**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT “THE SOUTH CAROLINA AGRICULTURAL ASSESSMENT REFORM ACT OF 2009”; TO AMEND SECTION 12‑43‑217, AS AMENDED, RELATING TO REASSESSMENT OF REAL PROPERTY EVERY FIVE YEARS, SO AS TO LIMIT A PROPERTY TAX INCREASE IN THE YEAR OF IMPLEMENTATION OF REVISED AGRICULTURAL USE STANDARDS; TO AMEND SECTION 12‑43‑220, AS AMENDED, RELATING TO ASSESSMENT RATIOS FOR CERTAIN PROPERTY CLASSIFICATIONS, SO AS TO PROVIDE FOR UPDATED CRITERIA FOR DETERMINING FAIR MARKET VALUE OF AGRICULTURAL USE PROPERTY, TO REQUIRE THAT THE PROPERTY OWNERS REAPPLY FOR AGRICULTURAL USE CLASSIFICATION EACH YEAR OF THE COUNTYWIDE APPRAISAL AND EQUALIZATION PROGRAM, TO PROVIDE FOR THE APPLICATION OF THE ROLLBACK TAX TO CERTAIN AGRICULTURAL PROPERTY BASED ON INCREASED VALUE, TO REQUIRE ROLLBACK TAXES TO BE PAID WITH THE DEED TRANSFERRING REAL PROPERTY WHERE THE INCREASE IN VALUE MEETS CERTAIN CRITERIA, TO LIMIT APPLICATION OF THE ROLLBACK TAX TO THAT PROPERTY AT A LATER DATE, AND TO EXEMPT FROM THE ROLLBACK TAX PROPERTY SOLD AT A FORECLOSURE SALE FOR SPECIFIED REASONS AND UNDER SPECIFIED CIRCUMSTANCES; TO AMEND SECTION 12‑43‑230, AS AMENDED, RELATING TO THE DEFINITION OF “AGRICULTURAL REAL PROPERTY” FOR PURPOSES OF PROPERTY TAX REASSESSMENT AND EQUALIZATION, SO AS TO DEFINE MORE FULLY “AGRICULTURAL REAL PROPERTY”, INCLUDING THE REQUIREMENT THAT THE AGRICULTURAL USE BE A COMMERCIAL USE AND TO PROVIDE FOR EVIDENCE OF COMMERCIAL USE; TO AMEND SECTION 12‑43‑232, AS AMENDED, RELATING TO OTHER CRITERIA FOR AGRICULTURAL USE PROPERTY, SO AS TO REQUIRE THAT TIMBERLAND PROPERTY MUST BE TWENTY‑FIVE ACRES OR MORE AND TO DELETE THE PROVISION ALLOWING A NONTIMBERLAND TRACT THAT FAILS TO MEET THE ACREAGE OR INCOME CRITERIA TO RETAIN THE AGRICULTURAL USE CLASSIFICATION SO LONG AS IT HAS REMAINED IN THE IMMEDIATE FAMILY SINCE THAT CLASSIFICATION; TO AMEND SECTION 12‑43‑260, RELATING TO A COUNTY’S COMPLIANCE WITH THE PROPERTY CLASSIFICATION PROVISIONS AND BY ADDING SECTION 12‑4‑525, BOTH SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO REVIEW APPEALS OF PROPERTY CLASSIFICATIONS AND AUDIT SAMPLE REASSESSMENTS SO AS TO ASSURE ACCURATE RESULTS; AND TO AMEND SECTION 12‑43‑340, RELATING TO PENALTIES FOR FALSELY CLAIMING AGRICULTURAL USE PROPERTY, SO AS TO MAKE THE PENALTY TEN DOLLARS FOR EACH ACRE FALSELY CLAIMED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as “The South Carolina Agricultural Assessment Reform Act of 2009”.

