed penalty has not been paid, the agent or governing body shall send to the person who is the registered owner of the motor vehicle a final notice of any unpaid civil monetary penalty authorized by this Code section, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The notice shall inform the registered owner that the agent or governing body shall send a referral to the Department of Revenue if the assessed penalty and any late fee is not paid within 30 days after the final notice was mailed and that such referral shall result in the nonrenewal of the registration of such motor vehicle and shall prohibit the title transfer of such motor vehicle within this state.

(8) The agent or governing body shall send a referral to the Department of Revenue not sooner than 30 days after the final notice required under paragraph (7) of this subsection was mailed if a violation of an ordinance or resolution adopted under this article has not

been contested and the assessed penalty has not been paid. The referral to the Department of Revenue shall include the following:

(A) Any information known or available to the agent or governing body concerning the license plate number, year of registration, and the name of the owner of the motor vehicle;

(B) The date on which the violation occurred;

(C) The date when the notice required under this Code section was mailed; and

(D) The seal, logo, emblem, or electronic seal of the governing body.

(9) If the Department of Revenue receives a referral under paragraph (8) of this subsection, such referral shall be entered into the motor vehicle database within five days of receipt and the Department of Revenue shall refuse to renew the registration of such motor vehicle and shall prohibit the title transfer of such vehicle within this state unless and until the civil monetary penalty plus any late fee is paid to the governing body. The Department of Revenue shall mail a notice to the registered owner of such motor vehicle that informs such owner:

(A) That the registration of the vehicle involved in the violation will not be permitted to be renewed;

(B) That the title of the vehicle involved in the violation will not be permitted to be transferred in this state;

(C) That the aforementioned penalties are being imposed due to the failure to pay the civil monetary penalty plus any late fee for an ordinance violation adopted under the authority of this Code section; and

(D) Of the procedure that the person may follow to remove the penalties.

(10) The Department of Revenue shall remove the penalties on a vehicle if any person presents the Department of Revenue with adequate proof that the penalty and any late fee, if applicable, has been paid.

~~(7)~~(11) Recorded images made for purposes of this subsection shall not be a public record for purposes of Article 4 of Chapter 18 of Title 50.

~~(8)~~(12) A governing authority shall not impose a civil penalty under this subsection on the owner of a motor vehicle if the operator of the vehicle was arrested or issued a citation and notice to appear by a certified peace officer for the same violation.

~~(9)~~(13) A local school system may enter into an intergovernmental agreement with a local governing authority to offset expenses regarding the implementation and ongoing operation of video recording devices serving the purpose of capturing recorded images of motor vehicles unlawfully passing a school bus.

~~(10)~~(14) Any school bus driver operating a vehicle equipped with an activated video recording device shall be exempt from the recording provisions of subsection (c) of Code Section 40-6-163.

(15) The money collected and remitted to the governing body pursuant to subparagraph (d)(3)(B) of this Code section shall only be used by such governing body to fund local law enforcement or public safety initiatives. This paragraph shall not preclude the appropriation of a greater amount than collected and remitted under this subsection."

SECTION 2.

Article 2 of Chapter 14 of Title 40 of the Official Code of Georgia Annotated, relating to speed detection devices, is amended by adding two new Code sections to read as follows:

"40-14-1.1.

As used in this article, the term:

(1) 'Agent' means a person or entity who is authorized by a law enforcement agency or governing body to administer the procedures contained herein and:

(A) Provides services to such law enforcement agency or governing body;

(B) Operates, maintains, leases, or licenses an automated traffic enforcement safety device; or

(C) Is authorized by such law enforcement agency or governing body to review and assemble the recorded images captured by the automated traffic enforcement safety device for review by a peace officer.

(2) 'Automated traffic enforcement safety device' means a speed detection device that:

(A) Is capable of producing photographically recorded still or video images, or both, of the rear of a motor vehicle or of the rear of a motor vehicle being towed by another vehicle, including an image of such vehicle's rear license plate;

(B) Is capable of monitoring the speed of a vehicle as photographically recorded pursuant to subparagraph (A) of this paragraph; and

(C) Indicates on each photographically recorded still or video image produced the date, time, location, and speed of a photographically recorded vehicle traveling at a speed above the posted speed limit within a marked school zone.

(3) 'Owner' means the registrant of a motor vehicle, except that such term shall not include a motor vehicle rental company when a motor vehicle registered by such company is being operated by another person under a rental agreement with such company.

(4) 'Recorded images' means still or video images recorded by an automated traffic enforcement safety device.

(5) 'School zone' means the area within 1,000 feet of the boundary of any public or private elementary or secondary school.

40-14-1.2.

Nothing in this article shall be construed to mean that an agent is providing or participating in private investigative services or acting in such manner as would render such agent subject to the provisions of Article 4 of Chapter 18 of Title 50."

SECTION 3.

Said article is further amended by revising subsection (c) of Code Section 40-14-2, relating to permit required for use of speed detection devices, use not authorized where officers paid on fee system, and operation by registered or certified peace officers, as follows:

"(c) A permit shall not be issued by the Department of Public Safety to an applicant under this Code section unless the applicant provides law enforcement services by certified peace officers 24 hours a day, seven days a week on call or on duty or allows only peace officers employed full time by the applicant to operate speed detection devices. Speed detection devices can only be operated by registered or certified peace officers of the county sheriff, county, municipality, college, or university to which the permit is applicable; provided, however, that an automated traffic enforcement safety device may be operated by an agent or registered or certified peace officers of the county sheriff, county, or municipality to which the permit is applicable. Persons operating the speed detection devices must be registered or certified by the Georgia Peace Officer Standards and Training Council as peace officers and certified by the Georgia Peace Officer Standards and Training Council as operators of speed detection devices; provided, however, that agents may operate automated traffic enforcement safety devices without such registrations or certifications."

SECTION 4.

Said article is further amended by revising Code Section 40-14-5, relating to testing and removal of inaccurate radar devices from service, as follows:

"40-14-5.

(a) Each state, county, municipal, or campus law enforcement officer using a radar device, except for an automated traffic enforcement safety device as provided for under Code Section 40-14-18, shall test the device for accuracy and record and maintain the results of the test at the beginning and end of each duty tour. Each such test shall be made in accordance with the manufacturer's recommended procedure. Any radar unit not meeting the manufacturer's minimum accuracy requirements shall be removed from service and thereafter shall not be used by the state, county, municipal, or campus law enforcement

agency until it has been serviced, calibrated, and recertified by a technician with the qualifications specified in Code Section 40-14-4.

(b) Each county, municipal, or campus law enforcement officer using a radar device, except for an automated traffic enforcement safety device as provided for under Code Section 40-14-18, shall notify each person against whom the officer intends to make a case based on the use of the radar device that the person has a right to request the officer to test the radar device for accuracy. The notice shall be given prior to the time a citation and complaint or ticket is issued against the person and, if requested to make a test, the officer shall test the radar device for accuracy. In the event the radar device does not meet the minimum accuracy requirements, the citation and complaint or ticket shall not be issued against the person, and the radar device shall be removed from service and thereafter shall not be used by the county, municipal, or campus law enforcement agency until it has been serviced, calibrated, and recertified by a technician with the qualifications specified in Code Section 40-14-4.

(c)(1) The law enforcement agency, or agent on behalf of the law enforcement agency, operating an automated traffic enforcement safety device provided for under Code Section 40-14-18 shall maintain a log for the automated traffic enforcement safety device attesting to the performance of such device's self-test at least once every 30 days and the results of such self-test pertaining to the accuracy of the automated traffic enforcement safety device. Such log shall be admissible in any court proceeding for a violation issued pursuant to Code Section 40-14-18.

(2) The law enforcement agency, or agent on behalf of the law enforcement agency, operating an automated traffic enforcement safety device shall perform an independent calibration test on the automated traffic enforcement safety device at least once every 12 months. The results of such calibration test shall be admissible in any court proceeding for a violation issued pursuant to Code Section 40-14-18.″

SECTION 5.

Said article is further amended by adding a new subsection to Code Section 40-14-6, relating to the requirement for warning signs, to read as follows:

″(c) In addition to the signs required under subsections (a) and (b) of this Code section, each law enforcement agency using an automated traffic enforcement safety device as provided for in Code Section 40-14-18 shall erect signs warning of the use of a stationary speed detection device within the approaching school zone. Such signs shall be at least 24 by 30 inches in area, shall be visible plainly from every lane of traffic, shall be viewable in all traffic conditions, and shall not be placed in such a manner that the view of such sign is subject to being obstructed by any other vehicle on such highway. Such signs shall be

placed within 500 feet prior to the warning sign announcing the reduction of the speed limit for the school speed zone. There shall be a rebuttable presumption that such signs are properly installed pursuant to this subsection at the time of any alleged violation under this article."

SECTION 6.

Said article is further amended by revising Code Section 40-14-7, relating to the visibility of a vehicle from which a speed detection device is operated, as follows:

"40-14-7.

~~No~~ Except as provided for in Code Section 40-14-18, no stationary speed detection device shall be employed by county, municipal, college, or university law enforcement officers where the vehicle from which the device is operated is obstructed from the view of approaching motorists or is otherwise not visible for a distance of at least 500 feet."

SECTION 7.

