

Senate Bill 390

By: Senator Carter of the 1st

AS PASSED

A BILL TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

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

(2) Notwithstanding any provision of this Code section or of any other law, ordinance, or resolution to the contrary, whenever the governing authority of any county determines that the establishment of a conservation easement would be of benefit to the county and to its citizens by way of retaining or protecting natural, scenic, or open-space values of real property; assuring the availability of the property for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of the property, such governing authority may sell or grant to any holder a conservation easement over any of its real property, including but not limited to any of its real property set aside for use as a park. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way; provided, however, that a conservation easement shall not be created, granted, or otherwise conveyed for the purpose of preventing, frustrating, or interfering with the exercise of the power of eminent domain by any public utility or other entity authorized to exercise the power of eminent domain."

SECTION 2.

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

"36-37-6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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