SECTION 2. Section 12‑43‑217 of the 1976 Code, as last amended by Act 399 of 2000, is further amended by adding an appropriately designated subsection to read:

“( ) A county may not impose a property tax increase greater than two percent of the total property tax of the county of the previous year in the year of the implementation of revised standards for determining agricultural use of real property or the implementation of assessment of a new classification of real property, or both; except that the county may impose an increase of property tax in an amount greater than two percent if the increase is approved by the county residents in a countywide referendum. This limitation is in addition to that provided in Section 6‑1‑320.”

SECTION 3. Section 12‑43‑220(d) of the 1976 Code, is amended to read:

“(d)(1) Agricultural real property which is actually used for ~~such~~ agricultural purposes ~~shall~~ must be taxed on an assessment equal to:

(A) Four percent of its fair market value for ~~such~~ the agricultural purposes for owners or lessees who are individuals or partnerships and certain corporations ~~which~~ that do not have:

(i) ~~Have~~ more than ten shareholders~~.~~;

(ii) ~~Have~~ as a shareholder a person~~(~~,other than an estate~~)~~, who is not an individual~~.~~;

(iii) ~~Have~~ a nonresident alien as a shareholder~~.~~; or

(iv) ~~Have~~ more than one class of stock.

(B) Six percent of its fair market value for ~~such~~ the agricultural purposes for owners or lessees who are corporations, except for certain corporations specified in (A) above.

(2)(A)(i) ‘Fair market value for agricultural purposes’, when applicable to land used for the growth of timber, is defined as the productive earning power based on soil capability ~~to be~~ as determined by capitalization of typical cash rents of the lands for timber growth or by capitalization of typical net income of similar soil in the region or a reasonable area of the region from the sale of timber, not including the timber growing ~~thereon, and when~~ on it. When applicable to land used for the growth of other agricultural products ~~the term~~, ‘fair market value for agricultural purposes’ is defined as the productive earning power based on soil capability ~~to be~~ as determined by capitalization of typical cash rents or by capitalization of typical net annual income of similar soil in the region or a reasonable area of the region, not including the agricultural products ~~thereon~~ on it.

(ii) ‘Soil capability’ when applicable to lands used for the growth of timber products means the capability of the soil to produce ~~such~~ the timber products of the region considering ~~any~~ natural deterrents to the potential capability of the soil as of the current assessment date. ~~The term~~ ‘Soil capability’, when applicable to lands used for the growth of other agricultural products, means the capability of the soil to produce typical agricultural products of the region considering ~~any~~ natural deterrents to the potential capability of the soil as of the current assessment date. ~~The term “region”~~

(iii) ‘Region’ means that geographical part of the State as determined by the department to be reasonably similar for the production of the agricultural products.

(B) After average net annual earnings ~~have been~~ are established for agricultural lands, they must be capitalized to determine use‑value of the property based on a capitalization rate ~~which~~ that includes:

~~1.~~(i) an interest component;

~~2.~~(ii) a local property tax differential component;

~~3.~~(iii) a risk component; and

~~4.~~(iv) an illiquidity component.

Each of these components of the capitalization rate must be based on identifiable factors related to agricultural use of the property. The interest rate component is the average coupon (interest) rate applicable on all bonds ~~which~~ that the Federal Land Bank of Columbia, which serves South Carolina farmers, has outstanding on July first of the crop‑years being used to estimate net earnings and agricultural use‑value. Implementation of the provisions contained in this section is the responsibility of the department.

~~(B)~~(C)(i) For tax year ~~1988~~ 2009 and subsequent tax years, fair market value for agricultural purposes must be determined by adjusting the applicable base year value by an amount equal to the product of multiplying the applicable base year value by a percentage factor obtained through the formula provided in this item. For tax year ~~1988~~ 2009, the applicable base year is ~~1981~~ 1988. ~~The fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years.~~

(ii) The percentage factor provided in this item is derived from ~~the most recent edition of~~ the United States Department of Agriculture publication “AGRICULTURAL LAND VALUES AND MARKETS”, specifically, from “Table 1‑‑Farm Real Estate Values: Indexes of the average value per acre of land and buildings . . .” as listed for this State. The formula to determine the applicable percentage factor is the index of the year of change less the index of the base year with the resulting amount being divided by the index of the base year and rounded to the nearest whole number. For purposes of the formula, the base year is the last year in which values were adjusted under this item.

