

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 731

Short Title: Conservation Use Value Taxation.

(Public)

Sponsors: Senators Clodfelter; Hagan, Horton, Kinnaird, Miller, and Phillips.

Referred to: Finance.

April 1, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW PROPERTY SUBJECT TO CONSERVATION
3 MANAGEMENT AGREEMENTS TO BE TAXED AT ITS PRESENT-USE
4 VALUE.

5 The General Assembly of North Carolina enacts:

6 Section 1. Subchapter II of Chapter 105 of the General Statutes is amended by
7 adding a new Article 12B entitled "Use-Value Taxation."

8 Section 2. G.S. 105-277.2 is recodified as G.S. 105-282.10 in Article 12B of
9 Chapter 105 of the General Statutes.

10 Section 3. G.S. 105-277.3 through G.S. 105-277.7 are recodified as G.S. 105-
11 282.12 through G.S. 105-282.16 in Article 12B of Chapter 105 of the General Statutes.

12 Section 4. Article 12B of Chapter 105 of the General Statutes, as enacted and
13 amended by this act, reads as rewritten:

14 **"ARTICLE 12B.**

15 **"USE-VALUE TAXATION.**

16 **"§ 105-282.10. ~~Agricultural, horticultural, and forestland~~—Definitions.**

17 The following definitions apply in ~~G.S. 105-277.3 through G.S. 105-277.7:~~ this Article:

- 18 (1) Agricultural land. – Land that is a part of a farm unit that is actively
19 engaged in the commercial production or growing of crops, plants, or
20 animals under a sound management program. Agricultural land includes

1 woodland and wasteland that is a part of the farm unit, but the woodland
2 and wasteland included in the unit shall be appraised under the use-
3 value schedules as woodland or wasteland. A farm unit may consist of
4 more than one tract of agricultural land, but at least one of the tracts
5 must meet the requirements in G.S. ~~105-277.3(a)(1)~~, 105-282.12(a)(1),
6 and each tract must be under a sound management program.

7 (1a) Business entity. – A corporation, a general partnership, a limited
8 partnership, or a limited liability company.

9 (2) Forestland. – Land that is a part of a forest unit that is actively engaged
10 in the commercial growing of trees under a sound management
11 program. Forestland includes wasteland that is a part of the forest unit,
12 but the wasteland included in the unit shall be appraised under the use-
13 value schedules as wasteland. A forest unit may consist of more than
14 one tract of forestland, but at least one of the tracts must meet the
15 requirements in G.S. ~~105-277.3(a)(3)~~, 105-282.12(a)(3), and each tract
16 must be under a sound management program.

17 (3) Horticultural land. – Land that is a part of a horticultural unit that is
18 actively engaged in the commercial production or growing of fruits or
19 vegetables or nursery or floral products under a sound management
20 program. Horticultural land includes woodland and wasteland that is a
21 part of the horticultural unit, but the woodland and wasteland included
22 in the unit shall be appraised under the use-value schedules as woodland
23 or wasteland. A horticultural unit may consist of more than one tract of
24 horticultural land, but at least one of the tracts must meet the
25 requirements in G.S. ~~105-277.3(a)(2)~~, 105-282.12(a)(2), and each tract
26 must be under a sound management program.

27 (4) Individually owned. – Owned by one of the following:

28 a. A natural person. For the purpose of this section, a natural person
29 who is an income beneficiary of a trust that owns land may elect
30 to treat the person's beneficial share of the land as owned by that
31 person. If the person's beneficial interest is not an identifiable
32 share of land but can be established as a proportional interest in
33 the trust income, the person's beneficial share of land is a
34 percentage of the land owned by the trust that corresponds to the
35 beneficiary's proportional interest in the trust income. For the
36 purpose of this section, a natural person who is a member of a
37 business entity, other than a corporation, that owns land may
38 elect to treat the person's share of the land as owned by that
39 person. The person's share is a percentage of the land owned by
40 the business entity that corresponds to the person's percentage of
41 ownership in the entity.

