

The House Committee on Natural Resources and Environment offers the following substitute to HB 1109:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,
2 so as to authorize counties and municipal corporations to grant conservation easements; to
3 define certain terms; to provide for related matters; to provide for an effective date; to repeal
4 conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
8 by revising Code Section 36-9-3, relating to disposition of county real property generally,
9 the right of certain counties to make private sale, and the right of county to negotiate and
10 consummate private sales of recreational set-asides, by adding a new subsection to read as
11 follows:

12 "(i)(1) As used in this subsection, the terms 'conservation easement' and 'holder' shall
13 have the meanings as set forth in Code Section 44-10-2.
14 (2) Notwithstanding any provision of this Code section or of any other law, ordinance,
15 or resolution to the contrary, whenever the governing authority of any county determines
16 that the establishment of a conservation easement would be of benefit to the county and
17 to its citizens by way of retaining or protecting natural, scenic, or open-space values of
18 real property; assuring the availability of the property for agricultural, forest, recreational,
19 or open-space use; protecting natural resources; maintaining or enhancing air or water
20 quality; or preserving the historical, architectural, archeological, or cultural aspects of the
21 property, such governing authority may sell or grant to any holder a conservation
22 easement over any of its real property, including but not limited to any of its real property
23 set aside for use as a park. These powers shall be cumulative of other powers and shall
24 not be deemed to limit their exercise in any way."

25 **SECTION 2.**

26 Said title is further amended by revising Code Section 36-37-6, relating to disposition of
27 municipal property generally, as follows:

28 "36-37-6.

29 (a) Except as otherwise provided in subsections (b) through ~~(i)~~(j) of this Code section, the
30 governing authority of any municipal corporation disposing of any real or personal
31 property of such municipal corporation shall make all such sales to the highest responsible
32 bidder, either by sealed bids or by auction after due notice has been given. Any such
33 municipal corporation shall have the right to reject any and all bids or to cancel any
34 proposed sale. The governing authority of the municipal corporation shall cause notice to
35 be published once in the official legal organ of the county in which the municipality is
36 located or in a newspaper of general circulation in the community, not less than 15 days
37 nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids,
38 preceding the last day for the receipt of proposals. The legal notice shall include a general
39 description of the property to be sold if the property is personal property or a legal
40 description of the property to be sold if the property is real property. If the sale is by sealed
41 bids, the notice shall also contain an invitation for proposals and shall state the conditions
42 of the proposed sale, the address at which bid blanks and other written materials connected
43 with the proposed sale may be obtained, and the date, time, and place for the opening of
44 bids. If the sale is by auction, the notice shall also contain the conditions of the proposed
45 sale and shall state the date, time, and place of the proposed sale. Bids received in
46 connection with a sale by sealed bidding shall be opened in public at the time and place
47 stated in the legal notice. A tabulation of all bids received shall be available for public
48 inspection following the opening of all bids. All such bids shall be retained and kept
49 available for public inspection for a period of not less than 60 days from the date on which
50 such bids are opened. The provisions of this subsection shall not apply to any transactions
51 authorized in subsections (b) through (i) of this Code section.

52 (b) The governing authority of any municipal corporation is authorized to sell personal
53 property belonging to the municipal corporation which has an estimated value of \$500.00
54 or less and lots from any municipal cemetery, regardless of value, without regard to
55 subsection (a) of this Code section. Such sales may be made in the open market without
56 advertisement and without the acceptance of bids. The estimation of the value of any such
57 personal property to be sold shall be in the sole and absolute discretion of the governing
58 authorities of the municipal corporation or their designated agent.

59 (c) Nothing in this Code section shall prevent a municipal corporation from trading or
60 exchanging real property belonging to the municipal corporation for other real property
61 where the property so acquired by exchange shall be of equal or greater value than the

62 property previously belonging to the municipal corporation; provided, however, that within
63 six weeks preceding the closing of any such proposed exchange of real property, a notice
64 of the proposed exchange of real property shall be published in the official organ of the
65 municipal corporation once a week for four weeks. The value of both the property
66 belonging to the municipal corporation and that to be acquired through the exchange shall
67 be determined by appraisals and the value so determined shall be approved by the proper
68 authorities of said municipal corporation.

69 (d) The governing authority of any municipal corporation is authorized to sell real property
70 in established municipal industrial parks or in municipally designated industrial
71 development areas for industrial development purposes without regard to subsection (a)
72 or (b) of this Code section.

73 (e)(1) This Code section shall not apply to any municipal corporation which has a
74 municipal charter provision setting forth procedures for the sale of municipal property
75 and existing as of January 1, 1976, so long as such charter provision thereafter remains
76 unchanged and as long as such charter provision contains the minimum notice
77 requirements as set forth in subsection (a) of this Code section.

