

House Bill 495 (COMMITTEE SUBSTITUTE)

By: Representatives Hill of the 22nd, Neal of the 2nd, and Greene of the 151st

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 16 of Title 50 of the Official Code of Georgia Annotated, relating to the State Properties Code, so as to modify provisions related to conveyances of state property and consideration of conveyances by the General Assembly; to facilitate and increase reliability of state property conveyances; to provide for consideration of conveyances by committees of the General Assembly outside of the regular legislative session; to modify provisions related to public bidding of state property; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 16 of Title 50 of the Official Code of Georgia Annotated, relating to the State Properties Code, is amended by revising paragraph (8) of Code Section 50-16-31, relating to definitions for provisions relating to the State Properties Code, and by adding a new paragraph (2.1) to read as follows:

"(2.1) 'Conveyance' means the sale or other disposition of real property including a transfer of fee simple title, lease, and easement."

"(8) 'Property' means:

(A) The Western and Atlantic Railroad including all the property associated with the railroad as of December 26, 1969, unless the same has otherwise been provided for by Act or resolution of the General Assembly;

(B) All the property owned by the state in Tennessee other than that property included in subparagraph (A) of this paragraph;

(C) The state owned property facing Peachtree, Cain, and Spring streets in the City of Atlanta, Fulton County, Georgia, upon which the Governor's mansion once stood and which is commonly referred to and known as the 'Henry Grady Hotel property' or 'old Governor's mansion site property';

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(D) Any state owned real property the custody and control of which has been transferred to the commission by executive order of the Governor; ~~and~~

(E) Any state owned real property the custody and control of which has been transferred to the commission by an Act or resolution of the General Assembly without specific instructions as to its disposition; and

(F) Any real property interest titled in the name of the state."

SECTION 2.

Said article is further amended by revising Code Section 50-16-34, relating to the powers and duties of the State Properties Commission generally, as follows:

"50-16-34.

The commission, in addition to other powers and duties set forth in other Code sections of this article, shall have the power and duty to:

(1) Inspect, control, manage, oversee, and preserve the property;

(2) Maintain at all times a current inventory of the property;

(3) Authorize the payment of any tax or assessment legally levied by the State of Tennessee or any governmental subdivision thereof upon any part of the property situated within the State of Tennessee;

(4) Prepare lease or sale proposals affecting the property for submission to the General Assembly;

(5) Approve a conveyance of state property; provided, however, that the commission shall not be authorized to approve a conveyance of state property that exceeds a value of \$500,000.00 as determined by an appraisal or opinion of value;

~~(5)(6)~~ Subject to the limitation contained in this article, determine all of the terms and conditions of each instrument prepared or executed by it;

~~(6)(7)~~ Have prepared, in advance of advertising for bids as provided for in Code Section 50-16-39, a thorough report of such data as will enable the commission to arrive at a fair valuation of the property involved in such advertisement; and to include within the report either an opinion of the value if the conveyance is to a public entity or at least two written appraisals one written appraisal of the value of the property if the conveyance is to a private entity, which appraisals appraisal shall be made by a person or persons familiar with property values in the area where the property is situated; provided, however, that one of the appraisals shall be made by and who is a member of a nationally recognized appraisal organization; and provided, further, that in. If the written appraisal values the property in excess of \$100,000.00 then a second written appraisal shall be required. In the case of the Western and Atlantic Railroad, the appraisal, other than the one required to be made by a member of a nationally recognized appraisal organization, at least two

64 written appraisals shall be required one of which may be the latest valuation report of the
65 Western and Atlantic Railroad prepared by the Interstate Commerce Commission or
66 successor agency;

67 ~~(7)~~(8) Contract with any person for the preparation of studies or reports as to:

68 (A) The value of such property including, but not limited to, sale value, lease value,
69 and insurance value;

70 (B) The proper utilization to be made of such property; and

71 (C) Any other data necessary or desirable to assist the commission in the execution and
72 performance of its duties;