Said article is further amended by revising subsection (b) of Code Section 40-14-8, relating to when case may be made and conviction had, as follows:

"(b) The limitations contained in subsection (a) of this Code section shall not apply in properly marked school zones one hour before, during, and one hour after the normal hours of school operation or programs for care and supervision of students before school, after school, or during vacation periods as provided for under Code Section 20-2-65, in properly marked historic districts, and in properly marked residential zones. For purposes of this chapter, thoroughfares with speed limits of 35 miles per hour or more shall not be considered residential districts. For purposes of this Code section, the term 'historic district' means a historic district as defined in paragraph (5) of Code Section 44-10-22 and which is listed on the Georgia Register of Historic Places or as defined by ordinance adopted pursuant to a local constitutional amendment."

SECTION 8.

Said article is further amended by revising subsection (d) of Code Section 40-14-11, relating to investigations by the commissioner of public safety, issuance of order suspending or revoking a permit, and ratio of speeding fines to agency's budget, as follows:

"(d) There shall be a rebuttable presumption that a law enforcement agency is employing speed detection devices for purposes other than the promotion of the public health, welfare, and safety if the fines levied based on the use of speed detection devices for speeding offenses are equal to or greater than 35 percent of a municipal or county law enforcement agency's budget. For purposes of this Code section, fines collected for citations issued for

violations of Code Section 40-6-180 shall be included when calculating total speeding fine revenue for the agency; provided, however, that fines for speeding violations exceeding 20 miles per hour over the established speed limit and civil monetary penalties for speeding violations issued pursuant to Code Section 40-14-18 shall not be considered when calculating total speeding fine revenue for the agency."

SECTION 9.

Said article is further amended by adding a new Code section to read as follows:

"40-14-18.

(a)(1) The speed limit within any school zone as provided for in Code Section 40-14-8 and marked pursuant to Code Section 40-14-6 may be enforced by using photographically recorded images for violations which occurred only on a school day during the time in which instructional classes are taking place and one hour before such classes are scheduled to begin and for one hour after such classes have concluded when such violations are in excess of ten miles per hour over the speed limit.

(2) Prior to the placement of a device within a school zone, each school within whose school zone such automated traffic enforcement safety device is to be placed shall first apply for and secure a permit from the Department of Transportation for the use of such automated traffic enforcement safety device. Such permit shall be awarded based upon need. The Department of Transportation shall promulgate rules and regulations for the implementation of this paragraph.

(b) For the purpose of enforcement pursuant to this Code section:

(1) The owner of a motor vehicle shall be liable for a civil monetary penalty to the governing body of the law enforcement agency provided for in paragraph (2) of this subsection if such vehicle is found, as evidenced by photographically recorded images, to have been operated in disregard or disobedience of the speed limit within any school zone and such disregard or disobedience was not otherwise authorized by law. The amount of such civil monetary penalty shall be $75.00 for a first violation and $125.00 for a second or any subsequent violation, in addition to fees associated with the electronic processing of such civil monetary penalty which shall not exceed $25.00; provided, however, that for a period of 30 days after the first automated traffic enforcement safety device is introduced by a law enforcement agency within a school zone, the driver of a motor vehicle shall not be liable for a civil monetary penalty but shall be issued a civil warning for disregard or disobedience of the speed limit within the school zone;

(2) A law enforcement agency authorized to enforce the speed limit of a school zone, or an agent working on behalf of a law enforcement agency or governing body, shall send by first class mail addressed to the owner of the motor vehicle within 30 days after

obtaining the name and address of the owner of the motor vehicle but no later than 60 days after the date of the alleged violation:

(A) A citation for the alleged violation, which shall include the date and time of the violation, the location of the infraction, the maximum speed at which such motor vehicle was traveling in photographically recorded images, the maximum speed applicable within such school zone, the civil warning or the amount of the civil monetary penalty imposed, and the date by which a civil monetary penalty shall be paid;

(B) An image taken from the photographically recorded images showing the vehicle involved in the infraction;

(C) A website address where photographically recorded images showing the vehicle involved in the infraction and a duplicate of the information provided for in this paragraph may be viewed;

(D) A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency authorized to enforce the speed limit of the school zone and stating that, based upon inspection of photographically recorded images, the owner's motor vehicle was operated in disregard or disobedience of the speed limit in the marked school zone and that such disregard or disobedience was not otherwise authorized by law;

(E) A statement of the inference provided by paragraph (4) of this subsection and of the means specified therein by which such inference may be rebutted;

(F) Information advising the owner of the motor vehicle of the manner in which liability as alleged in the citation may be contested through an administrative hearing; and

(G) A warning that failure to pay the civil monetary penalty or to contest liability in a timely manner as provided for in subsection (d) of this Code section shall waive any right to contest liability;

(3) Proof that a motor vehicle was operated in disregard or disobedience of the speed limit of the marked school zone shall be evidenced by photographically recorded images. A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency and stating that, based upon inspection of photographically recorded images, a motor vehicle was operated in disregard or disobedience of the speed limit in the marked school zone and that such disregard or disobedience was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein; and

(4) Liability under this Code section shall be determined based upon a preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued

pursuant to this Code section was operated in violation of the speed limit of the school zone, together with proof that the defendant was, at the time of such violation, the registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that such owner of the vehicle was the driver of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:

(A) Testifies under oath in open court or submits to the court a sworn notarized statement that he or she was not the operator of the vehicle at the time of the alleged violation;

(B) Presents to the court a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation.

(c) A violation for which a civil warning or a civil monetary penalty is imposed pursuant to this Code section shall not be considered a moving traffic violation for the purpose of points assessment under Code Section 40-5-57. Such violation shall be deemed noncriminal, and imposition of a civil warning or civil monetary penalty pursuant to this Code section shall not be deemed a conviction and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for any insurance purposes in the provision of motor vehicle insurance coverage.

(d) If a person issued and mailed a citation pursuant to subsection (b) of this Code section fails to pay the civil monetary penalty for the violation or has not filed a police report or notarized statement pursuant to paragraph (4) of subsection (b) of this Code section in no less than 30 nor more than 60 days after such mailing as determined and noticed by the law enforcement agency, the agent or law enforcement agency shall send to such person by first class mail a second notice of any unpaid civil monetary penalty, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The second notice shall include all information required in paragraph (2) of subsection (b) of this Code section and shall include a new date of return which shall be no less than 30 days after such mailing as determined and noticed by the law enforcement agency. If such person notified by second notice again fails to pay the civil monetary penalty or file a police report or notarized statement pursuant to paragraph (4) of subsection (b) of this Code section by the new date of return, such person shall have waived the right to contest the violation and shall be liable for the civil monetary penalty provided for under this Code section, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed.

(e) Notices mailed by first class mail pursuant to this Code section shall be adequate notification of the fees and penalties imposed by this Code section. No other notice shall be required for the purposes of this Code section.

(f)(1) Any court having jurisdiction over violations of subsection (a) of this Code section shall have jurisdiction over cases arising under this subsection and shall be authorized to impose the civil monetary penalty provided by this subsection. Except as otherwise provided in this subsection, the provisions of law governing jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of penalties otherwise applicable to violations of subsection (a) of this Code section shall apply to enforcement under this Code section except as provided in subsection (b) of this Code section; provided, however, that any appeal from superior or state court shall be by application in the same manner as that provided by Code Section 5-6-35.

(g) If a violation has not been contested and the assessed penalty has not been paid, the agent or governing body shall send to the person who is the registered owner of the motor vehicle a final notice of any unpaid civil monetary penalty authorized by this Code section, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The notice shall inform the registered owner that the agent or governing body shall send a referral to the Department of Revenue if the assessed penalty is not paid within 30 days after the final notice was mailed and such that such referral shall result in the nonrenewal of the registration of such motor vehicle and shall prohibit the title transfer of such motor vehicle within this state.

(h) The agent or governing body shall send a referral to the Department of Revenue not sooner than 30 days after the final notice required under subsection (g) was mailed if a violation of an ordinance or resolution adopted under this article has not been contested and the assessed penalty has not been paid. The referral to the Department of Revenue shall include the following:

(1) Any information known or available to the agent or governing body concerning the license plate number, year of registration, and the name of the owner of the motor vehicle;

(2) The date on which the violation occurred;

(3) The date when the notice required under this Code section was mailed; and

(4) The seal, logo, emblem, or electronic seal of the governing body.

(i) If the Department of Revenue receives a referral under subsection (h) of this Code section, such referral shall be entered into the motor vehicle database within five days of receipt and the Department of Revenue shall refuse to renew the registration of the motor vehicle and shall prohibit the title transfer of such vehicle within this state unless and until the civil monetary penalty plus any late fee is paid to the governing body. The Department of Revenue shall mail a notice to the registered owner:

(1) That the registration of the vehicle involved in the violation will not be permitted to be renewed;

(2) That the title of the vehicle involved in the violation will not be permitted to be transferred in this state;

(3) That the aforementioned penalties are being imposed due to the failure to pay the civil monetary penalty and any late fee for an ordinance violation adopted under the authority of this Code section; and

(4) Of the procedure that the person may follow to remove the penalties.

(j) The Department of Revenue shall remove the penalties on a vehicle if any person presents the Department of Revenue with adequate proof that the penalty and any late fee, if applicable, has been paid.

