

9-1-1989

CONSERVATION AND NATURAL RESOURCES Historic Preservation Legislation

B. Herrin

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

B. Herrin, *CONSERVATION AND NATURAL RESOURCES Historic Preservation Legislation*, 6 GA. ST. U. L. REV. (1989).
Available at: <https://readingroom.law.gsu.edu/gsulr/vol6/iss1/6>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

CONSERVATION AND NATURAL RESOURCES

Historic Preservation Legislation

CODE SECTIONS:	O.C.G.A. §§ 12-3-50.2 (new), 44-10-23 (amended), 48-5-2 (amended), 48-5-7 (amended), 48-5-7.2 (new)
BILL NUMBERS:	HB 225, HB 226, HB 799
ACT NUMBERS:	660, 662, 596
SUMMARY:	The Acts provide for a Georgia Register of Historic Places, for the creation of property tax incentives to rehabilitate historic structures, and for allowing local governments to continue to regulate zoning and historical plans without legislative interference.
EFFECTIVE DATE:	July 1, 1989

History

Since 1966, the United States Department of the Interior has maintained the National Register of Historic Places, a listing of "districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture."¹ Federal tax credits for rehabilitating National Register properties have been available since 1981.² To date, there are over 30,000 properties in Georgia listed in the National Register,³ and over 300 million dollars in federal tax credits have been received in support of Georgia's rehabilitation efforts.⁴

1. 16 U.S.C. § 470a(a)(1)(A) (1978). 16 U.S.C. § 470 is popularly referred to as the National Historic Preservation Act. 16 U.S.C.S. § 470 (1978).

2. GEORGIA TRUST FOR HISTORIC PRESERVATION, GENERAL ASSEMBLY INSTITUTES STATEWIDE TAX INCENTIVES FOR HISTORIC PRESERVATION (Mar. 8, 1989) (copy available at Georgia State University College of Law Library) [hereinafter TAX INCENTIVES]. The tax credits are available for certain properties. The Internal Revenue Code of 1986 allows a 20% tax credit for expenditures on certified rehabilitation of historic structures. Certified rehabilitation means the building must be listed on the National Register of Historic Places and must be restored in keeping with its historic character. The Code also allows a 10% investment tax credit for renovation of other properties over 40 years old. In either case, the buildings must be income-producing property, and the investor must spend at least the value of the building in renovation. There are, however, some significant limitations. The amount of the credit is limited to \$7,000 and can be used only to offset income earned on the property. See I.R.C. §§ 46 to -49 (1986).

3. TAX INCENTIVES, *supra* note 2.

4. *Id.*

In 1988, the citizens of Georgia approved an amendment to the state constitution which would grant property tax incentives to owners of historic properties.⁵ Pursuant to that authority, the General Assembly enacted several new laws designed to further historic preservation efforts.

HB 226

The Act adds section 12-3-50.2, which provides that the Georgia Department of Natural Resources (DNR) and its Historic Preservation Section "shall establish, maintain, and expand an inventory and register of historic places" called the Georgia Register of Historic Places (Register).⁶ The Register will include all Georgia properties on the National Register.⁷ The Register will also include any other properties which meet the qualifications to be established by the DNR.⁸

The Act also provides that buildings can be removed from the Register if they fail in the future to meet the DNR qualifications.⁹ Views of architectural and historical places may change over time, and the DNR's removal authority could render the registration meaningless. Oversight of the DNR's removal authority would prevent the capricious removal of historic structures.

Experts say that capricious removal of Georgia Register properties is unlikely to occur.¹⁰ One expert states that because the DNR is the agency responsible for administering the state's National Register program, it has "plenty of experience" with the program's procedures.¹¹ The program is administered by professionals in an attempt to remove political influence from the process.¹²

The Act also provides for procedures to determine eligibility¹³ and for grievance procedures before an administrative law judge.¹⁴ The Act passed both the House and the Senate unaltered.¹⁵

5. GA. CONST. art. VII, § 1, ¶ 3(d).

6. O.C.G.A. § 12-3-50.2(a)(1) (Supp. 1989).

7. O.C.G.A. § 12-3-50.2(a)(1)(A) (Supp. 1989).

8. O.C.G.A. § 12-3-50.2(a)(1)(B) (Supp. 1989).

9. O.C.G.A. § 12-3-50.2(b) (Supp. 1989).

10. Interview with Dr. Timothy Crimmins, Director of the Heritage Preservation Program, Georgia State University, in Atlanta (Apr. 13, 1989) [hereinafter Crimmins Interview].

