

House Bill 1109

By: Representative Stephens of the 164th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 37 of Title 36 of the Official Code of Georgia Annotated, relating to
2 acquisition and disposition of property, so as to authorize municipal corporations to grant
3 conservation easements; to define certain terms; to provide for related matters; to provide for
4 an effective date; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 style="text-align:center">**SECTION 1.**

7 Chapter 37 of Title 36 of the Official Code of Georgia Annotated, relating to acquisition and
8 disposition of property, is amended by revising Code Section 36-37-6, relating to disposition
9 of municipal property generally, as follows:

10 "36-37-6.

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

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

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

41 (c) Nothing in this Code section shall prevent a municipal corporation from trading or
42 exchanging real property belonging to the municipal corporation for other real property
43 where the property so acquired by exchange shall be of equal or greater value than the
44 property previously belonging to the municipal corporation; provided, however, that within
45 six weeks preceding the closing of any such proposed exchange of real property, a notice
46 of the proposed exchange of real property shall be published in the official organ of the
47 municipal corporation once a week for four weeks. The value of both the property
48 belonging to the municipal corporation and that to be acquired through the exchange shall
49 be determined by appraisals and the value so determined shall be approved by the proper
50 authorities of said municipal corporation.

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

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

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

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

- 63 (B) Which is received from the United States government or from this state pursuant
64 to a program which imposes conditions on the disposal of such property;
- 65 (C) Which is disposed of pursuant to the powers granted in Chapter 61 of this title, the
66 'Urban Redevelopment Law,' or a homesteading program;
- 67 (D) Which is sold or transferred to another governing authority or government agency
68 for public purposes; or
- 69 (E) Which is no longer needed for public road purposes and which is disposed of
70 pursuant to Code Section 32-7-4.
- 71 (f) Notwithstanding any provision of this Code section or of any other law or any
72 ordinance to the contrary, the governing authority of any municipal corporation is
73 authorized to sell real property within its corporate limits for museum purposes to either
74 a public authority or a nonprofit corporation which is classified as a public foundation (not
75 a private foundation) under the United States Internal Revenue Code, for the purpose of
76 building, erecting, and operating thereon a museum or facility for the development or
77 practice of the arts. Such sale may be made in the open market or by direct negotiations
78 without advertisement and without the acceptance of bids. The estimation of the value of
79 any property to be sold shall be in the sole and absolute discretion of the governing
80 authority of the municipality or its designated agent; provided, however, that nothing shall
81 prevent a municipality from trading or swapping property with another property owner if
82 such trade or swap is deemed to be in the best interest of the municipality.
- 83 (g) Notwithstanding any provision of this Code section or of any other law or ordinance
84 to the contrary, the governing authority of any municipal corporation is authorized to sell
85 and convey parcels of narrow strips of land, so shaped or so small as to be incapable of
86 being used independently as zoned or under applicable subdivision or other development
87 ordinances, or as streets, whether owned in fee or used by easement, to abutting property
88 owners where such sales and conveyances facilitate the enjoyment of the highest and best
89 use of the abutting owner's property without first submitting the sale or conveyance to the
90 process of an auction or the solicitation of sealed bids; provided, however, that each
91 abutting property owner shall be notified of the availability of the property and shall have
92 the opportunity to purchase said property under such terms and conditions as set out by
93 ordinance.
- 94 (h) Notwithstanding any provision of this Code section to the contrary or any other
95 provision of law or ordinance to the contrary, whenever any municipal corporation
96 determines that the establishment of a facility of the state or one of its authorities or other
97 instrumentalities or of a bona fide nonprofit resource conservation and development
98 council would be of benefit to the municipal corporation, by way of providing activities in
99 an area in need of redevelopment, by continuing or enhancing local employment

100 opportunities, or by other means or in other ways, such municipal corporation may sell or
101 grant any of its real or personal property to the state or to any of its authorities or
102 instrumentalities or to a bona fide nonprofit resource conservation and development council
103 and, further, may sell or grant such lesser interests, rental agreements, licenses, easements,
104 and other dispositions as it may determine necessary or convenient. These powers shall be
105 cumulative of other powers and shall not be deemed to limit their exercise in any way.