(k) Recorded images made for purposes of this Code section shall not be a public record for purposes of Article 4 of Chapter 18 of Title 50.

(l) A civil warning or civil monetary penalty under this Code section on the owner of a motor vehicle shall not be imposed if the operator of the vehicle was arrested or issued a citation and notice to appear by a certified peace officer for the same violation.

(m) The money collected and remitted to the governing body pursuant to paragraph (1) of subsection (b) of this Code section shall only be used by such governing body to fund local law enforcement or public safety initiatives. This subsection shall not preclude the appropriation of a greater amount than collected and remitted under this subsection."

SECTION 10.

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

House Bill 287 (AS PASSED HOUSE AND SENATE)

By: Representatives Kirby of the 114th, Hitchens of the 161st, Lumsden of the 12th, Willard of the 51st, Smyre of the 135th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, so as to provide for the issuance of special license plates honoring family members of service members killed in action at no cost to eligible family members; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, is amended in Code Section 40-2-85.3, relating to special license plates honoring family members of service members killed in action, by revising subsections (d) and (f) as follows:

"(d) Any motor vehicle owner who is a resident of Georgia, other than one registering under the International Registration Plan, upon complying with state laws relating to registration and licensing of motor vehicles shall be issued such a special license plate upon application therefor. Special license plates issued under this Code section shall be renewed annually with a revalidation decal as provided in Code Section 40-2-31. Upon payment of all ad valorem taxes and other fees due at registration of a motor vehicle, an eligible family member may apply for a Gold Star license plate. In order to qualify as an eligible family member for purposes of this Code section, the person must be related to the fallen service member as a spouse, mother, father, sibling, child, ~~step-parent~~ stepparrent, or surviving spouse of such service member's sibling. ~~One~~ Up to two free license ~~plate~~ plates shall be allowed for ~~the spouse, mother, and father,~~ any eligible family member and they may purchase additional license plates for each motor vehicle they register in this state. ~~Siblings, children, step-parents, or surviving spouses of siblings of service members may purchase Gold Star license plates for motor vehicles registered in this state. The cost of a Gold Star license plate shall be established by the department, but shall not exceed the cost~~

~~of other specialty license plates.~~ If a Gold Star license plate is lost, damaged, or stolen, the eligible family member must pay the reasonable cost, to be established by the department, but not to exceed the cost of other specialty license plates, to replace the Gold Star license plate."

"(f) ~~A free~~ Free Gold Star license ~~plate~~ plates shall be issued only to ~~the spouse, mother, and father of service~~ eligible family members who resided in Georgia at the time of the death of the service member. However, an eligible family member~~, except for nonresident siblings or surviving spouses of such nonresident siblings,~~ who was not a resident of Georgia at the time of the death of the service member may purchase a Gold Star license plate, at a cost to be established by the department, not to exceed the cost of other specialty license plates."

SECTION 2.

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

House Bill 671 (AS PASSED HOUSE AND SENATE)

By: Representatives Dunahoo of the 30th, Epps of the 144th, Barr of the 103rd, McCall of the 33rd, Pruett of the 149th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, so as to revise the definition of authentic historical Georgia license plates and the use of such plates; so as to establish a specialty license plate to benefit the Georgia Beekeepers Association; to provide for related matters; to provide for an effective date and applicability; to provide for compliance with constitutional requirements; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, is amended by revising Code Section 40-2-41.1, relating to authentic historical Georgia license plates, as follows:

"40-2-41.1.

(a) As used in this Code section, the term 'authentic historical Georgia license plate' means a license plate originally issued in the year ~~1970~~ 1989 or earlier and originally required to be displayed on motor vehicles operated upon the streets and highways of this state in the year ~~1970~~ 1989 or earlier pursuant to former motor vehicle registration laws of this state.

(b) The owner of any antique motor vehicle manufactured in ~~1970~~ 1989 or earlier shall be authorized to display in lieu of and in the same manner as the license plate otherwise required under Code Section 40-2-41 an authentic historical Georgia license plate which clearly represents the model year within four years of any such antique motor vehicle, provided that the owner has properly registered such antique motor vehicle for the current year as otherwise required under this chapter and has obtained a current Georgia license plate or revalidation decal for such antique motor vehicle. Such currently valid Georgia license plate shall be kept in such antique motor vehicle at all times but need not be displayed in a manner to be visible from outside the vehicle.

(c) For purposes of this Code section, the authentic historical Georgia license plate shall be furnished by the owner of any such antique motor vehicle.

(d) No later than January 1, 2006, the commissioner shall have installed within the department's computer information system applicable to the registration of motor vehicles the necessary program which will include in the information relating to the current Georgia license plate or revalidation decal issued for an antique motor vehicle the information relating to the authentic historical Georgia license plate authorized to be displayed on such antique motor vehicle."

SECTION 2.

Said chapter is further amended in Code Section 40-2-86, relating to special license plates promoting and supporting certain beneficial projects, causes, agencies, funds, or nonprofit corporations, by adding a new paragraph to subsection (m) to read as follows:

"(14) A special license plate promoting the conservation and protection of the official insect of this state, the honey bee. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Beekeepers Association and shall be used to increase public awareness of the importance of the conservation of the honey bee and for funding and supporting numerous association programs, including but not limited to the training and education of both new and experienced beekeepers, prison beekeeper programs, grants to beekeeping related nonprofit corporations, beekeeping research facilities in this state, and projects that encourage public support for the license plate and the activities it funds. Such special license plate shall include the phrase 'Save the Honey Bee' in lieu of the county of issuance."

SECTION 3.

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

SECTION 4.

In accordance with the requirements of Article III, Section IX, Paragraph VI(n) of the Constitution of the State of Georgia, Section 2 this Act shall not become law unless it receives the requisite two-thirds' majority vote in both the Senate and the House of Representatives.

SECTION 5.

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

House Bill 695 (AS PASSED HOUSE AND SENATE)

By: Representatives Epps of the 144th, England of the 116th, Nimmer of the 178th, McCall of the 33rd, Dickey of the 140th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, so as to allow for the waiver of certain requirements for license plates relating to vehicles of state and political subdivisions; to establish a special license plate honoring Georgia's working forests and the Georgia Forestry Foundation; to change the amount dedicated to a sponsoring agency, fund, or nonprofit corporation related to a special license plate promoting dog and cat sterilization; to provide for related matters; to provide for compliance with constitutional requirements; to provide for effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, is amended in Code Section 40-2-37, relating to registration and licensing of vehicles of state and political subdivisions, by revising subsection (c) as follows:

"(c) All license plates issued to government vehicles pursuant to this Code section shall be marked in such a manner as to indicate the specific type of governmental unit operating the vehicle. These markings shall be prominently displayed and shall consist of one of the following appropriate legends: 'STATE,' 'CITY,' 'COUNTY,' 'AUTHORITY,' or 'BOARD.' In addition, each such license plate shall bear a county identification strip indicating the county in which the vehicle is based except that vehicles owned by the state shall not be required to bear such county identification strip. The commissioner shall be authorized to grant a waiver of the requirements of this subsection such that regular Georgia license plates may be issued for any vehicle or vehicles owned by the State of Georgia, any municipality of this state, or any other political subdivision of this state upon finding issuance of such waiver to be in the best interest of public safety, public welfare, or efficient administration."

SECTION 2.

Said chapter is further amended in subsection (l) of Code Section 40-2-86, relating to special license plates promoting and supporting certain beneficial projects, agencies, funds, or nonprofit corporations, by revising paragraph (6) as follows:

"(6) Reserved. ~~Special license plates promoting the dog and cat reproductive sterilization support program of the Georgia Department of Agriculture. The funds raised by the sale of these special license plates shall be disbursed to the Georgia Department of Agriculture and shall be deposited in the special fund for support of the dog and cat reproductive sterilization support program created by Code Section 4-15-1 and Article III, Section IX, Paragraph VI(m) of the Constitution of the State of Georgia.~~"

SECTION 3.

Said chapter is further amended in subsection (m) of Code Section 40-2-86, relating to special license plates promoting and supporting certain beneficial projects, agencies, funds, or nonprofit corporations, by adding a new paragraph to read as follows:

"(14) A special license plate honoring Georgia's working forests and the benefits they provide to Georgians, with the words '#1 in Forestry' to be displayed across the bottom. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Georgia Forestry Foundation."

SECTION 4.

Said chapter is further amended in subsection (n) of Code Section 40-2-86, relating to special license plates promoting and supporting certain beneficial projects, agencies, funds, or nonprofit corporations, by adding a new paragraph to read as follows:

"(7) A special license plate promoting the dog and cat reproductive sterilization support program of the Department of Agriculture. The funds raised by the sale of this special license plate shall be disbursed to the Department of Agriculture and shall be deposited in the special fund for support of the dog and cat reproductive sterilization support program created by Code Section 4-15-1 and Article III, Section IX, Paragraph VI(m) of the Constitution of the State of Georgia."

SECTION 5.

In accordance with the requirements of Article III, Section IX, Paragraph VI(n) of the Constitution of the State of Georgia, this Act shall not become law unless the requisite two-thirds' majority vote in both the Senate and the House of Representatives is received.

SECTION 6.

