

House Bill 748

By: Representatives Petrea of the 166<sup>th</sup>, Hogan of the 179<sup>th</sup>, Sainz of the 180<sup>th</sup>, DeLoach of the 167<sup>th</sup>, Stephens of the 164<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 4 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated,  
2 relating to coastal waters, beaches, and sand dunes, so as to enact the "Coastal Marshlands  
3 Restoration Act of 2021"; to provide for legislative findings and intent; to provide for  
4 definitions; to provide for in rem proceedings; to provide for presentation of abstracts to the  
5 Attorney General; to provide for service of process and filing of pleadings; to provide for  
6 special masters and trial by jury; to provide for restriction of properties for conservation  
7 purposes; to provide for rebuttable presumptions; to provide for decrees and recording of  
8 same; to provide for joinder; to provide for compensation; to provide for related matters; to  
9 repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 4 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to  
13 coastal waters, beaches, and sand dunes, is amended by adding a new part to read as follows:

H. B. 748

- 1 -

14 "Part 7

15 12-5-299.1.

16 This part shall be known and may be cited as the 'Coastal Marshlands Restoration Act  
17 of 2021.'

18 12-5-299.2.

19 The General Assembly of Georgia finds that significant portions of coastal marshlands of  
20 Georgia were damaged prior to the enactment of Part 4 of Article 4 of Chapter 5 of  
21 Title 12, the 'Coastal Marshlands Protection Act of 1970,' through agricultural, recreational,  
22 and other man-made activities within the coastal marshlands. The General Assembly  
23 further finds that the restoration of coastal marshlands from damage caused by such  
24 activities will enhance the productivity of the nursery which the coastal marshlands provide  
25 for shellfish and other forms of marine life, thereby enhancing the environment and  
26 advancing the viability of the fisheries of Georgia's coastal waters. The General Assembly  
27 further finds that improving the quality of coastal marshlands will enhance recreational and  
28 economic opportunities for all Georgians. The General Assembly acknowledges that  
29 pursuant to Article 1 of Chapter 1 of Title 52, the 'Protection of Tidewaters Act,' certain  
30 portions of the coastal marshlands are owned by private parties that can trace their title to  
31 a valid Crown grant or state grant and that preservation of such coastal marshlands may not  
32 occur unless undertaken by the owner of said coastal marshlands. As such, the General  
33 Assembly further finds that establishing a framework to facilitate the identification and  
34 preservation or restoration of privately owned coastal marshlands is a proper function of  
35 the State of Georgia, as sovereign and trustee of the rights of the people of the state  
36 concerning coastal marshlands.

37 12-5-299.3.

38 As used in this chapter, the term:

39 (1) 'Coastal marshlands' or 'marshlands' shall have the same meaning as provided in  
40 Code Section 12-5-282, with the added condition that such term include uplands as such  
41 term is defined in this Code section.

42 (2) 'Conservation purposes' means to remediate, restore, or enhance natural conditions  
43 of coastal marshlands to substantially the same condition of such marshlands as prior to  
44 man-made alteration or damage or to restrict further disturbance or development of such  
45 marshlands by easement or other legal means which permanently restrict the development  
46 of such marshlands.

47 (3) 'Crown grant' or 'grant' means a valid grant from the Crown of England, or one of its  
48 agents exercising jurisdiction over Georgia's coastal marshlands during the colonial  
49 period, or from the State of Georgia after its independence.

50 (4) 'Person' shall have the same meaning as provided in Code Section 12-5-282.

51 (5) 'Trace' means to show the passage of title to property from one person to another by  
52 reference to recorded documents of title, the laws of descent and distribution,  
53 prescription, historical documents in existence 20 years or more the authenticity of which  
54 is established, or any other means, which by statutory law or common law, evidence the  
55 acquisition or transfer of title.

56 (6) 'Uplands' means any island or hammock located within coastal marshlands above the  
57 low-water mark.

58 12-5-299.4.

59 Any person claiming a grant to coastal marshlands located in this state may bring a  
60 proceeding in rem to establish title to the coastal marshlands as against the state. A  
61 proceeding under this section is not exclusive, but rather is cumulative, and may be filed  
62 concurrently with an equitable proceeding in rem against all the world as provided by  
63 Part 2 of Article 3 of Chapter 3 of Title 23.

64 12-5-299.5.

65 (a) Prior to filing a proceeding under this part, a petitioner may present to the Attorney  
66 General an abstract of title tracing the title of the subject coastal marshlands to a grant. The  
67 abstract shall be accompanied by copies of any deeds, documents, plats, instruments,  
68 records, or other material referenced in the abstract of title. The Attorney General shall  
69 have 60 days from receipt of the abstract of title to provide the petitioner with written  
70 certification as to whether or not such petitioner traced the title to the coastal marshlands  
71 to a grant. The certification that the petitioner has traced the title to a grant shall be an  
72 admission of such fact in a proceeding filed under this part and shall be binding upon the  
73 state. Failure of the Attorney General to issue a certification within the 60 day period shall  
74 be deemed an admission that the petitioner has traced the title to a grant, and if a court of  
75 this state later determines that the failure to do so was without cause, then the petitioner  
76 may recover reasonable attorney's fees and costs from the state.