(3) Agricultural real property does not come within the provisions of this section unless the owners of the real property or their agents make a written application ~~therefor~~ for agricultural use value on or before the first penalty date for taxes due for the first tax year in which the special assessment is claimed. The application for the special assessment must be made to the assessor of the county in which the agricultural real property is located, on forms provided by the county and approved by the department ~~and a failure~~. Failure to apply constitutes a waiver of the special assessment for that year. The governing body may extend the time for filing upon a showing satisfactory to it that the person had reasonable cause for not filing on or before the first penalty date. ~~No~~ An additional annual filing is not required while the use of the property remains bona fide agricultural and the ownership remains the same until the year of implementation of a countywide appraisal and equalization program conducted pursuant to Section 12‑43‑217. The owner or the owner’s agent shall reapply for agricultural use value in that year in the same manner as the original application. Failure to reapply constitutes a waiver of the special assessment for that year. The governing body may extend the time for filing the reapplication upon the same showing and in the same manner as it may extend the time for the original application. The owner shall notify the assessor within six months of a change in use. For failure to notify the assessor of a change in use, in addition to ~~any~~ other penalties provided by law, a penalty of ten percent and interest at the rate of one‑half of one percent a month must be paid on the difference between the amount that was paid and the amount that should have been paid, but not less than thirty dollars ~~nor~~ or more than the current year’s taxes.

(4) When real property ~~which~~ that is in agricultural use and that is being valued, assessed, and taxed ~~under~~ pursuant to the provisions of this article, is applied to a use other than agricultural, it is subject to additional taxes, ~~hereinafter~~ referred to as ~~roll‑back~~ rollback taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized ~~hereunder~~ by these provisions and the taxes that would have been paid or payable had the real property been valued, assessed, and taxed as other real property in the taxing district, in the current tax year (the year of change in use) and each of the five tax years immediately preceding in which the real property was valued, assessed, and taxed as ~~herein~~ provided in this article. If, in the tax year in which a change in use of the real property occurs, the real property was not valued, assessed, and taxed ~~under~~ pursuant to this article, then the real property is subject to ~~roll‑back~~ rollback taxes for each of the five tax years immediately preceding in which the real property was valued, assessed, and taxed ~~hereunder~~ pursuant to this article. In determining the amounts of the ~~roll‑back~~ rollback taxes chargeable on real property ~~which~~ that has undergone a change in use, the assessor shall ascertain, for each of the ~~roll‑back~~ rollback tax years ~~involved ascertain~~ involved, the:

(A) ~~the~~ fair market value without consideration of the standing timber of ~~such~~ the real property ~~under~~ pursuant to the valuation standard applicable to other real property in the same classification;

(B) ~~the~~ amount of the real property assessment for the particular tax year by multiplying ~~such~~ the fair market value by the appropriate assessment ratio provided in this article;

(C) ~~the~~ amount of the additional assessment on the real property for the particular tax year by deducting the amount of the actual assessment on the real property for that year from the amount of the real property assessment determined ~~under~~ pursuant to (B) of this ~~section~~ item (4);

(D) ~~the~~ amount of the rollback for that tax year by multiplying the amount of the additional assessment determined ~~under~~ pursuant to (C) of this ~~section~~ item (4) by the property tax rate of the taxing district applicable for that tax year.

(5) ~~Any other~~ Another provision of law to the contrary notwithstanding, a dockside facility whose primary use is the landing and processing of seafood is considered agricultural real property.

(6) ~~Any property which~~ Property that becomes exempt from property taxes ~~under~~ pursuant to Section 12‑37‑220(A)(1) or ~~any~~ economic development property ~~which~~ that becomes exempt ~~under~~ pursuant to Section 12‑37‑220(B) is not subject to rollback taxes.