(a) Except as provided for in subsection (b) of this section, this Act shall become effective on July 1, 2018.

(b) Section 3 of this Act shall become effective on July 1, 2019.

SECTION 7.

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

House Bill 784 (AS PASSED HOUSE AND SENATE)

By: Representatives Dubnik of the 29th, Knight of the 130th, Nimmer of the 178th, Rhodes of the 120th, and Ridley of the 6th

A BILL TO BE ENTITLED

AN ACT

To amend Code Section 40-2-86 of the Official Code of Georgia Annotated, relating to special license plates promoting and supporting certain beneficial projects, causes, agencies, funds, or nonprofit corporations, so as to establish a specialty license plate to promote the conservation and enhancement of waterfowl populations and their habitats; to provide for related matters; to provide for an effective date; to provide for compliance with constitutional requirements; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 40-2-86 of the Official Code of Georgia Annotated, relating to special license plates promoting and supporting certain beneficial projects, causes, agencies, funds, or nonprofit corporations, is amended by adding a new paragraph to subsection (n) to read as follows:

"(7) A special license plate promoting the conservation and enhancement of waterfowl populations and their habitats. The funds raised by the sale of this special license plate shall be disbursed to the Wildlife Resources Division of the Department of Natural Resources for the purposes of waterfowl habitat restoration, waterfowl research, and waterfowl management programs."

SECTION 2.

This Act shall become effective on July 1, 2019.

SECTION 3.

In accordance with the requirements of Article III, Section IX, Paragraph VI(n) of the Constitution of the State of Georgia, this Act shall not become law unless it receives the requisite two-thirds' majority vote in both the Senate and the House of Representatives.

SECTION 4.

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

House Bill 815 (AS PASSED HOUSE AND SENATE)

By: Representatives Martin of the 49th, Willard of the 51st, Coleman of the 97th, England of the 116th, and Stephens of the 164th

A BILL TO BE ENTITLED

AN ACT

To amend Code Section 40-2-86 of the Official Code of Georgia Annotated, relating to special license plates promoting and supporting certain beneficial projects, agencies, funds, or nonprofit corporations, so as to establish a specialty license plate to benefit Georgia Masonic Charities; to provide for related matters; to provide for an effective date; to provide for compliance with constitutional requirements; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 40-2-86 of the Official Code of Georgia Annotated, relating to special license plates promoting and supporting certain beneficial projects, agencies, funds, or nonprofit corporations, is amended by adding a new paragraph to subsection (l) to read as follows:

"(57) A special license plate honoring Georgia Masonic Charities Foundation. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Masonic Charities Foundation, Inc."

SECTION 2.

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

SECTION 3.

In accordance with the requirements of Article III, Section IX, Paragraph VI(n) of the Constitution of the State of Georgia, this Act shall not become law unless it receives the requisite two-thirds' majority vote in both the Senate and the House of Representatives.

SECTION 4.

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

House Bill 381(AS PASSED HOUSE AND SENATE)

By: Representatives Corbett of the 174th, Ealum of the 153rd, LaRiccia of the 169th, Shaw of the 176th, and Watson of the 172nd

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to landlord and tenant, so as to enact provisions for the classification of abandoned mobile homes as derelict or intact for purposes of disposal or filing of liens; to provide for a short title; to provide for legislative intent; to provide for definitions; to provide for a procedure for requesting classification of an abandoned mobile home as intact or derelict; to provide for notice; to provide for a right to file a lien on abandoned mobile homes deemed to be intact; to provide for the opportunity for a hearing to confirm classification as a derelict abandoned mobile home; to provide for court authority to order the disposal of abandoned mobile homes found to be derelict; to provide for a process to foreclose a lien on an abandoned mobile home deemed to be intact; to provide for right to an appeal; to provide for the public sale of an intact abandoned mobile home; to provide for the disposition of proceeds from such public sale; to provide for a process to obtain certificate of title for mobile homes purchased at public sale; to amend Code Section 15-10-2 of the Official Code of Georgia Annotated, relating to general jurisdiction of magistrate courts, so as to provide for jurisdiction of such courts relative to foreclosure of liens of abandoned mobile homes; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to landlord and tenant, is amended by adding a new article to read as follows:

″ARTICLE 6

44-7-110.

This article shall be known and may be cited as the 'Abandoned Mobile Home Act.'

44-7-111.

The General Assembly finds that abandoned mobile homes are a nuisance that cause blight and depress property values. This article is intended to provide local governing authorities with the authority to appoint an agent to determine the condition of mobile homes in order for landowners to remove or restore abandoned mobile homes left on their property. It is the further purpose of this article to provide landowners with the guidance necessary to efficiently and properly identify and dispose of abandoned mobile homes in this state while protecting the rights of any owner, lienholder, or other interested parties by performing a due diligence search, notification, and hearing process.

44-7-112.

As used in this article, the term:

(1) 'Abandoned mobile home' means a mobile home that has been left vacant by all tenants for at least 90 days without notice to the landowner and when there is evidence of one or more of the following:

(A) A tenant's failure to pay rent or fees for 90 days;

(B) Removal of most or all personal belongings from such mobile home;

(C) Cancellation of insurance for such mobile home;

(D) Termination of utility services to such mobile home; or

(E) A risk to public health, safety, welfare, or the environment due to such mobile home.

(2) 'Derelict' means an abandoned mobile home which is in need of extensive repair and is uninhabitable and unsafe due to the presence of one or more of the following conditions:

(A) Inadequate provisions for ventilation, light, air, or sanitation; or

(B) Damage caused by fire, flood, hurricane, tornado, earthquake, storm, or other natural catastrophe.

(3) 'Dispose' means to destroy, recycle, or repurpose for use not as living quarters.

(4) 'Intact' means an abandoned mobile home which is in livable condition under applicable state law and the building and health codes of a local governing authority.

(5) 'Landowner' means the owner of real property upon which a mobile home is located.

(6) 'Local government agent' means a person appointed by a local governing authority who is qualified to inspect an abandoned mobile home by demonstrating that he or she is qualified to determine if the abandoned mobile home is derelict or intact.

(7) 'Manufactured home' shall have the same meaning as set forth in Code Section 8-2-160.

(8) 'Mobile home' shall have the same meaning as set forth in Code Section 8-2-160 and shall include a manufactured home.

(9) 'Responsible party' means any person with an ownership interest in an abandoned mobile home as evidenced by the last payor of record as identified by a search of deeds or instruments of title, and shall include any holder of a recorded lien or the holder of any type of secured interest in such abandoned mobile home or a local government with a claim for unpaid taxes.

44-7-113.

(a) At the request of a landowner, a local government agent shall be authorized to assess the condition of such abandoned mobile home. Upon inspection, the local government agent shall classify such abandoned mobile home as either intact or derelict and provide documentation citing such determination to the requesting landowner within 20 days of such request.

(b) If a local government agent determines an abandoned mobile home to be intact, a landowner shall have a right to file a lien on such abandoned mobile home in the superior court for the circuit where such abandoned mobile home is located and in the amount of any unpaid rent as of the date on which such lien is filed and accrued fees. Such lien may be foreclosed pursuant to the procedure set forth in Code Section 44-7-115.

(c) If a local government agent determines an abandoned mobile home to be derelict, such agent shall post notice of such determination in a conspicuous location on such abandoned mobile home. Such notice shall include a date of issuance and shall be in substantially the following form:

'You are hereby notified that this mobile home (describe make, model, and color, if known) located at (address or description of location) has been deemed abandoned and derelict. You are entitled to a hearing in magistrate court to contest this determination. If you fail to request a hearing within 90 days from the date that appears on this notice or if it is confirmed by a court that this abandoned mobile home is derelict, the owner of the land upon which this mobile home sits shall be entitled to dispose of the mobile home.'

(d)(1) Upon receipt of a determination that an abandoned mobile home is derelict by a local government agent, and on the same date the notice required by subsection (c) of this Code section is posted, a landowner shall send notice, which notice shall include a listing of all responsible parties and last known addresses, to all responsible parties by registered or certified mail or statutory overnight delivery. Such notice shall contain a description of the abandoned mobile home, including the make of the mobile home, the location of such mobile home, and the fact that such abandoned mobile home has been deemed

derelict. Such notice shall include a statement that such responsible party is entitled to request a hearing in magistrate court within 90 days from the date that appears on such notice to contest the determination that such abandoned mobile home is derelict and that failure to request such hearing within 90 days of receipt of such notice shall entitle such landowner to dispose of the derelict mobile home.

(2) If no responsible party can be ascertained, the landowner shall place an advertisement in a newspaper of general circulation in the county where such mobile home is located; if there is no newspaper in such county, shall post such advertisement at the county courthouse in such place where other public notices are posted. Such advertisement shall run in the newspaper once a week for two consecutive weeks or shall remain posted at the courthouse for two consecutive weeks. The advertisement shall contain a description of the mobile home, including the make of the mobile home, the location of such mobile home, and the fact that such mobile home has been deemed derelict. Such advertisement shall include a statement that such responsible party is entitled to request a hearing in magistrate court by a date certain and the advertisement shall state the specific end date to contest the determination that such abandoned mobile home is derelict and that failure to request such hearing by such date shall entitle such landowner to dispose of the derelict mobile home.

