

The House Committee on Judiciary offers the following substitute to SB 390:

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; provided, however, that a conservation  
25 easement shall not be created, granted, or otherwise conveyed for the purpose of  
26 preventing, frustrating, or interfering with the exercise of the power of eminent domain  
27 by any public utility or other entity authorized to exercise the power of eminent domain."

28 **SECTION 2.**

29 Said title is further amended by revising Code Section 36-37-6, relating to the sale or  
30 disposition of municipal property, as follows:

31 "36-37-6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

157 (A) 'Conservation easement' shall have the same meaning as set forth in Code Section  
 158 44-10-2.

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

160 (2) Notwithstanding any provision of this Code section or of any other law or ordinance  
 161 to the contrary, whenever the governing authority of any municipal corporation  
 162 determines that the establishment of a conservation easement would be of benefit to the  
 163 municipal corporation and to its citizens, such governing authority may sell or grant to  
 164 any holder a conservation easement over any of its real property, including but not  
 165 limited to any of its real property set aside for use as a park. These powers shall be  
 166 cumulative of other powers and shall not be deemed to limit their exercise in any way  
 167 provided, however, that a conservation easement may not be created, granted, or  
 168 otherwise conveyed for the purpose of preventing, frustrating, or interfering with the  
 169 exercise of the power of eminent domain by any public utility or other entity authorized  
 170 to exercise the power of eminent domain.

171 (k)(1) Notwithstanding any provision of this Code section or any other law to the  
 172 contrary, the General Assembly by local Act may authorize the governing authority of  
 173 any municipal corporation to lease or enter into a contract for a valuable consideration  
 174 for the operation and management, and renewals and extensions thereof, of any real or  
 175 personal property comprising fairgrounds, ballfields, golf courses, swimming pools, or

176 other like property used primarily for recreational purposes for a period not to exceed five  
177 years to a nonprofit corporation which is qualified as exempt from taxation under the  
178 provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 that will covenant  
179 to use and operate the property for annual regional fair purposes or to continue the  
180 recreational purpose for which the property was formerly used and intended on a  
181 nondiscriminatory basis for the use and benefit of all citizens of the community;  
182 provided, however, that nothing in this subsection shall have the effect of authorizing  
183 alienation of title to such property in derogation of rights, duties, and obligations imposed  
184 by prior deed, contract, or like document of similar import or that would cause the  
185 divesting of title to property dedicated to public use and not subsequently abandoned; and  
186 provided further, that the lessee or contractee under a management contract shall not  
187 mortgage or pledge the property as security for any debt or incur any encumbrance that  
188 could result in a lien or claim of lien against the property. The lease or management  
189 contract may provide for options to renew such lease or management contract for not  
190 more than three renewal periods and each such renewal period shall not be greater than  
191 the original length of such lease or management contract. As a condition of any lease or  
192 management contract, the lessee or contractee shall provide and maintain in force and  
193 effect throughout the term of such lease or management contract sufficient liability  
194 insurance, in an amount not less than \$1 million per claim, no aggregate, naming the  
195 municipality as a named insured; shall assume sole responsibility for or incur liability for  
196 any injury to person or property caused by any act or omission of such person while on  
197 the property; and shall agree to indemnify the municipality and hold it harmless from any  
198 claim, suit, or demand made by such person. As an additional condition of any such lease  
199 or management contract, the lessee or contractee shall provide to and maintain with the  
200 municipality a current copy of the liability insurance policy, including any changes in  
201 such policy or coverages as such changes occur, and shall provide proof monthly in  
202 writing to the municipality that the lessee or contractee has in force and effect the liability  
203 insurance required by this paragraph which the municipality shall retain on file. As a  
204 further condition of any lease or management contract, the lessee or contractee shall agree  
205 to indemnify the municipality and hold it harmless from any claim, suit, or demand  
206 arising out of any improvements to the property or any indebtedness or obligations  
207 incurred by the lessee or contractee in making any such improvements to such property.  
208 When the lessee or contractee charges any person to enter or go upon the land for the  
209 purpose of attending the annual regional fair or for attending or participating in  
210 recreational purposes, the consideration received by the municipal corporation for the  
211 lease or management contract shall not be deemed a charge within the meaning of Article  
212 2 of Chapter 3 of Title 51.

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

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

223 (1)(1) In addition to any other authorization or power, the governing authority of any  
 224 municipal corporation may lease or enter into a contract for valuable consideration for  
 225 the use, operation, or management of any real or personal property of the municipal  
 226 corporation; provided, however, that:

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

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

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

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

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

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

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

250 (3) The initial term of a lease or contract for the use of real property shall be no longer  
251 than five years and there may be one renewal period of no longer than five years, after  
252 which the lease or contract shall again be subject to sealed bids or auction. When the  
253 lessee or contractee charges any person to enter or go upon the real property for  
254 recreational purposes, the consideration received by the municipal corporation for the  
255 lease or contract shall not be deemed a charge within the meaning of Article 2 of Chapter  
256 3 of Title 51.  
257 (4) This subsection shall apply to any lease or contract entered into or renewed on or  
258 after July 1, 2010. This subsection shall not effect any provisions of subsection (k) of this  
259 Code section."

260 **SECTION 3.**

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

263 **SECTION 4.**

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