78 (2) This Code section shall not apply to the disposal of property:

79 (A) Which is acquired by deed of gift, will, or donation and is subject to such
80 conditions as may be specified in the instrument giving or donating the property;

81 (B) Which is received from the United States government or from this state pursuant
82 to a program which imposes conditions on the disposal of such property;

83 (C) Which is disposed of pursuant to the powers granted in Chapter 61 of this title, the
84 'Urban Redevelopment Law,' or a homesteading program;

85 (D) Which is sold or transferred to another governing authority or government agency
86 for public purposes; or

87 (E) Which is no longer needed for public road purposes and which is disposed of
88 pursuant to Code Section 32-7-4.

89 (f) Notwithstanding any provision of this Code section or of any other law or any
90 ordinance to the contrary, the governing authority of any municipal corporation is
91 authorized to sell real property within its corporate limits for museum purposes to either
92 a public authority or a nonprofit corporation which is classified as a public foundation (not
93 a private foundation) under the United States Internal Revenue Code, for the purpose of
94 building, erecting, and operating thereon a museum or facility for the development or
95 practice of the arts. Such sale may be made in the open market or by direct negotiations
96 without advertisement and without the acceptance of bids. The estimation of the value of
97 any property to be sold shall be in the sole and absolute discretion of the governing
98 authority of the municipality or its designated agent; provided, however, that nothing shall

99 prevent a municipality from trading or swapping property with another property owner if
100 such trade or swap is deemed to be in the best interest of the municipality.

101 (g) Notwithstanding any provision of this Code section or of any other law or ordinance
102 to the contrary, the governing authority of any municipal corporation is authorized to sell
103 and convey parcels of narrow strips of land, so shaped or so small as to be incapable of
104 being used independently as zoned or under applicable subdivision or other development
105 ordinances, or as streets, whether owned in fee or used by easement, to abutting property
106 owners where such sales and conveyances facilitate the enjoyment of the highest and best
107 use of the abutting owner's property without first submitting the sale or conveyance to the
108 process of an auction or the solicitation of sealed bids; provided, however, that each
109 abutting property owner shall be notified of the availability of the property and shall have
110 the opportunity to purchase said property under such terms and conditions as set out by
111 ordinance.

112 (h) Notwithstanding any provision of this Code section to the contrary or any other
113 provision of law or ordinance to the contrary, whenever any municipal corporation
114 determines that the establishment of a facility of the state or one of its authorities or other
115 instrumentalities or of a bona fide nonprofit resource conservation and development
116 council would be of benefit to the municipal corporation, by way of providing activities in
117 an area in need of redevelopment, by continuing or enhancing local employment
118 opportunities, or by other means or in other ways, such municipal corporation may sell or
119 grant any of its real or personal property to the state or to any of its authorities or
120 instrumentalities or to a bona fide nonprofit resource conservation and development council
121 and, further, may sell or grant such lesser interests, rental agreements, licenses, easements,
122 and other dispositions as it may determine necessary or convenient. These powers shall be
123 cumulative of other powers and shall not be deemed to limit their exercise in any way.

124 (i)(1) As used in this subsection, the term 'lake' means an impoundment of water in
125 which at least 1,000 acres of land were to be submerged.

126 (2) Notwithstanding any provision of this Code section or any other law to the contrary,
127 whenever any municipality has acquired property for the creation or development of a
128 lake, including but not limited to property the acquisition of which was reasonably
129 necessary or incidental to the creation or development of that lake, and the governing
130 authority of such municipality thereafter determines that all or any part of the property
131 or any interest therein is no longer needed for such purposes because of changed
132 conditions, that municipality is authorized to dispose of such property or interest therein
133 as provided in this subsection.

134 (3) In disposing of property, as authorized under this subsection, the municipality shall
135 notify the owner of such property at the time of its acquisition or, if the tract from which

136 the municipality acquired its property has been subsequently sold, shall notify the owner
137 of abutting land holding title through the owner from whom the municipality acquired its
138 property. The notice shall be in writing delivered to the appropriate owner or by
139 publication if such owner's address is unknown; and such owner shall have the right to
140 acquire, as provided in this subsection, the property with respect to which the notice is
141 given. Publication, if necessary, shall be in a newspaper of general circulation in the
142 municipality where the property is located.

143 (4) When an entire parcel acquired by the municipality or any interest therein is being
144 disposed of, it may be acquired under the right created in paragraph (3) of this subsection
145 at such price as may be agreed upon, but in no event less than the price paid for its
146 acquisition. When only remnants or portions of the original acquisition are being
147 disposed of, they may be acquired for the market value thereof at the time the
148 municipality decides the property is no longer needed.