42 b. A business entity having as its principal business one of the
43 activities described in subdivisions (1), (2), and (3) and whose

- 1 members are all natural persons who meet one or more of the
2 following conditions:
- 3 1. The member is actively engaged in the business of the
4 entity.
 - 5 2. The member is a relative of a member who is actively
6 engaged in the business of the entity.
 - 7 3. The member is a relative of, and inherited the membership
8 interest from, a decedent who met one or both of the
9 preceding conditions after the land qualified for
10 classification in the hands of the business entity.
- 11 c. A trust that was created by a natural person who transferred the
12 land to the trust and each of whose beneficiaries who is currently
13 entitled to receive income or principal meets one of the following
14 conditions:
- 15 1. Is the creator of the trust or the creator's relative.
 - 16 2. Is a second trust whose beneficiaries who are currently
17 entitled to receive income or principal are all either the
18 creator of the first trust or the creator's relatives.
- 19 d. A testamentary trust that meets all of the following conditions:
- 20 1. It was created by a natural person who transferred to the
21 trust land that qualified in that person's hands for
22 classification under G.S. ~~405-277.3~~-105-282.12.
 - 23 2. At the time of the creator's death, the creator had no
24 relatives as defined in this section as of the date of death.
 - 25 3. The trust income, less reasonable administrative expenses,
26 is used exclusively for educational, scientific, literary,
27 cultural, charitable, or religious purposes as defined in
28 G.S. 105-278.3(d).
- 29 (4a) Member. – A shareholder of a corporation, a partner of a general or
30 limited partnership, or a member of a limited liability company.
- 31 (5) Present-use value. —~~The value of land in its current use as~~ In the case of
32 agricultural land, horticultural land, or forestland, the value of the land
33 based solely on its ability to produce income, using a rate of nine
34 percent (9%) to capitalize the expected net income of the property and
35 assuming an average level of management. In the case of conservation
36 land classified under G.S. 105-282.11, the value of the land based solely
37 on its value in its present use.
- 38 (5a) Relative. – Any of the following:
- 39 a. A spouse or the spouse's lineal ancestor or descendant.
 - 40 b. A lineal ancestor or a lineal descendant.
 - 41 c. A brother or sister, or the lineal descendant of a brother or sister.
42 For the purposes of this sub-subdivision, the term brother or
43 sister includes stepbrother or stepsister.

1 d. An aunt or an uncle.

2 e. A spouse of a person listed in paragraphs a. through d.

3 For the purpose of this subdivision, an adoptive or adopted relative is a
4 relative and the term 'spouse' includes a surviving spouse.

- 5 (6) Sound management program. – A program of production designed to
6 obtain the greatest net return from the land consistent with its
7 conservation and long-term improvement.

8 **"§ 105-282.11. Classification of conservation land.**

9 Land that meets all of the following conditions is designated a special class of
10 property under Section 2(2) of Article V of the North Carolina Constitution and
11 shall be appraised, assessed, and taxed as provided in this Article:

12 (1) It is managed for the protection of environmental resources for the
13 public benefit.

14 (2) It is subject to a written conservation management agreement between
15 the owner and the State, a local government, or an entity that is both
16 organized to receive and administer lands for conservation purposes and
17 qualified to receive charitable contributions pursuant to G.S. 105-130.9.

18 (3) The Department of Environment and Natural Resources has certified
19 that the land is suitable to be managed for the protection of
20 environmental resources for the public benefit.

21 **"§ 105-282.12. ~~Agricultural, horticultural, and forestland~~ — Classifications.**
22 **Classification of farmland.**

23 (a) Classes Defined. – The following classes of property are designated special
24 classes of property under authority of Section 2(2) of Article V of the North Carolina
25 Constitution and shall be appraised, assessed, and taxed as provided in ~~G.S. 105-277.2~~
26 ~~through G.S. 105-277.7.~~ this Article.

27 (1) Agricultural land. – Individually owned agricultural land consisting of
28 one or more tracts, one of which consists of at least 10 acres that are in
29 actual production and that, for the three years preceding January 1 of the
30 year for which the benefit of this section is claimed, have produced an
31 average gross income of at least one thousand dollars (\$1,000). Gross
32 income includes income from the sale of the agricultural products
33 produced from the land and any payments received under a
34 governmental soil conservation or land retirement program. Land in
35 actual production includes land under improvements used in the
36 commercial production or growing of crops, plants, or animals.

37 (2) Horticultural land. – Individually owned horticultural land consisting of
38 one or more tracts, one of which consists of at least five acres that are in
39 actual production and that, for the three years preceding January 1 of the
40 year for which the benefit of this section is claimed, have met the
41 applicable minimum gross income requirement. Land in actual
42 production includes land under improvements used in the commercial
43 production or growing of fruits or vegetables or nursery or floral

1 products. Land that has been used to produce evergreens intended for
2 use as Christmas trees must have met the minimum gross income
3 requirements established by the Department of Revenue for the land.
4 All other horticultural land must have produced an average gross
5 income of at least one thousand dollars (\$1,000). Gross income includes
6 income from the sale of the horticultural products produced from the
7 land and any payments received under a governmental soil conservation
8 or land retirement program.