(e) Neither the local governing authority nor the local government agent shall bear any liability with respect to any lawful actions taken to make a determination that a mobile home is abandoned or derelict.

44-7-114.

(a) Within the 90 day period described in Code Section 44-7-113, a responsible party, or after the expiration of such 90 day period, a landowner shall petition a magistrate court to hold a hearing to confirm or deny the decision of a local government agent that an abandoned mobile home is derelict. If a petition is filed pursuant to this Code section, a hearing on such issue shall be held within ten days of the filing of such petition.

(b) The court shall hear evidence of the condition of the abandoned mobile home, which may include introduction of a copy of the determination from the local government agent, and whether the notice provisions set forth have been met.

(c) If, after a full hearing, the court determines the abandoned mobile home to be derelict, the court shall issue an order finding such mobile home to be derelict and authorizing the landowner to dispose of such derelict mobile home. A landowner issued such order shall dispose of such derelict mobile home within 180 days of the date of such order. Within 30 days of disposal of a derelict mobile home, the landowner shall notify the Department of

Revenue and local tag agent of such disposal and such department shall cancel the certificate of title for such derelict mobile home, if such certificate exists.

44-7-115.

Notwithstanding any conflicting provisions in Code Section 44-14-349, all liens acquired upon an abandoned mobile home or intact mobile home under Code Section 44-7-113 shall be foreclosed as follows:

(1) Any proceeding to foreclose a lien on an abandoned mobile home determined to be intact by a local government agent shall be instituted in the magistrate court of the county where such mobile home is located within one year from the time the lien is recorded;

(2) The person desiring to foreclose a lien on an abandoned mobile home determined to be intact by a local government agent shall, by certified or registered mail or statutory overnight delivery, make a demand upon the responsible party in the amount of the lien and for the payment of rent and fees accrued after the filing of the lien; provided that the amount of such rent shall not exceed $3.00 per day. If the responsible party cannot be located, notice shall be published in a newspaper of general circulation for two consecutive weeks;

(3)(A) If, within 30 days of delivery to the appropriate address of the written demand required by paragraph (2) of this Code section or within 30 days after the last publication in a newspaper, the responsible party fails to respond to such demand or refuses to pay, or if the responsible party cannot be ascertained, the landowner may move to foreclose such lien. The person asserting such lien may move to foreclose by making an affidavit to a magistrate court showing all facts necessary to constitute such lien and the amount claimed to be due. Such affidavit shall aver that the notice requirements of Code Section 44-7-113 have been complied with, and such affidavit shall also aver that a demand for payment has been made and refused or that the identity of the responsible party cannot be ascertained. The landowner shall verify the statement by oath or affirmation with a signature affixed thereto.

(B) In addition to the filing fees required by Code Section 15-10-80, the fee for filing such affidavit shall be $5.00 per abandoned mobile home upon which a lien is asserted;

(4)(A) Upon the filing of such affidavit, the person asserting such lien shall give the clerk or judge of the court the address, if known, of all responsible parties and the clerk or judge of the court shall serve notice informing such responsible parties of a right to a hearing to determine if reasonable cause exists to believe that a valid debt exists; that such hearing shall be petitioned for within 30 days of receipt of such notice; and that, if no petition for such hearing is filed within the time allowed, the lien shall

conclusively be deemed a valid one, foreclosure thereof allowed, and a public sale pursuant to Code Section 44-7-116 shall be authorized.

(B) Any notice required by this paragraph shall be by certified mail or statutory overnight delivery or, if the responsible party is unknown, by posting such notice at the county courthouse in such place where other public notices are posted;

(5) If a petition for a hearing is filed within the time allowed pursuant to paragraph (4) of this Code section, the magistrate court shall set such a hearing within ten days of filing of the petition. Upon the filing of such petition by a party defendant, neither the prosecuting lienholder nor the court may sell the mobile home. If, at the hearing, the magistrate court determines there is reasonable cause to believe that a valid debt exists, then the person asserting the lien shall retain possession of the mobile home or the court shall obtain possession of the mobile home, as ordered by the court;

(6) If no petition for a hearing is filed, or if, after a full hearing, the magistrate court determines that a valid debt exists, the court shall authorize foreclosure upon and sale of the mobile home subject to the lien to satisfy the debt if such debt is not otherwise immediately paid. The holder of a security interest in or a lien on the mobile home, other than the holder of a lien created by Code Section 44-7-113, shall have the right, in the order of priority of such security interest or lien, to pay the debt and court costs no later than 15 days after a magistrate court's order to authorize the foreclosure. If the holder of a security interest or lien does so pay the debt and court costs, such person shall have the right to possession of the mobile home, and that person's security interest in or lien on such mobile home shall be increased by the amount so paid. A magistrate court order shall be issued to this effect, and in this instance there shall not be a sale of the mobile home. If the debt owed is not timely paid by the holder of a security interest or an appeal of the magistrate court decision has not been timely filed pursuant to paragraph (8) of this Code section, the court shall issue an order authorizing the sale of such mobile home;

(7) If the magistrate court finds the actions of the person asserting the lien in retaining possession of the mobile home were not taken in good faith, then the court, in its discretion, may award damages to the mobile home owner and to any party which has been deprived of the rightful use of the mobile home; and

(8) Any order issued by the magistrate court shall be appealable pursuant to Article 2 of Chapter 3 of Title 5, provided that any such appeal shall be filed within seven days of the date such order was entered and provided, further, that, after the notice of appeal is filed with the clerk of the trial court, the clerk shall immediately notify the magistrate court of the notice of appeal. If the order of the magistrate court is against the responsible party and the responsible party appeals such order, the responsible party shall be required to pay into the registry of the court all sums found by the magistrate court to be due in order

to remain in possession of the mobile home. The responsible party shall also be required to pay all future rent into the registry of the court as it becomes due in such amounts specified in paragraph (2) of this Code section until the issue has been finally determined on appeal.

44-7-116.

(a)(1) As used in this subsection, the term 'public sale' means a sale:

(A) Held at a place reasonably available to persons who might desire to attend and submit bids;

(B) At which those attending shall be given the opportunity to bid on a competitive basis;

(C) At which the sale, if made, shall be made to the highest and best bidder; and

(D) Except as otherwise provided in Title 11 for advertising or dispensing with the advertising of public sales, of which notice is given by advertisement once a week for two weeks in the newspaper in which the sheriff's advertisements are published in the county where the sale is to be held, and which notice shall state the day and hour, between 10:00 A.M. and 4:00 P.M., and the place of sale and shall briefly identify the goods to be sold.

(2) Upon order of the magistrate court, the person holding the lien on the abandoned mobile home shall be authorized to sell such mobile home at public sale.

(b) After satisfaction of the lien, the person selling such mobile home shall, not later than 30 days after the date of such sale, provide the clerk of the court with a copy of the bill of sale as provided to the purchaser and remit the remaining proceeds of such sale, if any, to the clerk of the court. Any person who fails to comply with the requirements of this subsection shall be guilty of a misdemeanor.

44-7-117.

The clerk of the magistrate court shall retain the remaining balance of the proceeds of a sale under Code Section 44-7-116, after satisfaction of liens, security interests, and debts, for a period of 12 months; and, if no claim has been filed against such proceeds by the owner of the abandoned mobile home or any interested party, then the clerk shall pay such remaining balance into the general fund of the municipality or county that employs the local government agent that made the determination that such mobile home was intact pursuant to Code Section 44-7-113.

44-7-118.

The purchaser at a sale as authorized by this article shall receive a certified copy of the court order authorizing such sale. Any such purchaser may obtain a certificate of title to such mobile home by filing the required application, paying the required fees, and filing a certified copy of the order of the court with the Department of Revenue. The Department of Revenue shall then issue a certificate of title, which shall be free and clear of all liens and encumbrances.

44-7-119.

Nothing in this article shall be construed to require a local governing authority to appoint a local government agent."

SECTION 2.

Code Section 15-10-2 of the Official Code of Georgia Annotated, relating to general jurisdiction of magistrate courts, is amended by revising paragraphs (14) and (15) and adding a new paragraph to read as follows:

"(14) The trial and sentencing of misdemeanor violations of other Code sections as provided by Article 13 of this chapter; ~~and~~

(15) The foreclosure of liens on animals as established in Title 4; and

(16) The foreclosure of liens on abandoned mobile homes as established in Article 6 of Chapter 7 of Title 44."

SECTION 3.

This Act shall become effective on May 1, 2019.

SECTION 4.

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

House Bill 871 (AS PASSED HOUSE AND SENATE)

By: Representatives LaRiccia of the 169th, Parrish of the 158th, Powell of the 171st, Burns of the 159th, Pirkle of the 155th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, so as to create an exemption from state sales and use tax for 50 percent of the sales price of manufactured homes to be converted into real property in this state; to require proof of a qualifying purchase to be completed by the seller; to provide for recapture of and a penalty for unproven exemptions; to provide for recapture of exempted amounts if the manufactured home is converted to tangible personal property; to provide for applicability; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, is amended in Code Section 48-8-3, relating to exemptions from state sales and use taxes, by deleting "or" at the end of subparagraph (E) of paragraph (99), by replacing the period with "; or" at the end of subparagraph (C) of paragraph (100), and by adding a new paragraph to read as follows:

"(101)(A) Fifty percent of the sales price of a manufactured home if such manufactured home is installed pursuant to Code Section 8-2-160 and will be converted to real property pursuant to Code Section 8-2-183.1 within 30 days of the retail sale.