73 ~~(8)~~(9) Insure the improvements on all or any part of the property against loss or damage
74 by fire, lightning, tornado, or other insurable casualty; and insure the contents of the
75 improvements against any such loss or damage;

76 ~~(9)~~(10) Inspect as necessary any of the property which may be under a lease, rental
77 agreement, or revocable license agreement in order to determine whether the property is
78 being kept, preserved, cared for, repaired, maintained, used, and operated in accordance
79 with the terms and conditions of the lease, rental agreement, or revocable license
80 agreement and to take such action necessary to correct any violation of the terms and
81 conditions of the lease, rental agreement, or revocable license agreement;

82 ~~(10)~~(11) Deal with and dispose of any unauthorized encroachment upon, or use or
83 occupancy of, any part of the property, whether the encroachment, use, or occupancy is
84 permissive or adverse, or whether with or without claim of right therefor; to determine
85 whether the encroachment, use, or occupancy shall be removed or discontinued or
86 whether it shall be permitted to continue and, if so, to what extent and upon what terms
87 and conditions; to adjust, settle, and finally dispose of any controversy that may exist or
88 arise with respect to any such encroachment, use, or occupancy in such manner and upon
89 such terms and conditions as the commission may deem to be in the best interest of the
90 state; to take such action as the commission may deem proper and expedient to cause the
91 removal or discontinuance of any such encroachment, use, or occupancy; and to institute
92 and prosecute for and on behalf of and in the name of the state such actions and other
93 legal proceedings as the commission may deem appropriate for the protection of the
94 state's interest in or the assertion of the state's title to such property;

95 ~~(11)~~(12) Settle, adjust, and finally dispose of any claim, dispute, or controversy of any
96 kind whatsoever arising out of the terms and conditions, operation, or expiration of any
97 lease of the property or grant of rights in the property;

98 ~~(12)~~(13) Negotiate and prepare for submission to the General Assembly amendments to
99 any existing lease, which amendments shall not, for the purposes of paragraph (4) of this

Code section and Code Section 50-16-39, be interpreted as lease proposals or proposals to lease, provided:

(A) That the lessee of the lease as it is to be amended shall be either the lessee, a successor, an assignee, or a sublessee as to all or a portion of the property described in the lease as first executed or as heretofore amended; and

~~(B) That unless otherwise provided in the lease as first executed or as heretofore amended:~~

~~(i) The commission shall prepare each amendment in at least four counterparts all of which shall immediately be signed by the lessee, whose signature shall be witnessed in the manner required by the applicable law for public recording of conveyances of real estate. The signing shall constitute an offer by the lessee and shall not be subject to revocation by the lessee unless it is rejected by the General Assembly or the Governor as provided in this Code section. A resolution containing an exact copy of the amendment, or to which an exact copy of the amendment is attached, shall be introduced in the General Assembly in either the House of Representatives, the Senate, or both, if then in regular session, or, if not in regular session at such time, at the next regular session of the General Assembly. The resolution, in order to become effective, shall receive the same number of readings and, in both the House of Representatives and the Senate, go through the same processes and procedures as a bill;~~

~~(ii) If either the House of Representatives or the Senate fails to adopt (pass) the resolution during the regular session by a constitutional majority vote in each house, the offer shall be considered rejected by the General Assembly;~~

~~(iii) If the resolution is adopted (passed) during the regular session by a constitutional majority vote of both the House of Representatives and the Senate but is not approved by the Governor, the offer shall be considered rejected by the Governor;~~

~~(iv) If the resolution is adopted (passed) during the regular session by a constitutional majority vote of both the House of Representatives and the Senate and is approved by the Governor, whenever in the judgment of the chairperson of the commission all of the precedent terms and conditions of the amendment and the resolution, if there are any, have been fulfilled or complied with, the chairperson of the commission, in his or her capacity as Governor of the state, shall execute and deliver to the lessee the amendment for and on behalf of and in the name of the state. The Governor's signature shall be attested by the secretary of the commission in his or her capacity as Secretary of State. The Secretary of State shall also affix the great seal of the state to the amendment; and~~

