

House Bill 370

By: Representatives Petrea of the 166th, DeLoach of the 167th, Sainz of the 180th, Stephens of the 164th, and Williams of the 168th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 3 of Title 23 of the Official Code of Georgia Annotated,
2 relating to quia timet, so as to provide a procedure for clearing title to coastal marshlands;
3 to provide for legislative findings, purpose, and intent; to provide for definitions; to provide
4 for in rem proceedings; to provide for presentation of abstracts to the State Properties
5 Commission; to provide for service of process and filing of pleadings; to provide for special
6 masters and trial by jury; to provide for restriction of properties for conservation purposes;
7 to provide for rebuttable presumptions; to provide for decrees and recording of same; to
8 provide for joinder; to provide for compensation of the special master; to provide for
9 applicability; to provide for related matters; to repeal conflicting laws; and for other
10 purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Article 3 of Chapter 3 of Title 23 of the Official Code of Georgia Annotated, relating to quia
14 timet, is amended by adding a new part to read as follows:

H. B. 370

"Part 3

15

16 23-3-75.

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

35 (b) The purpose of this part is to create a procedure for removing any cloud upon the title
36 to coastal marshlands and for readily and conclusively establishing that certain named
37 persons are the owners of the fee simple interest in such land defined by a decree entered
38 in such proceeding, so that there shall be no occasion for such land in this state to be
39 unmarketable because of any uncertainty as to the owner of every interest therein.

40 (c) This part is intended to encourage the restoration of altered coastal marshlands to their
41 natural state and to encourage the protection of coastal marshlands as a complete ecological
42 system vital to this state. This part shall not amend or supersede Part 4 of Article 4 of
43 Chapter 5 of Title 12, the 'Coastal Marshlands Protection Act of 1970,' and any physical
44 change to any costal marshlands shall conform to all applicable laws.

45 23-3-76.

46 As used in this part, the term:

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

50 (2) 'Conservation purposes' means to remediate, restore, or enhance natural conditions
51 of coastal marshlands to substantially the same condition of such marshlands as prior to
52 manmade alteration or damage or to restrict further disturbance or development of such
53 marshlands by easement or other legal means which permanently restrict the development
54 of such marshlands.

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

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

59 (5) 'Restoration' or 'restore' means the manipulation of the physical, chemical, or
60 biological characteristics of a site with the goal of returning natural and historical
61 functions to a former or degraded coastal marshland.

62 (6) 'Trace' means to show the passage of title to property from one person to another by
63 reference to recorded documents of title, the laws of descent and distribution,
64 prescription, adverse possession, historical documents in existence 20 years or more of

65 which the authenticity is established, or any other means, which by statutory law or
66 common law, evidence the acquisition or transfer of title.

67 (7) 'Uplands' means any island or hammock located within coastal marshlands above the
68 high-water mark.

69 23-3-77.

70 Any person claiming a grant to coastal marshlands located in this state may bring a
71 proceeding in rem to establish title to the coastal marshlands as against the state. A
72 proceeding under this section is not exclusive, but rather is cumulative, and may be filed
73 concurrently with an equitable proceeding in rem against all the world as provided by
74 Part 2 of this article.

75 23-3-78.

76 (a) Prior to filing a proceeding under this part, a petitioner may present to the State
77 Properties Commission an abstract of title tracing the title of the subject coastal marshlands
78 to a grant. The abstract shall be accompanied by copies of any deeds, documents, plats,
79 instruments, records, or other material referenced in the abstract of title. The State
80 Properties Commission shall provide written notice to the claimant of its receipt of the
81 abstract and any other materials and shall have 180 days from the date of such notice to
82 provide the petitioner with written certification as to whether or not such petitioner traced
83 the title to the coastal marshlands to a grant. The certification that the petitioner has traced
84 the title to a grant shall be an admission of such fact in a proceeding filed under this part
85 and shall be binding upon the state. Failure of the State Properties Commission to issue
86 a certification within the 180 day period shall be deemed an admission that the petitioner
87 has traced the title to a grant, and if a court of this state later determines that the failure to
88 do so was without cause, then the petitioner may recover reasonable attorney's fees and
89 costs from the state.