(7)(A) Notwithstanding the provisions of subsection (d) above, beginning in 2009, if a parcel of real property classified as agricultural use property is sold for a fair market value that, without regard to its agricultural use, exceeds a value determined by multiplying the number of acres of this property by the average per acre value determined pursuant to (d)(2)(C), times a multiplier factor of one hundred fifty percent, plus the value of any farm improvements and the value of any standing timber thereon, then the real property in that year shall be taxed for ad valorem tax purposes as nonagricultural use property and also becomes subject to the rollback tax which shall be assessed and collected from the seller in the manner provided in this subsection (d) as though the property were converted to another use.

(B) Rollback taxes computed in the manner provided above must be paid to the county treasurer after computation by the county assessor before a deed may be recorded transferring real property which gives rise to the rollback tax. The purchaser or new owner of the property by affidavit attached to the deed of transfer shall certify that based on his information and belief a change in use of the property did or did not occur.

(C) A new owner of real property against which a rollback tax was assessed and collected upon its transfer to the new owner, pursuant to this item (7), is subject to a rollback tax on the property upon its change of use, but only for the taxable years after the transfer to him.

(D) Notwithstanding any other provision of this section, rollback taxes are not required to be paid when real property is sold at a foreclosure sale after a court of competent jurisdiction has ordered the sale as part of a proceeding to collect a bad debt judgment if the fair market value of the real property at the time of the sale and the acquisition cost paid at the foreclosure sale are different.”

SECTION 4. Section 12‑43‑230(a) of the 1976 Code, is amended to read:

“(a)(1) For ~~the~~ purposes of this article, ~~unless otherwise required by the context,~~ the ~~words~~ phrase ‘agricultural real property’ ~~shall~~ means ~~any~~ a tract of real property ~~which~~ that is used for commercial purposes to: (i) raise, harvest, or store crops~~,~~; (ii) feed, breed, or manage livestock~~,~~; or ~~to~~ (iii) produce plants, trees, fowl, or animals ~~useful to man, including~~. The commercial use of the real property includes, but is not limited to: the preparation of the products raised ~~thereon for man’s use~~ and disposed of by marketing or other means~~. It includes but is not limited to such real property used~~ and its use for agriculture, grazing, horticulture, forestry, dairying, and mariculture. ~~In the event~~ If at least fifty percent of a real property tract ~~shall qualify~~ qualifies as ‘agricultural real property’, the entire tract ~~shall~~ must be so classified, ~~provided no other~~ unless another business for profit is being operated ~~thereon~~ on it. The term ‘agricultural real property’ ~~shall include~~ includes real property used to provide free housing for farm laborers, ~~provided such~~ if the housing is located on the tract of land that qualifies as agricultural real property.

~~The department shall provide by regulation for a more detailed definition of “agricultural real property” consistent~~

(2) Consistent with the general definition ~~set forth~~ in this section, ~~to be~~ more detailed criteria must be used by county assessors in determining entitlement to special assessment ~~under~~ pursuant to this article~~. Such regulations shall be designed to exclude~~, with emphasis on excluding from the special assessment ~~that~~ real property ~~which~~ that is not bona fide agricultural real property for which the tax relief is intended. The following factors must be considered by county assessors as determinative of the issue of the tract being agricultural real property used for commercial purposes:

(A) As to general agricultural use real property, evidence of filing of an Internal Revenue Service Schedule F or other satisfactory proof of a reasonable rate of income for an acre; and

(B) As to forestry agricultural use real property, evidence that the use of the property meets minimum standards for qualification as commercial timberland, as established by the South Carolina State Forestry Commission.

(3) The South Carolina Forestry Commission shall establish a statewide database serving as the official registry of commercial timberland. Data must be entered and updated by the assessor of each county.

(4) Income to the landowner from leasing the real property to another for commercial agricultural use is income for purposes of determining if the landowner is eligible to claim the special agricultural use assessment ratio.