11. *Id.*

12. *Id.* The only question remaining is whether the DNR has the staff resources to handle the additional duties. *Id.*

13. O.C.G.A. § 12-3-50.2(c)-(d) (Supp. 1989).

14. O.C.G.A. § 12-3-50.2(e) (Supp. 1989).

15. Final Composite Status Sheet, Mar. 15, 1989. The sponsors of the bill defeated a proposed floor amendment in the House which would have prevented the grandfathering of all National Register properties in the state by requiring local government approval of properties placed on the Register. TAX INCENTIVES, *supra* note 2. Apparently, the proposal would prevent the decrease of local tax revenue in areas with large numbers of historic properties. The bill passed the House by a vote of 151 to 13. *Id.*

HB 225

Unlike HB 226, HB 225 underwent several changes in the legislative process. The Act defines the fair market value of "historic property"¹⁶ to provide an incentive for listing a property on the Georgia Register. HB 226, as introduced, provided for a seven-year freeze on property values at prerenhabilitation digested value.¹⁷ In year eight, the property value would have been increased by one-third the difference between prerenhabilitation and postrehabilitation valuation.¹⁸ In year nine, the property would have been recorded at prerenhabilitation value plus two-thirds the difference between prerenhabilitation and postrehabilitation values.¹⁹ Finally, in year ten, the property would have been recorded at its full postrehabilitation value.²⁰

When the bill was transmitted to the Senate, the Committee on Governmental Operations proposed an initial ten-year freeze on property values at the prerenhabilitation digested value, with full value to be recorded in year eleven.²¹ After disagreement, a joint House-Senate conference committee was appointed to produce a substitute. The substituted version, which passed both houses, provides for an initial eight-year freeze on property values at the prerenhabilitation digested value.²² In year nine, the property is increased by one-half the difference between prerenhabilitation and postrehabilitation values, with full value recorded in year ten.²³

A second crucial portion of HB 225 was the subject of far less disagreement. The Act defines "rehabilitated historic property."²⁴ Any property which meets the Act's four criteria is a "rehabilitated historic property" and can receive preferential property tax treatment. The four criteria are: (1) listing on the Georgia Register of Historic Places; (2) having rehabilitation standards which meet with the approval of the DNR; (3) receiving certification from the DNR as a rehabilitated structure;²⁵ and (4) being "substantially

16. O.C.G.A. § 48-5-2(1)(C) (Supp. 1989).

17. HB 225, as introduced, 1989 Ga. Gen. Assem. The term "digested value" is used as shorthand for that value which is recorded in the county tax digests as the fair market value of the subject property. See O.C.G.A. § 48-5-2(1)(C)(i) (Supp. 1989).

18. *Id.*

19. *Id.*

20. *Id.* The House Ways and Means Committee substitute did not alter these provisions. See HB 225 (HCS), 1989 Ga. Gen. Assem.

21. HB 225 (SCS), 1989 Ga. Gen. Assem.

22. O.C.G.A. § 48-5-2(1)(C) (Supp. 1989).

23. *Id.*

24. O.C.G.A. § 48-5-7.2(a)(1) (Supp. 1989).

25. O.C.G.A. § 48-5-7.2(b) (Supp. 1989). This certification will be issued pursuant to regulations issued by the DNR. Applications for certification must be accompanied by a fee to be set by the DNR regulations. *Id.* The original version of the bill contained no

rehabilitated.”²⁶ To qualify as “substantially rehabilitated,” residential property must be improved to 150 percent of its prereshabilitation value; commercial property must be improved to 200 percent of its prereshabilitation value; and, dual-use property must be improved to 175 percent of its prereshabilitation value.²⁷ The rehabilitation must have begun after January 1, 1989, and the certification must be obtained after July 1, 1989.²⁸ The certification applies to the structure, the realty it occupies, and up to two acres of surrounding realty.²⁹ In any jurisdiction which assesses tax on real property above forty percent of the property’s fair market value,³⁰ the owner of rehabilitated historic property is taxed at forty percent of the property’s fair market value.³¹ The Act includes procedures for the reclassification and registration of property with the county tax commissioner,³² and penalties if the owner fails to complete rehabilitation within the nine-year period allowed.³³

Once a property receives preferential tax treatment, it continues to have such treatment until one of four contingencies occurs: (1) the taxpayer requests that the property no longer receive preferential treatment;³⁴ (2) the taxpayer transfers the property to a tax-exempt organization;³⁵ (3) the taxpayer fails to complete rehabilitation within the prescribed period;³⁶ or (4) the property is removed from the Georgia Register due to “inappropriate rehabilitation” or a failure to possess “qualities and features which made it eligible” in the first instance.³⁷ Mere sale or transfer to anyone other than a tax-exempt organization will not disqualify the property from preferential treatment.³⁸

Persons disagreeing with any ruling of the DNR regarding the property may have a hearing before an administrative law judge if an application

application fee requirement. HB 225, as introduced, 1989 Ga. Gen. Assem. The House committee substitute added the fee provision, and all other versions of the bill retained it. HB 225 (HCS), 1989 Ga. Gen. Assem.

