

Senate Bill 390

By: Senator Carter of the 1st

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 37 of Title 36 of the Official Code of Georgia Annotated, relating to the
2 acquisition and disposition of real and personal property generally, so as to provide for
3 definitions; to provide that a municipal corporation may determine when it is appropriate to
4 establish a conservation easement; to provide for related matters; to provide for an effective
5 date; to repeal conflicting laws; and for other purposes.

6 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

7 **SECTION 1.**

8 Chapter 37 of Title 36 of the Official Code of Georgia Annotated, relating to the acquisition
9 and disposition of real and personal property generally, is amended by revising subsection
10 (a) of Code Section 36-37-6, relating to the sale or disposition of municipal property, as
11 follows:

12 "(a) Except as otherwise provided in subsections (b) through ~~(i)~~(j) of this Code section, the
13 governing authority of any municipal corporation disposing of any real or personal
14 property of such municipal corporation shall make all such sales to the highest responsible
15 bidder, either by sealed bids or by auction after due notice has been given. Any such
16 municipal corporation shall have the right to reject any and all bids or to cancel any
17 proposed sale. The governing authority of the municipal corporation shall cause notice to
18 be published once in the official legal organ of the county in which the municipality is
19 located or in a newspaper of general circulation in the community, not less than 15 days
20 nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids,
21 preceding the last day for the receipt of proposals. The legal notice shall include a general
22 description of the property to be sold if the property is personal property or a legal
23 description of the property to be sold if the property is real property. If the sale is by sealed
24 bids, the notice shall also contain an invitation for proposals and shall state the conditions
25 of the proposed sale, the address at which bid blanks and other written materials connected
26 with the proposed sale may be obtained, and the date, time, and place for the opening of

27 bids. If the sale is by auction, the notice shall also contain the conditions of the proposed
 28 sale and shall state the date, time, and place of the proposed sale. Bids received in
 29 connection with a sale by sealed bidding shall be opened in public at the time and place
 30 stated in the legal notice. A tabulation of all bids received shall be available for public
 31 inspection following the opening of all bids. All such bids shall be retained and kept
 32 available for public inspection for a period of not less than 60 days from the date on which
 33 such bids are opened. The provisions of this subsection shall not apply to any transactions
 34 authorized in subsections (b) through ~~(i)~~(j) of this Code section."

35 **SECTION 2.**

36 Said chapter is further amended in Code Section 36-37-6, relating to the sale or disposition
 37 of municipal property, by revising subsection (j) as follows:

38 "(j)(1) As used in this subsection, the term:

39 (A) 'Conservation easement' shall have the same meaning as set forth in Code Section
 40 44-10-2.

41 (B) 'Holder' shall have the same meaning as set forth in Code Section 44-10-2.

42 (2) Notwithstanding any provision of this Code section or of any other law or ordinance
 43 to the contrary, whenever the governing authority of any municipal corporation
 44 determines that the establishment of a conservation easement would be of benefit to the
 45 municipal corporation and to its citizens, such governing authority may sell or grant to
 46 any holder a conservation easement over any of its real property, including but not
 47 limited to any of its real property set aside for use as a park. These powers shall be
 48 cumulative of other powers and shall not be deemed to limit their exercise in any way.

49 (k)(1) Notwithstanding any provision of this Code section or any other law to the
 50 contrary, the General Assembly by local Act may authorize the governing authority of
 51 any municipal corporation to lease or enter into a contract for a valuable consideration
 52 for the operation and management, and renewals and extensions thereof, of any real or
 53 personal property comprising fairgrounds, ballfields, golf courses, swimming pools, or
 54 other like property used primarily for recreational purposes for a period not to exceed five
 55 years to a nonprofit corporation which is qualified as exempt from taxation under the
 56 provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 that will covenant
 57 to use and operate the property for annual regional fair purposes or to continue the
 58 recreational purpose for which the property was formerly used and intended on a
 59 nondiscriminatory basis for the use and benefit of all citizens of the community;
 60 provided, however, that nothing in this subsection shall have the effect of authorizing
 61 alienation of title to such property in derogation of rights, duties, and obligations imposed
 62 by prior deed, contract, or like document of similar import or that would cause the

