

Senate Bill 390

By: Senator Carter of the 1st

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 37 of Title 36 of the Official Code of Georgia Annotated, relating to the  
2 acquisition and disposition of real and personal property generally, so as to provide for  
3 definitions; to provide that a municipal corporation may determine when it is appropriate to  
4 establish a conservation easement; to provide for related matters; to provide for an effective  
5 date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 37 of Title 36 of the Official Code of Georgia Annotated, relating to the acquisition  
9 and disposition of real and personal property generally, is amended by revising subsection  
10 (a) of Code Section 36-37-6, relating to the sale or disposition of municipal property, as  
11 follows:

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

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

35 **SECTION 2.**

36 Said chapter is further amended in Code Section 36-37-6, relating to the sale or disposition  
 37 of municipal property, by revising subsection (j) as follows:

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

39 (A) 'Conservation easement' shall have the same meaning as set forth in Code Section  
 40 44-10-2.

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

42 (2) Notwithstanding any provision of this Code section or of any other law or ordinance  
 43 to the contrary, whenever the governing authority of any municipal corporation  
 44 determines that the establishment of a conservation easement would be of benefit to the  
 45 municipal corporation and to its citizens, such governing authority may sell or grant to  
 46 any holder a conservation easement over any of its real property, including but not  
 47 limited to any of its real property set aside for use as a park. These powers shall be  
 48 cumulative of other powers and shall not be deemed to limit their exercise in any way.

49 (k)(1) Notwithstanding any provision of this Code section or any other law to the  
 50 contrary, the General Assembly by local Act may authorize the governing authority of  
 51 any municipal corporation to lease or enter into a contract for a valuable consideration  
 52 for the operation and management, and renewals and extensions thereof, of any real or  
 53 personal property comprising fairgrounds, ballfields, golf courses, swimming pools, or  
 54 other like property used primarily for recreational purposes for a period not to exceed five  
 55 years to a nonprofit corporation which is qualified as exempt from taxation under the  
 56 provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 that will covenant  
 57 to use and operate the property for annual regional fair purposes or to continue the  
 58 recreational purpose for which the property was formerly used and intended on a  
 59 nondiscriminatory basis for the use and benefit of all citizens of the community;  
 60 provided, however, that nothing in this subsection shall have the effect of authorizing  
 61 alienation of title to such property in derogation of rights, duties, and obligations imposed  
 62 by prior deed, contract, or like document of similar import or that would cause the

63 divesting of title to property dedicated to public use and not subsequently abandoned; and  
64 provided further, that the lessee or contractee under a management contract shall not  
65 mortgage or pledge the property as security for any debt or incur any encumbrance that  
66 could result in a lien or claim of lien against the property. The lease or management  
67 contract may provide for options to renew such lease or management contract for not  
68 more than three renewal periods and each such renewal period shall not be greater than  
69 the original length of such lease or management contract. As a condition of any lease or  
70 management contract, the lessee or contractee shall provide and maintain in force and  
71 effect throughout the term of such lease or management contract sufficient liability  
72 insurance, in an amount not less than \$1 million per claim, no aggregate, naming the  
73 municipality as a named insured; shall assume sole responsibility for or incur liability for  
74 any injury to person or property caused by any act or omission of such person while on  
75 the property; and shall agree to indemnify the municipality and hold it harmless from any  
76 claim, suit, or demand made by such person. As an additional condition of any such lease  
77 or management contract, the lessee or contractee shall provide to and maintain with the  
78 municipality a current copy of the liability insurance policy, including any changes in  
79 such policy or coverages as such changes occur, and shall provide proof monthly in  
80 writing to the municipality that the lessee or contractee has in force and effect the liability  
81 insurance required by this paragraph which the municipality shall retain on file. As a  
82 further condition of any lease or management contract, the lessee or contractee shall agree  
83 to indemnify the municipality and hold it harmless from any claim, suit, or demand  
84 arising out of any improvements to the property or any indebtedness or obligations  
85 incurred by the lessee or contractee in making any such improvements to such property.  
86 When the lessee or contractee charges any person to enter or go upon the land for the  
87 purpose of attending the annual regional fair or for attending or participating in  
88 recreational purposes, the consideration received by the municipal corporation for the  
89 lease or management contract shall not be deemed a charge within the meaning of Article  
90 2 of Chapter 3 of Title 51.

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

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

99 contractee associated with any such improvements to the property and shall take such  
100 improvements free and clear of any such indebtedness or other obligations.”

101 **SECTION 3.**

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

104 **SECTION 4.**

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