(B) As used in this paragraph, the term 'manufactured home' means a structure built on a permanent chassis that:

(i) Is designed to be used as a dwelling;

(ii) Is transportable in one or more sections;

(iii) Contains plumbing, heating, air-conditioning, and electrical systems; and

(iv) Is designed to have an angled roof and contain an area of at least 650 square feet.

(C) Within 30 days of a sale exempted as provided for in subparagraph (A) of this paragraph, the seller shall complete the requirements of Code Section 8-2-183.1 and properly file a copy of the Certificate of Permanent Location with the clerk of superior

court, or the commissioner shall recover from the seller 1.5 times the amount of tax exempted by this paragraph.

(D) A manufactured home that is exempted as provided in subparagraph (A) of this paragraph shall not be eligible for a Certificate of Removal from Permanent Location provided in Part 4 of Article 2 of Chapter 2 of Title 8, or any other manner of a return to tangible personal property unless the amount exempted pursuant to subparagraph (A) of this paragraph is paid to the commissioner.

(E) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any sales and use tax levied or imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to:

(i) Constitutional amendment;

(ii) Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; or

(iii) Article 2, 2A, 3, 4, 5, or 5A of this chapter.″

SECTION 2.

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

House Bill 661 (AS PASSED HOUSE AND SENATE)

By: Representatives Williamson of the 115th, Powell of the 171st, and Harrell of the 106th

A BILL TO BE ENTITLED

AN ACT

To amend Titles 15, 44, and 48 of the Official Code of Georgia Annotated, relating to courts, property, and revenue and taxation, respectively, so as to revise provisions relating to the transmittal, filing, recording, access to, and territorial effect of tax liens issued by the Department of Revenue; to provide for electronic record keeping relating to the filing and public access to state tax liens; to provide for duties and responsibilities of the Georgia Superior Court Clerks' Cooperative Authority; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by revising subsections (e) and (f) of Code Section 48-2-56, relating to priority of liens for taxes, as follows:

"(e) The lien for taxes imposed by the provisions of Article 2 of Chapter 7 of this title, relating to certain income taxes, shall:

(1) Arise and attach to all property of the taxpayer ~~within the state~~ as of the time a tax execution for these taxes is filed with the clerk of superior court of the county of the last known address of the taxpayer appearing on the records of the department at the time the state tax execution is filed; and

(2) Not ~~attach to the interest of a prior bona fide purchaser where a certificate of clearance is required and has been obtained or where a certificate of clearance is not required pursuant to Code Section 44-1-18, nor~~ be superior to the lien of a prior recorded instrument securing a bona fide debt.

Before the lien provided for in this subsection shall attach to real property, an execution shall be filed with the clerk of superior court in the county where the real property is located.

(f) The lien for taxes imposed by the provisions of Article 5 of Chapter 7 of this title, relating to withholding taxes, shall:

(1) Arise and attach to all property of the defaulting employer or other person required to deduct and withhold on the date of the assessment of the taxes by operation of law or by action of the commissioner;

(2) Not ~~attach to the interest of a prior bona fide purchaser where a certificate of clearance is required and has been obtained or where a certificate of clearance is not required pursuant to Code Section 44-1-18, nor~~ be superior to the lien of a prior recorded instrument securing a bona fide debt; and

(3) Not attach to the interest of a subsequent bona fide purchaser ~~where a certificate of clearance is required and has been obtained or where a certificate of clearance is not required pursuant to Code Section 44-1-18,~~ nor be superior to the lien of a lender for value recorded prior to the time the execution for the tax has been filed in the office of the clerk of superior court of the county of the last known address of the taxpayer appearing on the records of the department at the time the state tax execution is filed. Before the lien provided for in this subsection shall attach to real property, an execution shall be filed with the clerk of superior court in the county where the real property is located.″

SECTION 2.

Said title is further amended by revising Code Section 48-3-21, relating to nonresident procedures for petitions to reduce execution to judgment, as follows:

″48-3-21.

~~All~~ Except for executions issued by the commissioner, all county, municipal, or other tax executions, before or after legal transfer and record, shall be enforced within seven years from:

(1) The date of issue; or

(2) The time of the last entry upon the tax execution by the officer authorized to execute and return the execution if the execution and entry are properly entered or reentered upon the execution docket or books in which executions issued on judgments and entries on executions issued on judgments are required to be entered or reentered.″

SECTION 3.

Said title is further amended by revising Code Section 48-3-28, relating to entry of satisfaction duly recorded on lien docket, as follows:

″48-3-28.

~~An entry of satisfaction shall be made on the lien docket in the office of the clerk of superior court as soon as reasonably possible after a tax execution has been fully satisfied, except as otherwise provided in this chapter.~~ The department shall file a release of any state tax execution as soon as reasonably possible after a tax execution has been fully satisfied. All such releases shall be filed in all offices of the clerks of superior court where the executions were originally filed.″

SECTION 4.

Said title is further amended by revising Article 2 of Chapter 3, relating to uniform system for filing state tax executions, as follows:

″ARTICLE 2

48-3-40.

(a) The purpose of this article is to provide a uniform state-wide system for filing notices of state tax executions issued by the commissioner that are in favor of or enforced by the department.

(b) This article shall only be applicable to state tax executions and to the liens of state tax executions as against real and personal property which arise pursuant to Code Section 48-2-56 for tax liabilities administered by the department.

(c) As used in this article, the term:

(1) 'Authority' ~~shall mean~~ means the Georgia Superior Court Clerks' Cooperative Authority.

~~(2) 'Certificate of clearance' shall mean a document issued by the department affirming that a proper search has been conducted by the department and has yielded no active liens associated with an individual or entity.~~

~~(3)~~(2) 'Delinquent taxpayer' means a person owing an unpaid tax liability ~~that is collectable~~ for which an execution has been filed by the department, unless such execution is released, withdrawn, or expired.

~~(4)~~(3) 'Execution' ~~shall mean~~ means either a state tax execution or a renewed state tax execution, as applicable.

~~(5)~~(4) 'Last known address of the delinquent taxpayer' means the address of the delinquent taxpayer appearing on the records of the department at the time the state tax execution is filed with the superior court clerk.

~~(6)~~(5) 'Renewed state tax execution' means any tax execution properly filed by the department prior to January 1, 2018, that is refiled upon implementation of this article.

~~(7)~~(6) 'State tax execution' means any execution issued by the department for the collection of any tax, fee, license, penalty, interest, or collection costs due the state.

~~(8) 'URPERA' shall mean the Uniform Real Property Electronic Recording Act found at Code Section 44-2-35, et seq.~~

~~(9) 'URPERA rules' shall mean the rules adopted by the Georgia Superior Court Clerks' Cooperative Authority pursuant to the Uniform Real Property Electronic Recording Act.~~

48-3-41.

The department may issue an execution for the collection of any tax, fee, license, penalty, interest, or collection costs due the state once a lien has arisen pursuant to Code Section 48-2-56. ~~An execution shall be a lien in favor of the department upon all property and right to property, whether real or personal, within the State of Georgia, belonging to the delinquent taxpayer named on the execution.~~

48-3-42.

(a) On or after January 1, 2018, the execution shall be effective as provided by law when such execution is filed by the department with the appropriate superior court clerk.

(b) All executions or writs of fieri facias issued by the department filed or recorded on the general execution docket or lien docket of any county shall be invalid as of December 31, 2017. Any such execution or writs of fieri facias which the department does not show as satisfied, issued in error, or otherwise withdrawn and which was last recorded or rerecorded on the general execution docket within seven years before January 1, 2018, may be renewed for a period of ten years upon the department's filing a renewed state tax execution with the clerk of superior court ~~on or after~~ between January 1, 2018, and the effective date of this Act. For priority purposes, a filed renewed state tax execution shall retain its original date of filing ~~on the general execution docket or lien docket~~. All renewed state tax execution documents shall reflect the original date of filing.

(c) On or after January 1, 2018, any execution and any related releases, cancellations, or other documents submitted by the department for filing with the clerk of superior court shall be submitted for filing electronically.

(d) An execution filed or renewed after January 1, 2018, pursuant to this Code section shall be a lien against and attach to all existing and after-acquired property of the delinquent taxpayer, both real and personal, tangible and intangible, ~~located in any county and in all counties within the State of Georgia,~~ with the same force and effect as any recorded judgment on the lien docket of the superior court clerk.

(e) An execution electronically transmitted to the authority pursuant to this Code section shall be deemed filed and perfected upon its receipt by the authority for transmission to the

applicable clerk of superior court. The authority shall provide to the department confirmation of receipt of an execution. Absent evidence of such confirmation there shall be no presumption of filing. Executions filed shall have priority as provided by law.

(f) The lien of an execution filed pursuant to this Code section shall continue in effect until released or withdrawn by the department or until the execution has expired.