(5) In cases in which the real property is committed to more than one use, one use being agricultural use and the other use or uses being unrelated to agriculture, the agricultural activity use must be the most significant use of the property for it to be classified as agricultural real property. Recreation, hunting clubs, fishing clubs, vacant and dormant land, and other similar uses do not qualify as agricultural uses.”

SECTION 5. Section 12‑43‑232 of the 1976 Code, as last amended by Act 145 of 2005, is further amended to read:

“Section 12‑43‑232. In addition to all other requirements for real property to be classified as agricultural real property, the property must meet the following requirements:

(1)(a) If the tract is used to grow timber, the tract must be ~~five~~ twenty‑five acres or more. ~~Tracts of timberland of less than five acres which are contiguous to or are under the same management system as a tract of timberland which meets the minimum acreage requirement are treated as part of the qualifying tract. Tracts timberland of less than five acres are eligible to be agricultural real property when they are owned in combination with other tracts of nontimberland agricultural real property that qualify as agricultural real property.~~ For the purposes of this item, ~~tracts~~ a tract of timberland must be devoted actively to growing trees for commercial use.

(b) A tract ~~which~~ that meets the acreage requirement of subitem (a) of this item devoted to growing Christmas trees is considered timberland. A Christmas tree tract not meeting the acreage requirement qualifies as agricultural property if the landowner reports gross income from Christmas trees that meets the income test provided in item (3) of this section, mutatis mutandis.

(2) For ~~tracts~~ a tract not used to grow timber as provided in item (1) of this section, the tract must be ten acres or more. ~~Nontimberland tracts~~ A nontimberland tract of less than ten acres which ~~are~~ is contiguous to other ~~such~~ tracts ~~which~~ that, when added together, meet the minimum acreage requirement, are treated as a qualifying tract. For purposes of this item (2) only, contiguous tracts include tracts with identical owners of record separated by a dedicated highway, street, or road or separated by any other public way.

(3)(a) ~~Nontimberland tracts~~ A nontimberland tract not meeting the acreage requirement of item (2) ~~qualify~~ qualifies as agricultural real property if the person making the application required pursuant to Section 12‑43‑220(d)(3) earned at least one thousand dollars of gross farm income for at least three of the five taxable years preceding the year of the application. The assessor may require the applicant (i) to give written authorization consistent with privacy laws allowing the assessor to verify farm income from the Department of Revenue or the Internal Revenue Service and (ii) to provide the Agriculture Stabilization and Conservation Service (ASCS) farm identification number of the tract and allow verification with the ASCS office.

(b) An owner making an initial application required pursuant to Section 12‑43‑220(d)(3) for a nontimberland tract of less than ten acres may claim the property as agricultural real property for each year for the first five years of operation if he earned at least one thousand dollars of gross farm income in at least three of the first five years. The assessor may require the new owner (i) to give written authorization consistent with privacy laws allowing the assessor to verify farm income from the Department of Revenue or the Internal Revenue Service and (ii) to provide the Agriculture Stabilization and Conservation Service (ASCS) farm identification number of the tract and allow verification with the ASCS office. If the new owner fails to meet the income requirements in the five‑year period, the tract is not considered agricultural real property and is subject to the rollback tax.

(c) Real property idle under a federal or state land retirement program or property idle pursuant to accepted agricultural practices is agricultural real property if the property otherwise would have qualified as agricultural real property subject to satisfactory proof to the assessor.

(d) Unimproved real property subject to a perpetual conservation easement as provided in Chapter 8 of Title 27 is agricultural real property if the property otherwise would have qualified as agricultural real property subject to satisfactory proof to the assessor.

~~(e)~~ ~~A nontimberland tract that does not meet the acreage or income requirements of this section to be classified as agricultural real property must nevertheless be classified as agricultural real property if the current owner or an immediate family member of the current owner has owned the property for at least the ten years ending January 1, 1994, and the property is classified as agricultural real property for property tax year 1994.~~

~~The property must continue to be classified as agricultural real property until the property is applied to some other use or until the property is transferred to other than an immediate family member whichever occurs first. For purposes of this subitem, “immediate family” is a person related to the current owner within the third degree of consanguinity or affinity and a trust all of whose noncontingent beneficiaries are related to the grantor of the trust within the third degree of consanguinity or affinity.~~

(4) In the case of rented or leased agricultural real property, either the lessor or the lessee shall meet the requirements of this section.