(v)(B) On or before December 31 in each year the executive director of the State Properties Commission shall submit a report describing all ~~amendments~~ conveyances and proposed conveyances negotiated during that year or under negotiation at the date of the report to the ~~chairmen~~ chairpersons of the Senate ~~Finance~~ State Institutions and Property Committee and the ~~State Institutions and Property~~ Committee of the House Committee on State Properties or such other standing committee that routinely considers state property related issues as designated by the President of the Senate or the Speaker of the House of Representatives;

(13)(14) Exercise such other powers and perform such other duties as may be necessary or desirable to inspect, control, manage, oversee, and preserve the property;

(14)(15) Do all things and perform all acts necessary or convenient to carry out the powers and fulfill the duties given to the commission in this article;

(15)(16) Perform all terms including, but not limited to, termination, satisfy all conditions, fulfill all requirements, and discharge all obligations and duties contained in all ~~leases or contracts of sale of the property~~ conveyances which provide that the commission is empowered to act or shall act for and on behalf of the state (~~lessor or seller~~) and which ~~leases or contracts of sale~~ conveyances have heretofore been approved and adopted (~~passed~~) or authorized by a resolution of the General Assembly or which ~~leases or contracts of sale~~ conveyances may be approved and adopted (~~passed~~) or authorized by a resolution of the General Assembly ~~with the latter resolution being~~ approved by the Governor;

(16)(17) Perform all terms, satisfy all conditions, fulfill all requirements, discharge all obligations, and otherwise implement the disposition of real property for and on behalf of the state when the General Assembly so provides in any enactment, including Acts or resolutions, authorizing or directing a disposition of real property of the state or of any instrumentality of the state; and

(17)(18) Provide or perform acquisition related services to or for all state entities."

SECTION 3.

Said article is further amended by revising Code Section 50-16-39, relating to public competitive bidding procedure for sales and leases, acceptance or rejection of bids by commission, General Assembly, or the Governor, and execution of leases and deeds, as follows:

168 "50-16-39.

169 (a) Subject to authorization by the General Assembly as provided in Code Section
170 50-16-40, any conveyance ~~Any proposal to lease~~, other than a lease of mineral resources
171 provided for in Code Section 50-16-43, ~~or sell any part of the property pursuant to the~~
172 ~~power granted by paragraph (4) of Code Section 50-16-34~~ shall be initiated and carried out
173 in accordance with this Code section.

174 (b) ~~Any such lease or sale shall be made upon public competitive bidding and the~~
175 ~~invitation for bids shall be advertised once a week for four consecutive weeks in the legal~~
176 ~~organ and in one or more newspapers of general circulation in the county or counties~~
177 ~~wherein is situated the property to be bid upon and in the legal organ of Fulton County,~~
178 ~~Georgia. Prior to such advertising, the commission shall prepare a proposed form of lease~~
179 ~~or contract of sale and deed and appropriate instructions which shall be furnished to~~
180 ~~prospective bidders under such conditions as the commission may prescribe. A~~
181 conveyance to a private entity shall be made only upon a public competitive process in
182 accordance with rules established by the commission. The commission shall be authorized
183 to accept sealed bids and best and final offers for any conveyance of property.

184 (c) When a conveyance is based upon the acceptance of sealed bids, the ~~Sealed~~ bids shall
185 be submitted to the ~~secretary~~ executive director of the commission, or his or her designee,
186 and each bid shall be accompanied by a bid bond or such other security as may be
187 prescribed by the commission. All bids shall be opened in public on the date and at the
188 time and place specified in the invitation for bids. The commission shall formally
189 determine and announce which bid and bidder it considers to be most advantageous to the
190 state. The commission shall have the right to reject any or all bids and bidders and the right
191 to waive formalities in bidding.