9 (3) Forestland. – Individually owned forestland consisting of one or more
10 tracts, one of which consists of at least 20 acres that are in actual
11 production and are not included in a farm unit.

12 (b) Natural Person Ownership Requirements. – In order to come within a
13 classification described in subsection (a) of this section, the land must, if owned by a
14 natural person, also satisfy one of the following conditions:

15 (1) It is the owner's place of residence.

16 (2) It has been owned by the current owner or a relative of the current
17 owner for the four years preceding January 1 of the year for which the
18 benefit of this section is claimed.

19 (3) At the time of transfer to the current owner, it qualified for classification
20 in the hands of a business entity or trust that transferred the land to the
21 current owner who was a member of the business entity or a beneficiary
22 of the trust, as appropriate.

23 (b1) Entity Ownership Requirements. – In order to come within a classification
24 described in subsection (a) of this section, the land must, if owned by a business entity or
25 trust, have been owned by the business entity or trust or by one or more of its members
26 or creators, respectively, for the four years immediately preceding January 1 of the year
27 for which the benefit of this section is claimed.

28 (b2) Exception to Ownership Requirements. – G.S. ~~405-277.4(e)~~-105-282.13(c)
29 provides that deferred taxes are payable if land fails to meet any condition or requirement
30 for classification. Accordingly, if land fails to meet an ownership requirement due to a
31 change of ownership, G.S. ~~405-277.4(e)~~-105-282.13(c) applies. Despite this failure and
32 the resulting liability for taxes under G.S. ~~405-277.4(e)~~-105-282.13(c), the land may
33 qualify for classification in the hands of the new owner if both of the following
34 conditions are met, even if the new owner does not meet all of the ownership
35 requirements of subsections (b) and (b1) of this section with respect to the land:

36 (1) The land was appraised at its present use value or was eligible for
37 appraisal at its present use value at the time title to the land passed to
38 the new owner.

39 (2) At the time title to the land passed to the new owner, the owner owned
40 other land classified under subsection (a).

41 (c) Repealed by Session Laws 1995, c. 454, s. 2.

42 (d) Exception for Conservation Reserve Program. – Land enrolled in the federal
43 Conservation Reserve Program authorized by 16 U.S.C. § 1381 is considered to be in

1 actual production, and income derived from participation in the federal Conservation
2 Reserve Program may be used in meeting the minimum gross income requirements of
3 this section either separately or in combination with income from actual production. Land
4 enrolled in the federal Conservation Reserve Program shall be assessed as agricultural
5 land if it is planted in vegetation other than trees, or as forestland if it is planted in trees.

6 (e) Exception for Turkey Disease. – Agricultural land that meets all of the
7 following conditions is considered to be in actual production and to meet the minimum
8 gross income requirements:

- 9 (1) The land was in actual production in turkey growing within the
10 preceding two years and qualified for present use value treatment while
11 it was in actual production.
- 12 (2) The land was taken out of actual production in turkey growing solely for
13 health and safety considerations due to the presence of Poult Enteritis
14 Mortality Syndrome among turkeys in the same county or a neighboring
15 county.
- 16 (3) The land is otherwise eligible for present use value treatment.

17 "**§ 105-282.13. ~~Agricultural, horticultural and forestland~~ — ~~Application; appraisal~~**
18 **Appraisal at use value; appeal; deferred taxes.**

19 (a) Application. – Property coming within one of the classes defined in G.S. 105-
20 ~~277.3 shall be this Article is~~ eligible for taxation on the basis of the value of the property
21 in its present use if a timely and proper application is filed with the assessor of the county
22 in which the property is located. The application ~~shall clearly show~~ must show clearly that
23 the property comes within one of the classes and ~~shall~~ must also contain any other
24 relevant information required by the assessor to properly appraise the property at its
25 present-use value. An initial application ~~shall~~ must be filed during the regular listing
26 period of the year for which the benefit of this classification is first claimed, or within 30
27 days ~~of~~ after the date shown on a notice of a change in valuation made pursuant to G.S.
28 105-286 or G.S. 105-287. A new application is not required to be submitted unless the
29 property is transferred or becomes ineligible for use-value appraisal because of a change
30 in use or acreage.