77 (b) A proceeding under this part shall be instituted by filing a petition in the superior court  
78 of the county in which the coastal marshlands are situated.

79 (c) The petition shall be verified by the petitioner and shall contain a description of the  
80 coastal marshlands involved, shall identify the grant upon which the claim is based, and  
81 shall identify the basis upon which the petitioner claims to trace the title to the grant.

82 (d) With the petition, there shall be filed a plat of survey of the coastal marshlands and a  
83 copy of all instruments or documents relied upon by the petitioner to trace the title to the

84 grant, including a copy of any abstract reviewed by the Attorney General, as well as any  
85 related certification issued.

86 (e) Upon the filing of the petition, the petitioner shall contemporaneously file with the  
87 clerk of court for record a notice of lis pendens pursuant to Article 9 of Chapter 14 of Title  
88 44.

89 12-5-299.6.

90 (a) Process upon the state shall be served upon the Attorney General or the Attorney  
91 General may acknowledge service of process.

92 (b) Notice of the action shall be published in the legal organ of the county where the  
93 proceeding is filed once a week for four consecutive weeks. The notice shall identify the  
94 petitioner by name, the State of Georgia as respondent, and shall describe the property as  
95 defendant, with a caption setting forth the action above, and the date the action was filed.

96 (c) The respondent shall have at least 30 days after completion of service to file any  
97 pleadings.

98 12-5-299.7.

99 Contemporaneous with the filing of the petition, the petitioner shall file a motion for the  
100 appointment of a special master. The motion shall be served upon the Attorney General  
101 with the petition. The special master shall be an individual who is authorized to practice  
102 law in this state, demonstrates experience in real property law, and resides in the judicial  
103 circuit where the action was filed. After consideration of the motion and any objection  
104 filed by the respondent, the court shall appoint a special master. The appointment shall be  
105 made no later than 60 days after the filing of the motion.

106 12-5-299.8.

107 Upon reasonable notice to all parties, after proof of serving notice as required by this part  
108 has been filed, the special master shall have complete jurisdiction within the scope of the  
109 pleadings to ascertain and determine the validity, nature, or extent of the petitioner's grant  
110 and whether or not the title can be traced to the grant. At any time prior to a hearing before  
111 the special master any party may demand a trial by jury on any issue of fact.

112 12-5-299.9.

113 Any coastal marshlands, exclusive of the uplands contained therein, which are subject to  
114 a decree as provided for in this part shall be restricted to utilization for conservation  
115 purposes; provided, however, that the uplands contained therein may be used for  
116 conservation purposes.

117 12-5-299.10.

118 For any proceedings filed under this part the following shall apply:

119 (a) The existence of a grant shall create a rebuttable presumption that the state divested  
120 itself of any interest in the property to the low-water mark.

121 (b) Visible evidence of man-made use or manipulation of the coastal marshlands shall  
122 create a rebuttable presumption that such use or manipulation occurred prior to the  
123 enactment of the 'Coastal Marshlands Protection Act of 1970' at the instance of persons in  
124 the chain of title under a claim of right and that the use was public, continuous, exclusive,  
125 uninterrupted, peaceable, and not merely passive.

126 12-5-299.11.

127 Upon the receipt of the special master's report or upon a jury verdict, the court shall issue  
128 a decree which shall be recorded in the office of the clerk of superior court of the county  
129 or counties wherein the coastal marshlands affected are located and which, when recorded,

130 shall operate to bind the coastal marshlands subject to the action, and such decree shall  
131 contain the following recital: 'The coastal marshlands subject to this decree, specifically  
132 excluding any uplands, are restricted to use for conservation purposes as defined by the  
133 "Coastal Marshlands Restoration Act of 2021." A marginal reference to the recorded  
134 judgment and decree shall be entered upon the deed vesting title to the coastal marshlands  
135 in the petitioner.

136 12-5-299.12.

137 A petitioner that obtains a decree stating that such petitioner has traced the property title  
138 to a grant shall be deemed to have met the requirements for tracing the title of land to a  
139 grant from the Crown of England or the state under the provisions of the 'Protection of  
140 Tidewaters Act' and shall be entitled to pursue conservation actions for the coastal  
141 marshlands contained in the property of title.

142 12-5-299.13.

143 The court shall fix a reasonable compensation, not less than \$1,000.00, to be paid to the  
144 special master appointed under this part. Such compensation shall be taxed in the  
145 discretion of the court as part of the costs; provided, however, that if the state refused to  
146 certify the petitioner's tracing of the title to a grant, and the court enters a decree  
147 establishing the tracing of the title to a grant, then the compensation paid to the special  
148 master shall be assessed against the state.

149 12-5-299.14.

150 (a) Two or more persons having separate and distinct parcels of land in the same county  
151 and holding under the same source of title, or persons creating separate and distinct  
152 interests in the same parcel or parcels, may file a petition under this part against the same  
153 respondents.

154 (b) A petitioner may join separate causes of action in one petition; provided, however, that  
155 if they cannot be conveniently disposed of together, the court may order separate trials."

156 **SECTION 2.**

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