(g) The department shall file an execution within five years of the date of a final assessment. An execution filed or renewed after January 1, 2018, shall expire ten years from the date of filing and shall not be subject to renewal by nulla bona or otherwise. ~~Said expiration period~~ The periods of limitation set forth in this subsection shall be tolled and suspended for:

(1) The duration of an installment agreement between the taxpayer and the commissioner for any tax liabilities contained within an execution plus an additional 90 days;

(2) If a timely proceeding in court for the imposition or collection of a tax is commenced, the duration of the period until the liability for the tax or a judgment against the taxpayer arising from such liability is satisfied or becomes unenforceable;

(3) The duration of any enforcement action to collect the liability contained within an execution initiated prior to the expiration of the period of limitations and released after such period of limitations;

(4) In a case under Title 11 of the United States Code, the running of the period of limitations provided in this Code section shall be suspended and tolled for the period during which the commissioner is prohibited from collecting any tax liability and six months thereafter; or

(5) The period during which a taxpayer's offer-in-compromise is under consideration by the commissioner.

(h) All executions filed by the department on or after the effective date of this Act shall only attach to real property in the county in which the execution has been filed. After the effective date of this Act, no execution previously filed by the department shall be considered to have state-wide attachment to all real property within the state and shall only attach to real property in the county in which the execution has been filed.

48-3-43.

(a) The department shall maintain information on executions in its information management system in a form that permits information related to executions to be readily accessible in an electronic form via the Internet and available to the public. The following shall be available within such system at no charge to the public:

(1) Search by delinquent taxpayer name, execution number, last four digits of the taxpayer's social security number, or, when applicable, federal employee identification number;

(2) Search by identification number assigned to the execution by the department;

(3) The basis for an execution, including, but not limited to, the amount of the taxes, penalties, interest, and fees owed, and the tax periods and relevant assessment dates of the taxes owed;

(4) The place, date, and time of the filing of the execution;

(5) The status of the execution as defined in subsection (b) of this Code section;

(6) The present balance of the execution;

(7) Provision of official electronic copies of an execution; and

~~(8) Provision and issuance of official statements of lien pursuant to Code Section 44-1-18;~~

~~(9) Provision and issuance of official certificates of clearance pursuant to Code Section 44-1-18;~~

~~(10) Search by identification number assigned to certificates of clearance; and~~

~~(11)~~(8) Notwithstanding Code Sections 48-2-15 and 48-7-60, provision ~~Provision~~ and issuance of official payoff information as to any execution ~~pursuant to Code Section 44-1-18~~.

(b) An execution shall hold one of the following official statuses on the department information system and such status shall be available, except as provided below, and on the electronic printable forms of state tax executions:

(1) Active — The execution is perfected and enforceable;

(2) Withdrawn — The execution was issued in error and is not enforceable. Within two business days from the date the department discovers an error in the filing of an execution, it shall change the status of the execution to withdrawn. Such execution shall be treated as though it was never filed;

(3) Released — The execution has been released ~~or canceled~~ and is no longer enforceable. Within 15 business days from the department's receipt of payment in full of an execution, the department shall change the status of the execution to released. The department may release an unpaid execution that the department determines is not legally or practically collectable;

(4) Refiled — If an execution is released in error, the department may file a new execution for any outstanding, finally determined tax liability to bear an active status as of the date of the new recording; and

(5) Expired — The execution has expired pursuant to Code Section 48-3-42 and is unenforceable.

(c) The department shall provide to the authority such electronic linking data elements as may be required by the authority to link filed executions found in the authority's state-wide uniform automated information system for real and personal property records to the matching data related to the execution in the department's information management system.

(d) The department's information management system as provided for in this Code section shall constitute a public record and the department shall redact information in accordance with Code Section 9-11-7.1.

(e) The department's information management system as provided for in this Code section shall not be used for survey, marketing, or solicitation purposes. Survey, marketing, or solicitation purposes shall not include any action by the department or its authorized agents to collect a debt on an execution. The Attorney General is hereby authorized to bring an action at law or in equity to address the unlawful use of such information for a survey, marketing, or solicitation purpose and to recover the costs of such action, including reasonable attorney's fees.

(f) The commissioner may adopt reasonable rules and regulations providing for the maintenance, reliability, accessibility, and use of the department's information management system. Such rules and regulations may address, among other matters, the authenticity of the electronic printable executions and issues related to periods during which the information system may be unavailable for use due to routine maintenance or other activities.

48-3-44.

~~(a)~~ An execution bearing a 'Released' status on the department's information management system shall constitute a complete release of the execution by the department and ~~of~~ the department shall also timely file the release of the lien in the office of the clerk of superior court where the execution was filed as required by Code Section 48-3-28.

~~(b) A certificate of clearance issued by the department shall be deemed an effective release of an execution. The department shall provide to the delinquent taxpayer, within 30 days of the date of payment, a notice of the release of the execution and shall cause a release of the execution to be filed with the applicable superior court clerk.~~"

SECTION 5.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising Code Section 15-6-97.3, relating to revision of automated information system for state tax execution data and regulatory authority, as follows:

″15-6-97.3.

(a) The Georgia Superior Court Clerks' Cooperative Authority or its designated agent shall revise the state-wide uniform automated information system for real and personal property records as provided for in Code Section 15-6-97 to provide for the inclusion in such system functionality as provided in this Code section for state tax executions and renewed state tax executions electronically filed with clerks of superior court as provided for in Article 2 of Chapter 3 of Title 48.

(b) As used in this Code section, the term 'state tax execution' shall be inclusive of the term 'renewed state tax execution.'

(c) Effective January 1, 2018, the state-wide uniform automated information system for real and personal property records shall be revised to provide the following function and utility related to state tax executions:

~~(1) Electronic query of the Georgia consolidated lien indexes for state tax execution instrument types by direct party name to include state-wide results of all state tax executions filed for such party regardless of any applied county limiting search filter;~~

~~(2) Electronic query of the Georgia consolidated lien indexes for all lien types by direct party name to include state-wide results of all state tax executions filed for such party regardless of any applied county limiting search filter;~~

~~(3) A secondary electronic query of the results returned by a search performed pursuant to paragraphs (1) and (2) of this subsection by the last four digits of a social security number or federal employer identification number which will render results of state tax executions associated with such number;~~

~~(4)~~(1) An electronic link from an index data record of a state tax execution found in the system to the Department of Revenue information management system to provide users access to detailed information~~,~~ and status~~, and clearance certificates~~ from the department system. The Department of Revenue shall provide to the authority such electronic linking data elements as may be required by the authority to link filed executions found in the state-wide uniform automated information system for real and personal property records to the matching data on the execution in the Department of Revenue information management system; and

~~(5)~~(2) A searchable electronic filing submission docket or other means which allows a search by direct party name, as provided by the Department of Revenue, for state tax executions which have been submitted to the authority for filing with a clerk of superior court pending the inclusion of final index data for such execution into the Georgia consolidated lien indexes. Search features shall be available for an execution upon its receipt by the authority.

(d) The Georgia Superior Court Clerks' Cooperative Authority shall have authority to promulgate rules and regulations necessary to develop and implement the provisions of this Code section."

SECTION 6.

Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by revising Code Section 44-1-18, relating to execution search prior to conveyance of property, as follows:

"44-1-18.

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

~~(1) 'Certificate of clearance' or 'certificate' shall mean a document issued by the department affirming that a proper search has been conducted by the department and has yielded no active liens associated with an individual or entity, as provided for in Article 2 of Chapter 3 of Title 48.~~

~~(2) 'Current owner' means:~~

~~(A) The individual or entity vested with fee simple title to a parcel of real property; or~~

~~(B) Where fee simple title to a parcel of real property has been vested by:~~

~~(i) A joint tenancy with survivorship rights, then the survivor of such joint tenancy;~~

~~(ii) A deed in lieu of foreclosure, then the grantor of such deed;~~

~~(iii) An order of a probate court providing for:~~

~~(I) An executor, administrator, and granting an order declaring no administration necessary, then the deceased subject party of such probate proceeding; or~~

~~(II) A conservator, custodian, or guardian, then the ward subject party of such probate proceeding;~~

~~(iv) A deed into a trustee of a trust in which the party to an execution is the trustor, then:~~

~~(I) Where an execution attaches to the trustor prior to the trustor's conveyance to the trust, then the trustor; and~~

~~(II) Where an execution attaches to the trustor after the trustor's conveyance to the trust, then the trustee of such trust in his or her capacity as trustee and the trust, which trust shall obtain a distinct federal employee identification number;~~

~~(v) An order of a court providing:~~

~~(I) Award of real property to a spouse in a divorce proceeding, then the spouse so awarded fee simple title to the property;~~

~~(II) Award of real property in a quiet title action as provided in Code Section 23-3-40, et seq., and Code Section 23-3-60, et seq., then the successful petitioner of such action, provided proper service was effectuated upon the department; or~~

~~(III) Award of real property in an action to partition the property; where the property is physically partitioned into separate parcels, then the party vested with title to each such partitioned parcel; and where the property is ordered sold and the proceeds of such sale partitioned, then to each party to the extent of their interest in said proceeds;~~

~~(vi) The death of a life tenant, then the remaindermen of such life estate;~~

~~(vii) The termination of an executory trust, then the vestees of such trust;~~

~~(viii) The merger of entities wherein one or more of the entities is a party to an execution, then both the acquired and acquiring parties; or~~

~~(ix) Voluntary deed to a condemnor for compensation as provided in Title 22, then the grantor in such deed.~~