63 divesting of title to property dedicated to public use and not subsequently abandoned; and
64 provided further, that the lessee or contractee under a management contract shall not
65 mortgage or pledge the property as security for any debt or incur any encumbrance that
66 could result in a lien or claim of lien against the property. The lease or management
67 contract may provide for options to renew such lease or management contract for not
68 more than three renewal periods and each such renewal period shall not be greater than
69 the original length of such lease or management contract. As a condition of any lease or
70 management contract, the lessee or contractee shall provide and maintain in force and
71 effect throughout the term of such lease or management contract sufficient liability
72 insurance, in an amount not less than \$1 million per claim, no aggregate, naming the
73 municipality as a named insured; shall assume sole responsibility for or incur liability for
74 any injury to person or property caused by any act or omission of such person while on
75 the property; and shall agree to indemnify the municipality and hold it harmless from any
76 claim, suit, or demand made by such person. As an additional condition of any such lease
77 or management contract, the lessee or contractee shall provide to and maintain with the
78 municipality a current copy of the liability insurance policy, including any changes in
79 such policy or coverages as such changes occur, and shall provide proof monthly in
80 writing to the municipality that the lessee or contractee has in force and effect the liability
81 insurance required by this paragraph which the municipality shall retain on file. As a
82 further condition of any lease or management contract, the lessee or contractee shall agree
83 to indemnify the municipality and hold it harmless from any claim, suit, or demand
84 arising out of any improvements to the property or any indebtedness or obligations
85 incurred by the lessee or contractee in making any such improvements to such property.
86 When the lessee or contractee charges any person to enter or go upon the land for the
87 purpose of attending the annual regional fair or for attending or participating in
88 recreational purposes, the consideration received by the municipal corporation for the
89 lease or management contract shall not be deemed a charge within the meaning of Article
90 2 of Chapter 3 of Title 51.

91 (2) Any governing authority entering into a lease as provided in paragraph (1) of this
92 subsection shall have the right unilaterally to terminate such lease after giving three
93 months' notice of its intention to do so.

94 (3) Any lease entered into as provided in paragraph (1) of this subsection shall be
95 automatically terminated upon conviction of the lessee or contractee for any offense
96 involving the conduct of unlawful activity. In such event, any improvements to the
97 property made by the lessee shall be forfeited. The municipality shall not be liable in any
98 manner or subject to suit for any indebtedness or other obligations of the lessee or

99 contractee associated with any such improvements to the property and shall take such
100 improvements free and clear of any such indebtedness or other obligations.

101 (1)(1) In addition to any other authorization or power, the governing authority of any
102 municipal corporation may lease or enter into a contract for valuable consideration for the
103 use, operation, or management of any real or personal property of the municipal
104 corporation; provided, however, that:

105 (A) Any lease or contract for the use, operation, or management of any real or personal
106 property for longer than 30 days shall be by sealed bids or by auction as provided in
107 subsection (a) of this Code section;

108 (B) Nothing in this subsection shall have the effect of authorizing alienation of title to
109 such property in derogation of rights, duties, and obligations imposed by prior deed,
110 contract, or like document of similar import or shall cause the divesting of title to
111 property dedicated to public use and not subsequently abandoned; and

112 (C) The lessee or contractee shall not mortgage or pledge the property, lease or
113 contract the property as security for any debt, or incur any encumbrance that could
114 result in a lien or claim of lien against the property, lease, or contract.

115 (2) As a condition of any lease or contract for the use, operation, or management of any
116 real or personal property for longer than 30 days:

117 (A) The lessee or contractee shall provide and maintain in force in effect throughout
118 the term of such lease or contract sufficient liability insurance, in an amount not less
119 than \$1 million per claim, no aggregate, naming the municipality as a named insured;

120 (B) The lessee or contractee shall assume sole responsibility for or incur liability for
121 any injury to person or property caused by any act or omission of any person while on
122 the property and shall agree to indemnify the municipality and hold it harmless from
123 any claim, suit, or demand made by any person; and

124 (C) The lessee or contractee shall agree to indemnify the municipality and hold it
125 harmless from any claim, suit, or demand arising out of any improvements to the
126 property or any indebtedness or obligations incurred by the lessee or contractee in
127 making any such improvement to such property.

128 (3) The initial term of a lease or contract for the use of real property shall be no longer
129 than five years and there may be one renewal period of no longer than five years, after
130 which the lease or contract shall again be subject to sealed bids or auction. When the
131 lessee or contractee charges any person to enter or go upon the real property for
132 recreational purposes, the consideration received by the municipal corporation for the
133 lease or contract shall not be deemed a charge within the meaning of Article 2 of Chapter
134 3 of Title 51.

135 (4) This subsection shall apply to any lease or contract entered into or renewed on or
136 after July 1, 2010. This subsection shall not effect any provisions of subsection (k) of this
137 Code section."

138 **SECTION 3.**

139 This Act shall become effective upon its approval by the Governor or upon its becoming law
140 without such approval.

141 **SECTION 4.**

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