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

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

116 (3) In disposing of property, as authorized under this subsection, the municipality shall
117 notify the owner of such property at the time of its acquisition or, if the tract from which
118 the municipality acquired its property has been subsequently sold, shall notify the owner
119 of abutting land holding title through the owner from whom the municipality acquired its
120 property. The notice shall be in writing delivered to the appropriate owner or by
121 publication if such owner's address is unknown; and such owner shall have the right to
122 acquire, as provided in this subsection, the property with respect to which the notice is
123 given. Publication, if necessary, shall be in a newspaper of general circulation in the
124 municipality where the property is located.

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

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

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

137 (2) Notwithstanding any provision of this Code section or of any other law or any
138 ordinance to the contrary, whenever the governing authority of any municipal corporation
139 determines that the establishment of a conservation easement would be of benefit to the
140 municipal corporation and to its citizens by way of retaining or protecting natural, scenic,
141 or open-space values of real property; assuring the availability of the property for
142 agricultural, forest, recreational, or open-space use; protecting natural resources;
143 maintaining or enhancing air or water quality; or preserving the historical, architectural,
144 archeological, or cultural aspects of the property, such governing authority may sell or
145 grant to any holder a conservation easement over any of its real property, including but
146 not limited to any of its real property set aside for use as a park. These powers shall be
147 cumulative of other powers and shall not be deemed to limit their exercise in any way.
148 (k)(1) Notwithstanding any provision of this Code section or any other law to the
149 contrary, the General Assembly by local Act may authorize the governing authority of
150 any municipal corporation to lease or enter into a contract for a valuable consideration
151 for the operation and management, and renewals and extensions thereof, of any real or
152 personal property comprising fairgrounds, ballfields, golf courses, swimming pools, or
153 other like property used primarily for recreational purposes for a period not to exceed five
154 years to a nonprofit corporation which is qualified as exempt from taxation under the
155 provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 that will covenant
156 to use and operate the property for annual regional fair purposes or to continue the
157 recreational purpose for which the property was formerly used and intended on a
158 nondiscriminatory basis for the use and benefit of all citizens of the community;
159 provided, however, that nothing in this subsection shall have the effect of authorizing
160 alienation of title to such property in derogation of rights, duties, and obligations imposed
161 by prior deed, contract, or like document of similar import or that would cause the
162 divesting of title to property dedicated to public use and not subsequently abandoned; and
163 provided further, that the lessee or contractee under a management contract shall not
164 mortgage or pledge the property as security for any debt or incur any encumbrance that
165 could result in a lien or claim of lien against the property. The lease or management
166 contract may provide for options to renew such lease or management contract for not
167 more than three renewal periods and each such renewal period shall not be greater than
168 the original length of such lease or management contract. As a condition of any lease or
169 management contract, the lessee or contractee shall provide and maintain in force and
170 effect throughout the term of such lease or management contract sufficient liability
171 insurance, in an amount not less than \$1 million per claim, no aggregate, naming the
172 municipality as a named insured; shall assume sole responsibility for or incur liability for
173 any injury to person or property caused by any act or omission of such person while on

174 the property; and shall agree to indemnify the municipality and hold it harmless from any
175 claim, suit, or demand made by such person. As an additional condition of any such lease
176 or management contract, the lessee or contractee shall provide to and maintain with the
177 municipality a current copy of the liability insurance policy, including any changes in
178 such policy or coverages as such changes occur, and shall provide proof monthly in
179 writing to the municipality that the lessee or contractee has in force and effect the liability
180 insurance required by this paragraph which the municipality shall retain on file. As a
181 further condition of any lease or management contract, the lessee or contractee shall agree
182 to indemnify the municipality and hold it harmless from any claim, suit, or demand
183 arising out of any improvements to the property or any indebtedness or obligations
184 incurred by the lessee or contractee in making any such improvements to such property.
185 When the lessee or contractee charges any person to enter or go upon the land for the
186 purpose of attending the annual regional fair or for attending or participating in
187 recreational purposes, the consideration received by the municipal corporation for the
188 lease or management contract shall not be deemed a charge within the meaning of Article
189 2 of Chapter 3 of Title 51.

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

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

200 **SECTION 2.**

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

203 **SECTION 3.**

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