

Senate Bill 390

By: Senator Carter of the 1st

AS PASSED

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.