31 (b) Appraisal at Present-use Value. – Upon receipt of a properly executed
32 application, the assessor shall appraise the property at its present-use value as established
33 in the schedule prepared pursuant to G.S. 105-317. In appraising the property at its
34 present-use value, the assessor shall appraise the improvements located on qualifying
35 land according to the schedules and standards used in appraising other similar
36 improvements in the county. If all or any part of a qualifying tract of land is located
37 within the limits of an incorporated city or town, or is property annexed subject to G.S.
38 160A-37(f1) or G.S. 160A-49(f1), the assessor shall furnish a copy of the property record
39 showing both the present-use appraisal and the valuation upon which the property would
40 have been taxed in the absence of this classification to the collector of the city or town.
41 ~~He~~ The assessor shall also notify the tax collector of any changes in the appraisals or in
42 the eligibility of the property for the benefit of this classification. Upon a request for a
43 certification pursuant to G.S. 160A-37(f1) or G.S.160A-49(f1), or any change in the

1 certification, the assessor for the county where the land subject to the annexation is
2 located shall, within 30 days, determine if the land meets the requirements of G.S. 160A-
3 37(f1)(2) or G.S. 160A-49(f1)(2) and report the results of its findings to the city.

4 (b1) Appeal. – Decisions of the assessor regarding the qualification or appraisal of
5 property under this section may be appealed to the county board of equalization and
6 review or, if that board is not in session, to the board of county commissioners. Decisions
7 of the county board may be appealed to the Property Tax Commission.

8 (c) Deferred Taxes. – Land meeting the conditions for classification under ~~G.S.~~
9 ~~105-277.3~~ this Article shall be taxed on the basis of the value of the land for its present
10 use. The difference between the taxes due on the present-use basis and the taxes that
11 would have been payable in the absence of this classification, together with any interest,
12 penalties, or costs that may accrue thereon, are a lien on the real property of the taxpayer
13 as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the
14 records of the taxing unit or units as deferred taxes. The taxes become due and payable
15 when the land fails to meet any condition or requirement for classification. The tax for
16 the fiscal year that opens in the calendar year in which deferred taxes become due is
17 computed as if the land had not been classified for that year, and taxes for the preceding
18 three fiscal years that have been deferred are immediately payable, together with interest
19 as provided in G.S. 105-360 for unpaid taxes. Interest accrues on the deferred taxes due
20 as if they had been payable on the dates on which they originally became due. If only a
21 part of the qualifying tract of land fails to meet a condition or requirement for
22 classification, a determination shall be made of the amount of deferred taxes applicable to
23 that part and that amount becomes payable with interest as provided above. Upon the
24 payment of any taxes deferred in accordance with this section for the three years
25 immediately preceding a disqualification, all liens arising under this subsection are
26 extinguished.

27 (d) Exceptions. – Notwithstanding the provisions of subsection (c) of this section,
28 if property loses its eligibility for present use value classification solely due to one of the
29 following reasons, no deferred taxes are due and the lien for the deferred taxes is
30 extinguished:

- 31 (1) There is a change in income caused by enrollment of the property in the
32 federal conservation reserve program established under 16 U.S.C.
33 Chapter 58.
- 34 (2) The property is conveyed by gift to a nonprofit organization and
35 qualifies for exclusion from the tax base pursuant to G.S. 105-275(12)
36 or G.S. 105-275(29).
- 37 (3) The property is conveyed by gift to the State, a political subdivision of
38 the State, or the United States.

39 (e) Repealed by Session Laws 1997-270, s. 3.

40 **"§ 105-282.14. Agricultural, horticultural and forestland Notice of change in use.**

41 Not later than the close of the listing period following a change which would
42 disqualify all or a part of a tract of land receiving the benefit of this classification, the
43 property owner shall furnish the assessor with complete information regarding ~~such~~ the

1 change. Any property owner who fails to notify the assessor of changes ~~as aforesaid~~
2 regarding land receiving the benefit of this classification shall be subject to a penalty of
3 ten percent (10%) of the total amount of the deferred taxes and interest thereon for each
4 listing period for which the failure to report continues.

5 **"§ 105-282.15. ~~Agricultural, horticultural and forestland~~ Appraisal; computation of**
6 **deferred tax.**

7 (a) In determining the amount of the deferred ~~taxes herein provided,~~ taxes under this
8 Article, the assessor shall use the appraised valuation established in the county's last
9 general revaluation except for any changes made under the provisions of G.S. 105-287.