26. O.C.G.A. § 48-5-7.2(a)(1)(A)-(D) (Supp. 1989).

27. O.C.G.A. § 48-5-7.2(a)(1)(B) (Supp. 1989). The original version of the bill omitted the part residential, part commercial classification. HB 225, as introduced, 1989 Ga. Gen. Assem. The House committee substitute added the provision, and all other versions of the bill retained it. HB 225 (HCS), 1989 Ga. Gen. Assem.

28. O.C.G.A. § 48-5-7.2(a)(3) (Supp. 1989).

29. O.C.G.A. § 48-5-7.2(a)(2) (Supp. 1989).

30. O.C.G.A. § 48-5-7(a) (Supp. 1989) (provides that all jurisdictions assess taxable property at a minimum of 40% of its fair market value). O.C.G.A. § 48-5-7(d) (Supp. 1989) (allows counties to assess taxable property at more than 40% if they did so in 1971).

31. O.C.G.A. § 48-5-7(c) (Supp. 1989).

32. O.C.G.A. § 48-5-7.2(e) (Supp. 1989).

33. O.C.G.A. § 48-5-7.2(f) (Supp. 1989).

34. O.C.G.A. § 48-5-7.2(h)(1) (Supp. 1989).

35. O.C.G.A. § 48-5-7.2(h)(2) (Supp. 1989).

36. O.C.G.A. § 48-5-7.2(h)(4) (Supp. 1989).

37. O.C.G.A. § 48-5-7.2(h)(3) (Supp. 1989).

38. *Id.*

is filed within thirty days of the DNR's action.³⁹ The deferred property taxes, which must be paid if the property is not rehabilitated, are considered a lien on the property which attaches at the end of the prescribed time period.⁴⁰

HB 799

This amendment expands the scope of section 44-10-23, of the Georgia Historical Preservation Act; local governments which had historic preservation ordinances in place as of March 31, 1980, are made exempt from this Act.⁴¹ The amendment authorizes certain cities and counties to replace completely or to amend existing ordinances without losing the exemption.⁴² Further, the amendment authorizes the creation of "historic districts, zones, or sites."⁴³

The bill was introduced by the Atlanta delegation primarily to effect changes by the city's Urban Design Commission.⁴⁴ After the creation of the city's Preservation Plan, the Commission intends to classify certain structures as city landmarks pursuant to a new landmark ordinance. Classification would result in restrictions on exterior and interior alterations and on demolition of landmark properties.⁴⁵

Summary

This package of legislation provides incentives to restore and rehabilitate, not just to renovate, historic structures. The Georgia General Assembly responded to public concern about the destruction of famous state landmarks such as the Atlanta Terminal and the Loew's Grand Theater,⁴⁶ and the near destruction of the Fox Theater. The package enables property buyers to take advantage of tax savings for both commercial and residential properties and compliments the federal investment tax credit for commercial properties. The state package now provides an incentive for the average homeowner to participate in the preservation of Georgia heritage, which is crucial to the success of any

39. O.C.G.A. § 48-5-7.2(i) (Supp. 1989).

40. O.C.G.A. § 48-5-7.2(j) (Supp. 1989). The original version of the bill contained no lien provision. HB 225, as introduced, 1989 Ga. Gen. Assem. The House committee substitute added the provision, and all subsequent versions retained it. HB 225 (HCS), 1989 Ga. Gen. Assem.

41. O.C.G.A. § 44-10-23 (Supp. 1989). The Act enables the cities of Atlanta, Augusta, Columbus, Macon, and Savannah to alter or replace their existing ordinances and still comply with the Georgia Historic Preservation Act of 1980. *Id.*

42. *Id.*

43. *Id.*

44. Crimmins Interview, *supra* note 10.

45. *Id.*

46. The Grand was the site of the 1939 world premier of *Gone With The Wind*.

statewide heritage preservation program.⁴⁷ The package also allows local governments to continue their own efforts to retain their historical structures, thus preserving their local character and history.

B. Herrin

47. Crimmins Interview, *supra* note 10.