192 (d) The commission shall give no less than 30 days' prior written notice of its intention to
193 convey property which has been declared surplus. Notice shall be made by registered or
194 certified mail or statutory overnight delivery and electronic transmission. The notice shall
195 include a description of the property including the size, location, and prior use. The notice
196 shall be mailed and electronically transmitted to the Office of Legislative Counsel, the
197 Speaker of the House of Representatives, the President of the Senate, and the chairpersons
198 of the standing committees of the Senate and the House of Representatives which regularly
199 consider proposed legislation related to state property, and all members of the General
200 Assembly whose legislative district contains all or a portion of the property that is the
201 subject of a proposed conveyance. If any member of the General Assembly whose
202 legislative district contains all or a portion of the property that is a subject of a proposed
203 conveyance objects to such conveyance in writing to the commission not later than 30 days
204 following the mailing of the notice required by this subsection, then the commission shall

no longer be authorized to convey such property without the approval of the General Assembly as provided in Code Section 50-16-40.

~~(e) When the commission formally determines and announces which bid and bidder or offer and offeror it considers to be most advantageous to the state, the commission shall then prepare the instrument of lease or contract of sale and deed, in at least four counterparts, which lease or contract of sale shall be immediately signed by the prospective lessee or purchaser, whose signature shall be witnessed in the manner required by the applicable law for public recording of conveyances of real estate. The signing shall constitute a bid by the prospective lessee or purchaser and shall not be subject to revocation by the prospective lessee or purchaser unless it is rejected by the General Assembly or the Governor as provided in this Code section. A resolution containing an exact copy of the proposed lease or contract of sale and deed, or to which an exact copy of the proposed lease or contract of sale and deed is attached, shall be introduced in the General Assembly in either the House of Representatives, the Senate, or both, if then in regular session, or, if not in regular session at such time, at the next regular session of the General Assembly. The resolution, in order to become effective, shall receive the same number of readings and, in both the House of Representatives and the Senate, go through the same processes and procedures as a bill.~~

~~(e) If either the House of Representatives or the Senate fails to adopt (pass) the resolution during the regular session by a constitutional majority vote in each house, the bid shall be considered rejected by the General Assembly.~~

~~(f) If the resolution is adopted (passed) during the regular session by a constitutional majority vote of both the House of Representatives and the Senate but is not approved by the Governor, the bid shall be considered rejected by the Governor.~~

~~(g) If the resolution is adopted (passed) during the regular session by a constitutional majority vote of both the House of Representatives and the Senate and is approved by the Governor, the~~ The chairperson of the commission, in his or her capacity as Governor of the state or, with the permission of the Governor, the executive director, shall execute and deliver to the purchaser the contract of sale for and on behalf of and in the name of the state, and thereupon both parties to the agreement shall be bound thereby. The Governor's signature or the signature of the executive director shall be attested by the secretary of the commission in his or her capacity as Secretary of State. The Secretary of State or the executive director shall also affix the great seal of the state to the contract of sale. Whenever, in the judgment of the chairperson of the commission, all of the terms and conditions of the contract of sale, or all of the precedent terms and conditions of the contract of sale, or all of the precedent terms and conditions of the lease have been fulfilled or complied with, the chairperson of the commission in his or her capacity as Governor of

the state shall execute and deliver to the purchaser or lessee the deed or lease for and on behalf of and in the name of the state. The Governor's or executive director's signature shall be attested by the secretary of the commission in his or her capacity as Secretary of State. The Secretary of State or executive director shall also affix the great seal of the state to the deed or lease."

SECTION 4.

Said article is further amended by revising Code Section 50-16-40, relating to interesse termini provisions not considered, as follows:

"50-16-40.

(a) Approval by the General Assembly of conveyances generally.

(1) The commission shall prepare each conveyance of property with a value of \$500,000.00 or more for consideration by the General Assembly and the Governor as provided in this Code section.