(5)(a) On the application required pursuant to Section 12‑43‑220(d)(3), the owner or his agent shall certify substantially as follows: Subject to the penalty provided in Section 12‑43‑340, either:

(i) ‘I certify that the property which is the subject of this application meets the requirements to qualify as agricultural real property as of January first of the current tax year’; or

(ii) ‘I certify that the property which is the subject of this application meets the requirements to qualify as agricultural real property and for the special assessment ratio for certain agricultural real property as of January first of the current tax year’.

(b) If it is determined that the property for which the certification was made did not meet the requirements to qualify for agricultural use classification at the time the certification was made, the property ~~which~~ that is the subject of the certification is denied agricultural use value for the property tax year or years in question and ~~in lieu~~ instead of the rollback tax, the tax on the property for each tax year in question must be recalculated using fair market value, the appropriate assessment ratio, and the appropriate millage. There must be deducted from the recalculated tax liability any taxes paid for the year and the penalties provided pursuant to Section 12‑45‑180 must be added to the balance due. Interest at the rate of one percent a month must be added to the unpaid taxes calculated from the last penalty date. Additional property tax revenues derived from the operation of this section changing agricultural use property to some other use ~~must~~ may be used only for the purpose of rolling back property tax millage.”

SECTION 6.A. Section 12‑43‑260 of the 1976 Code is amended to read:

“Section 12‑43‑260. ~~Any~~ A county ~~which~~ that wilfully fails to comply with the provisions of this article, or the provisions of Section 12‑4‑525(B), ~~shall~~ is not ~~be~~ entitled to twenty percent of ~~the~~ its allocation ~~of the taxes as provided for in the General Appropriations Act for State Aid to Subdivisions~~ pursuant to Chapter 27 of Title 6, the State Aid to Subdivisions Act. The department shall make application to the circuit court for a determination as to whether or not ~~such~~ the county meets the requirements of this article or Section 12‑4‑525(B), or both. The department ~~shall then~~, based on this determination, shall then certify to the State Treasurer that ~~such~~ the county meets the requirements ~~of this article~~ before ~~any tax allocation~~ a distribution is made to the county.”

B. Article 5, Chapter 4, Title 12 of the 1976 Code is amended by adding:

“Section 12‑4‑525. (A) The department shall:

(1) review appeals arising out of a countywide appraisal and equalization program conducted and implemented pursuant to Section 12‑43‑217 and, based on that review, audit sample reassessments of valuations both under appeal and also similarly situated valuations not appealed to determine the accuracy and fairness of the values determined in the countywide program; and

(2) audit applications for agricultural use value for the purpose of ensuring statewide uniformity in the granting of agricultural use value.

(B) If, from the review and audits required pursuant to this section, the Director of the Department of Revenue determines that (i) appraisal procedures used by a county assessor, or (ii) granting of agricultural use value, or both, have led consistently to inaccurate results, the director may:

(1) order the assessor to adopt corrective actions; and

(2) supervise directly the operation of the assessor’s office until the director determines that corrections have been made and will continue in effect.

(C) If the director determines that a county assessor has failed to apply corrective measures ordered by the director, the director may apply to the circuit court in the manner and for the purposes provided in Section 12‑43‑260, mutatis mutandis.”

SECTION 7. Section 12‑43‑340 of the 1976 Code is amended to read:

“Section 12‑43‑340. It is unlawful for a person knowingly and wilfully to make a false statement on the application required pursuant to Section 12‑43‑220(d)(3) to a county assessor for the classification of property as agricultural real property or for the special assessment ratio for certain agricultural real property. A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than ~~two hundred dollars~~ ten dollars for each acre falsely claimed.”

SECTION 8. This act takes effect upon approval by the Governor and applies to property tax years beginning January 1, 2009.

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