~~(3) 'Department' shall mean the Georgia Department of Revenue.~~

~~(4) 'Execution' shall mean either a state tax execution or a renewed state tax execution as defined in Article 2 of Chapter 3 of Title 48.~~

~~(5) 'Statement of lien' or 'statement' shall mean a document issued by the department:~~

~~(A) Affirming that an active execution, as provided for in Article 2 of Chapter 3 of Title 48, is associated with the current owner;~~

~~(B) Providing the identification reference number assigned to the execution by the department; and~~

~~(C) Providing information to contact the department through the department's information management system for payoff information of such execution.~~

~~(b) Prior to the conveyance of real property upon which a title is transferred, any holder of a fee simple interest in real property, licensed attorney at law, or title insurance company shall be entitled to, upon request from the department:~~

~~(1) A certificate of clearance; or~~

~~(2) A statement of lien.~~

~~(c) The department shall only require a certificate of clearance for the current owner of the property to be conveyed at the time of the conveyance, and shall not require a certificate of clearance as to any previous owners or title holders of such property.~~

~~(d) Subject to the provisions of subsection (n) of this Code section, all executions against any party previously vested with title other than the current owner shall be of no force and effect as to the title of, and shall not be a lien against, any real property owned by the current owner.~~

~~(e) All requests for a certificate of clearance made to the department shall:~~

~~(1) Be in writing;~~

~~(2) State the name, address, e-mail address, and telephone number of the requestor;~~

~~(3) State whether the requestor is the owner of the real property, an attorney at law, or a title insurance company;~~

~~(4) State the name of the current owner of the real property;~~

~~(5) State an e-mail address to which the certificate or statement can be directed; and~~

~~(6) Provide a certification that the information provided therein is true and correct to the best of the requestor's knowledge.~~

~~(f) All requests shall be transmitted to the department by electronic means through the department's information management system or be delivered to the registered address of the department by certified mail, return receipt requested, or statutory overnight delivery. Any request transmitted by electronic means shall be considered received on the first business day following such transmission.~~

~~(g) The information specified in the certificate of clearance shall be binding upon the department as of the date of the certificate and for 30 days thereafter, during which time the department shall not issue any new executions against the current owner designated in the certificate.~~

~~(h) The department shall furnish a certificate of clearance or statement of lien, as applicable, to the requestor immediately upon request by electronic means through the department's information management system or, if not available through such system, to the e-mail address provided by the requestor within five business days of receipt of such request.~~

~~(i) The failure of the department to provide a certificate or statement within such five-day period shall cause any lien against real property arising from any execution against the current owner to be extinguished and to be of no force and effect as to the title. Such failure by the department to provide a certificate or statement shall be evidenced by a recorded affidavit, signed by a licensed attorney at law, containing a statement that the request was made pursuant to this Code section and that a certificate has not been issued by the department and would not be found in the records of the department or otherwise, with a copy of the acknowledgment of receipt of the request attached thereto.~~

~~(j) The certificate of clearance may be recorded in the superior court of the county where any real property owned by the current owner lies, and upon such recording shall be conclusive evidence that through that certain date 30 days after the date of the certificate no lien of the department attaches to the real property owned by the current owner referred to in such certificate.~~

~~(k) A copy of the certificate of clearance shall be maintained in the department's information management system and shall be identified by an identification number assigned to the certificate by the department, with such identification number being~~

~~required to be entered on the real estate transfer tax declaration form as required in Code Section 48-6-4.~~

~~(l) If a statement of lien is issued and payoff information is acquired from the department pursuant to the reference information provided therein, such payoff information shall be binding upon the department as of the date such payoff information is received by any requesting party and for 30 days thereafter, during which time the department shall not issue any executions against the current owner designated in the statement, and upon payment in full of all sums due as set forth in any such payoff information:~~

~~(1) All liens of the department against the real property owned by the current owner in existence as of the date of the statement shall be extinguished and all executions encumbering such real property shall be cancelled. The department shall provide proof of receipt of such payoff to the party remitting such payoff funds, and such proof may be recorded in the superior court of the county where the real property lies, and upon such recording shall be conclusive evidence that through the date of the statement no lien of the department attaches to any real property owned by the current owner referred to in such statement; and~~

~~(2) If one or more executions are for any reason not set forth on such statement or payoff information, as to such omitted execution, said payment shall cause any lien against any real property owned by the current owner arising from any such omitted execution to be extinguished and to be of no force and effect as to the title.~~

~~(m) Any person who files a request in accordance with this Code section which request is fraudulent shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than 12 months or by a fine of not less than $1,000.00 nor more than $5,000.00, or both.~~

~~(n) Noncompliance with any provision of this Code section shall preserve an execution properly executed and filed as provided for in Article 2 of Chapter 3 of Title 48 on real property on the date of any conveyance of such property.~~

~~(o) This Code section shall not apply to any conveyance listed below and the grantee of any such conveyance shall take title to the real property free and clear of any execution or lien created from such execution existing at the time of such conveyance:~~

~~(1) A foreclosure of a mortgage or security deed, wherein such mortgage or security deed has priority over any execution;~~

~~(2) A receiver or trustee in a bankruptcy proceeding;~~

~~(3) A judicial order resulting from an action regarding condemnation, forfeiture, and judicial foreclosure, wherein the department was properly provided personal service of such action;~~

~~(4) A tax sale performed by the Internal Revenue Service;~~

~~(5) A year's support order by operation of law; or~~

~~(6) A tax sale conducted by any sheriff, tax commissioner, or municipal levying officer in this state, provided that proper service was effectuated on the department in accordance with Code Section 48-4-45,~~

~~and upon such conveyance all liens of the department against the real property owned by the current owner of such property as of the date of such conveyance shall be extinguished and all executions encumbering such real property shall be cancelled.~~

~~(p) The certificate of clearance shall be signed by the state revenue commissioner, or authorized agent thereof, and shall contain certifications from the department regarding:~~

~~(1) Identification of the current owner;~~

~~(2) That upon statutory request by a proper party in accordance with this Code section, an examination of the department records was made by the department;~~

~~(3) That upon such examination by the department, the current owner as shown in the certificate has no active liens associated with such party by an execution or lien arising therefrom; and~~

~~(4) The certificate is given pursuant to this Code section.~~

~~(q) The state revenue commissioner shall promulgate such rules and regulations not in conflict with this Code section as may be necessary and appropriate to implement and administer this Code section.~~ Reserved.″

SECTION 7.

Said title is further amended by revising Code Section 44-2-2, relating to the duties of clerks to record property transactions, as follows:

″44-2-2.

(a)(1) The clerk of the superior court shall file, index on a computer program designed for such purpose, and permanently record, in the manner provided constructively in Code Sections 15-6-61 and 15-6-66, the following instruments conveying, transferring, encumbering, or affecting real estate and personal property:

(A) Deeds;

(B) Mortgages;

(C) Liens as provided for by law; and

(D) Maps or plats relating to real estate in the county; and

(E) State tax executions and state tax execution renewals as provided for in Article 2 of Chapter 3 of Title 48.

(2) As used in this subsection, the term 'liens' shall have the same meaning as provided in Code Sections 15-19-14, 44-14-320, and 44-14-602 and shall include all liens provided by state or federal statute.

(3) When indexing liens, the clerk shall ~~enter~~ index the names of ~~debtors in the index in the manner provided for names of grantors conveying real estate in subsection (b) of Code Section 15-6-66 and the names of creditors or claimants in the manner as provided therein for names of grantees making such conveyances. When indexing state tax executions and state tax execution renewals as provided by subparagraph (a)(1)(E) of this Code section, the clerk shall enter the names of the taxpayers in the manner provided for names of grantors conveying real estate in subsection (b) of Code Section 15-6-66 and the name 'GEORGIA STATE DEPT OF REVENUE' in the manner as provided therein for names of grantees making such conveyances. For state tax executions, the clerk shall also:~~

~~(A) Index the last four characters of the taxpayer's social security number or the last four characters of the federal employer taxpayer number, as applicable to each taxpayer;~~

~~(B) Index such state tax execution control number as provided by rule established by the Georgia Superior Court Clerks' Cooperative Authority;~~

~~(C) Index using instrument types as provided by rule established by the Georgia Superior Court Clerks' Cooperative Authority; and~~

~~(D) Transmit such data to the Georgia Superior Court Clerks' Cooperative Authority pursuant to the provisions of paragraph (15) of subsection (a) of Code Section 15-6-61~~ parties in the manner provided by such rules and regulations adopted by the Georgia Superior Court Clerks' Cooperative Authority pursuant to the provisions of Code Section 15-6-61 as authorized by Code Section 15-6-97.

(4) When indexing maps or plats relating to real estate in the county, the clerk of superior court shall index the names or titles provided in the caption of the plat.

(b) Deeds, mortgages, and liens of all kinds which are required by law to be recorded in the office of the clerk of superior court and which are against the interests of third parties who have acquired a transfer or lien binding the same property and who are acting in good faith and without notice shall take effect only from the time they are filed for record in the clerk's office.

(c) Nothing in this Code section shall be construed to affect the validity or force of any deed, mortgage, judgment, or lien of any kind between the parties thereto."

SECTION 8.

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

SECTION 9.

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