149 (5) If the right of acquisition is not exercised within 60 days after due notice, the
150 municipality shall proceed to sell such property as provided in subsection (a) of this Code
151 section. The municipality shall thereupon have the right to reject any and all bids, in its
152 discretion, to readvertise, or to abandon the sale.

153 (j)(1) As used in this subsection, the terms 'conservation easement' and 'holder' shall have
154 the meanings as set forth in Code Section 44-10-2.

155 (2) Notwithstanding any provision of this Code section or of any other law, ordinance,
156 or resolution to the contrary, whenever the governing authority of any municipal
157 corporation determines that the establishment of a conservation easement would be of
158 benefit to the municipal corporation and to its citizens by way of retaining or protecting
159 natural, scenic, or open-space values of real property; assuring the availability of the
160 property for agricultural, forest, recreational, or open-space use; protecting natural
161 resources; maintaining or enhancing air or water quality; or preserving the historical,
162 architectural, archeological, or cultural aspects of the property, such governing authority
163 may sell or grant to any holder a conservation easement over any of its real property,
164 including but not limited to any of its real property set aside for use as a park. These
165 powers shall be cumulative of other powers and shall not be deemed to limit their
166 exercise in any way.

167 (k)(1) Notwithstanding any provision of this Code section or any other law to the
168 contrary, the General Assembly by local Act may authorize the governing authority of
169 any municipal corporation to lease or enter into a contract for a valuable consideration
170 for the operation and management, and renewals and extensions thereof, of any real or
171 personal property comprising fairgrounds, ballfields, golf courses, swimming pools, or
172 other like property used primarily for recreational purposes for a period not to exceed five

173 years to a nonprofit corporation which is qualified as exempt from taxation under the
174 provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 that will covenant
175 to use and operate the property for annual regional fair purposes or to continue the
176 recreational purpose for which the property was formerly used and intended on a
177 nondiscriminatory basis for the use and benefit of all citizens of the community;
178 provided, however, that nothing in this subsection shall have the effect of authorizing
179 alienation of title to such property in derogation of rights, duties, and obligations imposed
180 by prior deed, contract, or like document of similar import or that would cause the
181 divesting of title to property dedicated to public use and not subsequently abandoned; and
182 provided further, that the lessee or contractee under a management contract shall not
183 mortgage or pledge the property as security for any debt or incur any encumbrance that
184 could result in a lien or claim of lien against the property. The lease or management
185 contract may provide for options to renew such lease or management contract for not
186 more than three renewal periods and each such renewal period shall not be greater than
187 the original length of such lease or management contract. As a condition of any lease or
188 management contract, the lessee or contractee shall provide and maintain in force and
189 effect throughout the term of such lease or management contract sufficient liability
190 insurance, in an amount not less than \$1 million per claim, no aggregate, naming the
191 municipality as a named insured; shall assume sole responsibility for or incur liability for
192 any injury to person or property caused by any act or omission of such person while on
193 the property; and shall agree to indemnify the municipality and hold it harmless from any
194 claim, suit, or demand made by such person. As an additional condition of any such lease
195 or management contract, the lessee or contractee shall provide to and maintain with the
196 municipality a current copy of the liability insurance policy, including any changes in
197 such policy or coverages as such changes occur, and shall provide proof monthly in
198 writing to the municipality that the lessee or contractee has in force and effect the liability
199 insurance required by this paragraph which the municipality shall retain on file. As a
200 further condition of any lease or management contract, the lessee or contractee shall agree
201 to indemnify the municipality and hold it harmless from any claim, suit, or demand
202 arising out of any improvements to the property or any indebtedness or obligations
203 incurred by the lessee or contractee in making any such improvements to such property.
204 When the lessee or contractee charges any person to enter or go upon the land for the
205 purpose of attending the annual regional fair or for attending or participating in
206 recreational purposes, the consideration received by the municipal corporation for the
207 lease or management contract shall not be deemed a charge within the meaning of Article
208 2 of Chapter 3 of Title 51.

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

212 (3) Any lease entered into as provided in paragraph (1) of this subsection shall be
213 automatically terminated upon conviction of the lessee or contractee for any offense
214 involving the conduct of unlawful activity. In such event, any improvements to the
215 property made by the lessee shall be forfeited. The municipality shall not be liable in any
216 manner or subject to suit for any indebtedness or other obligations of the lessee or
217 contractee associated with any such improvements to the property and shall take such
218 improvements free and clear of any such indebtedness or other obligations."

219 **SECTION 3.**

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

222 **SECTION 4.**

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