10 (b) In revaluation years, as provided in G.S. 105-286, all property entitled to
11 classification under ~~G.S. 105-277.3~~ this Article shall be reappraised at its true value in
12 money and at its present use value as of the effective date of the revaluation. The two
13 valuations shall continue in effect and shall provide the basis for deferred taxes until a
14 change in one or both of the appraisals is required by law. The present use-value
15 schedule, standards, and rules shall be used by the tax assessor to appraise agricultural
16 property, forestland, and horticultural property receiving the benefit of this classification
17 until the next general revaluation of real property in the county as required by G.S. 105-
18 286.

19 (c) Repealed by Session Laws 1987, c. 295, s. 2.

20 **"§ 105-282.16. Use-Value Advisory Board.**

21 The Use-Value Advisory Board is established under the supervision of the
22 Agricultural Extension Service of North Carolina State University. The Board shall
23 annually submit to the Department of Revenue a recommended use-value manual
24 developed in accordance with the guidelines in G.S. 105-289(a)(5). In developing the
25 manual, the Board may consult with federal and State agencies as needed. The Board
26 shall submit to the Department of Revenue recommendations concerning requirements
27 for horticultural land used to produce evergreens intended for use as Christmas trees
28 when requested to do so by the Department.

29 The Board shall be chaired by the Director of the Agricultural Extension Service of
30 North Carolina State University and shall consist of the following additional members: a
31 representative of the Department of Agriculture and Consumer Services, designated by
32 the Commissioner of Agriculture; a representative of the Forest Resources Division of the
33 Department of Environment and Natural Resources, designated by the Director of that
34 Division; and a representative of the Agricultural Extension Service at North Carolina
35 Agricultural and Technical State University, designated by the Director of the Extension
36 Service. All members shall serve ex officio. The Agricultural Extension Service at North
37 Carolina State University shall provide clerical assistance to the Board."

38 Section 5. G.S. 105-282.7(a) reads as rewritten:

39 "(a) When any cropland or forestland owned by the United States, the State, a
40 ~~county-county,~~ or a municipal corporation is leased, ~~loaned-loaned,~~ or otherwise made
41 available to and used by a person, as defined in G.S. ~~105-273(12),~~ 105-273, in connection
42 with a business conducted for profit, the lessee or user of the property is subject to
43 taxation to the same extent as if the lessee or user owned the property. As used in this

1 section, 'forestland' has the same meaning as in G.S. ~~105-277.2(2)~~, 105-282.10, and
2 'cropland' means agricultural land and horticultural land as defined in G.S. ~~105-277.2(1)~~
3 ~~and (3) respectively~~. 105-282.10."

4 Section 6. G.S. 105-284(a) reads as rewritten:

5 "(a) Except as otherwise provided in this section, all property, real and personal,
6 shall be assessed for taxation at its true value or use value as determined under G.S. 105-
7 283 or ~~G.S. 105-277.6~~, Article 12B of this Chapter, and taxes levied by all counties and
8 municipalities shall be levied uniformly on assessments determined in accordance with
9 this section."

10 Section 7. G.S. 105-290(c)(1) reads as rewritten:

11 "(1) A property owner of the county who, either separately or in conjunction
12 with other property owners of the county, asserts that the schedules of
13 values, standards, and rules adopted by order of the board of county
14 commissioners do not meet the true value or present-use value appraisal
15 standards established by G.S. 105-283 and ~~G.S. 105-277.2(5)~~, Article
16 12B of this Chapter, respectively, may appeal the order to the Property
17 Tax Commission within 30 days of the date when the order adopting the
18 schedules, standards, and rules was first published, as required by G.S.
19 105-317(c)."

20 Section 8. The introductory language of G.S. 105-361(a) reads as rewritten:

21 "(a) Duty to Furnish a Certificate. – On the request of any of the persons prescribed
22 in subdivision ~~(a)(1), below~~, (1) of this subsection and upon the condition prescribed by
23 subdivision ~~(a)(2), below~~, (2) of this subsection, the tax collector shall furnish a written
24 certificate stating the amount of any taxes and special assessments for the current year
25 and for prior years in ~~his~~ the tax collector's hands for collection (together with any
26 penalties, interest, and costs accrued thereon) including the amount due under ~~G.S. 105-~~
27 ~~277.4(e)~~ Article 12B of this Chapter if the property should lose its eligibility for the
28 benefit of classification under ~~G.S. 105-277.2 et seq.~~ that Article, that are a lien on a parcel
29 of real property in the taxing unit."

30 Section 9. This act is effective for taxes imposed for taxable years beginning
31 on or after July 1, 2000.