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

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

95 (d) There shall be filed with the petition a plat of survey of the coastal marshlands and a
96 copy of all instruments or documents relied upon by the petitioner to trace the title to the
97 grant, including a copy of any abstract reviewed by the State Properties Commission, as
98 well as any related certification issued.

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

102 23-3-79.

103 (a) Process upon the state shall be served upon the State Properties Commission, or the
104 State Properties Commission may acknowledge service of process.

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

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

112 23-3-80.

113 Contemporaneous with the filing of the petition, the petitioner shall file a motion for the
114 appointment of a special master. The motion shall be served upon the State Properties

115 Commission with the petition. The special master shall be an individual who is authorized
116 to practice law in this state, demonstrates experience in real property law, and resides in
117 the judicial circuit where the action was filed. After consideration of the motion and any
118 objections filed by the respondent, the court shall appoint a special master. The
119 appointment shall be made no later than 60 days after the filing of the motion.

120 23-3-81.

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

126 23-3-82.

127 Any coastal marshlands and uplands contained therein which are subject to a decree as
128 provided for in this part shall be restricted to utilization for conservation purposes.

129 23-3-83.

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

131 (a) The existence of a grant shall create a rebuttable presumption that the state divested
132 itself of the fee simple interest in the property to the extent provided for in the grant.

133 (b) Visible evidence of manmade use or manipulation of the coastal marshlands shall
134 create a rebuttable presumption that such use or manipulation occurred prior to the
135 enactment of Part 4 of Article 4 of Chapter 5 of Title 12, the 'Coastal Marshlands
136 Protection Act of 1970,' at the instance of persons in the chain of title under a claim of right
137 and that the use was public, continuous, exclusive, uninterrupted, peaceable, and not
138 merely passive and that title was acquired by such person.

139 (c) Evidence of the existence of a grant accompanied by manipulation, manmade
140 alteration, or damage to said marshland prior to the enactment of the 'Coastal Marshlands
141 Protection Act of 1970,' combined with a showing of good record title for 40 years, shall
142 create a prima facie case that the title has been traced to a grant.

143 23-3-84.

144 Upon the receipt of the special master's report or upon a jury verdict, the court shall issue
145 a decree which shall be recorded in the office of the clerk of superior court of the county
146 or counties wherein the coastal marshlands affected are located and which, when recorded,
147 shall operate to bind the coastal marshlands subject to the action, and such decree shall
148 contain the following recital: 'The coastal marshlands subject to this decree, including
149 uplands contained therein, are restricted to use for conservation purposes as defined by
150 Part 3 of Article 3 of Chapter 3 of Title 23 of the Official Code of Georgia Annotated.' A
151 marginal reference to the recorded judgment and decree shall be entered upon the deed
152 vesting title to the coastal marshlands in the petitioner.

153 23-3-85.

154 A petitioner that obtains a decree stating that such petitioner has traced the property title
155 to a grant shall be deemed to have met the requirements for tracing the title of land to a
156 grant from the Crown of England or the state under the provisions of Article 1 of Chapter
157 1 of Title 52, the 'Protection of Tidewaters Act,' and shall be entitled to pursue conservation
158 actions for the coastal marshlands contained in the property of title.

159 23-3-86.

160 The court shall fix a reasonable compensation, not less than \$1,000.00, to be paid to the
161 special master appointed under this part. Such compensation shall be taxed in the
162 discretion of the court as part of the costs; provided, however, that, if the state refused to

163 certify the petitioner's tracing of the title to a grant and the court enters a decree
164 establishing the tracing of the title to a grant, then the compensation paid to the special
165 master shall be assessed against the state.

166 23-3-87.

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

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

173 23-3-88.

174 The admission of coastal marshlands to the carbon sequestration registry pursuant to
175 Article 5 of Chapter 6 of Title 12, the 'Georgia Carbon Sequestration Registry Act,' shall
176 not be affected by the operation of this part."

177 **SECTION 2.**

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