(2) The commission shall not submit to the General Assembly for its consideration any ~~lease~~ conveyance which provides that either:

(1)(A) The ~~lessee~~ conveyee will not obtain possession of the leased premises within a period of five years from the commencement date of the regular session of the General Assembly to which the ~~lease~~ conveyance is submitted for consideration; or

(2)(B) The term of the ~~lease~~ conveyance will not commence within a period of five years from the commencement date of the regular session of the General Assembly to which the ~~lease~~ conveyance is submitted for consideration.

(b) Conveyances submitted to the General Assembly during regular session.

(1) A resolution containing a general description of the proposed conveyance shall be introduced in the General Assembly in either the Senate, the House of Representatives, or both, if then in regular session, or if not in regular session at such time, at the next regular session of the General Assembly; provided, however, that conveyances may be considered outside the regular session of the General Assembly in a manner provided in subsection (c) of this Code section. Such resolution shall be prepared with the assistance of the Office of Legislative Counsel and shall not be submitted until approved by that office. The resolution shall authorize the commission to convey the property by appropriate instrument for fair market value or other consideration and provisions as the commission shall in its discretion determine to be in the best interest of the State of Georgia. The resolution, in order to become effective, shall receive the same number of readings and in both the Senate and the House of Representatives go through the same processes and procedures as a bill:

(A) If either the Senate or the House of Representatives fails to adopt the resolution during the regular session by a majority vote in each house, the conveyance shall be considered rejected by the General Assembly;

(B) If the resolution is adopted during the regular session by a majority vote of both the Senate and the House of Representatives but is not approved by the Governor, the conveyance shall be considered rejected by the Governor; and

(C) If the resolution is adopted during the regular session by a majority vote of both the Senate and the House of Representatives and is approved by the Governor, whenever in the judgment of the chairperson of the commission all of the precedent terms and conditions of the resolution, if there are any, have been fulfilled or complied with, the chairperson of the commission, in his or her capacity as Governor of the state, or the executive director shall execute and deliver to the conveyee the agreement for and on behalf of and in the name of the State of Georgia. The Governor's or executive director's signature shall be attested by the secretary of the commission in his or her capacity as Secretary of State. The Secretary of State or executive director shall also affix the great seal of the state to the amendment.

(2) A conveyance resolution submitted to the General Assembly during the regular legislative session pursuant to this subsection shall not be amended or considered for amendment after more than 20 days of its original filing in either the Senate or the House of Representatives. In addition, such bill shall not have any amendment at any time that pertains to matters unrelated to a state property conveyance.

(c) Conveyances initiated prior to regular session of the General Assembly.

(1) Not more than twice outside of the regular session of the General Assembly the commission may prepare a resolution containing a description of proposed conveyances which shall be submitted to the President of the Senate and the Speaker of the House of Representatives and to the chairpersons of the standing committees of the Senate and of the House of Representatives which regularly consider proposed legislation related to state property. The resolution shall be prepared with the assistance of the Office of Legislative Counsel and shall not be submitted until approved by that office. A copy of the proposed resolution shall also be provided to each member whose legislative district contains all or a portion of the property that is the subject of a proposed conveyance.

(2) The standing committees that regularly consider matters related to state property in the Senate and the House of Representatives may meet not more than twice a year at a time outside of the regular legislative session of the General Assembly, on or about July and October of each year. At such meeting the committees shall only consider property conveyance resolutions submitted by the commission and shall vote to approve or disapprove of such resolution. If a committee in the Senate or the House of

314 Representatives approves a resolution by a majority vote, then a committee report shall
315 be prepared reflecting the committee's approval of the resolution. If both the Senate and
316 the House of Representatives committees approve a resolution, then the resolution shall
317 be filed at the next regular session of the General Assembly with a copy of both
318 committee reports attached. The resolution, in order to become effective, shall receive
319 the same number of readings in both the Senate and the House of Representatives and
320 shall then be voted on as any other bill; provided, however, that such bills shall not be
321 subject to assignment to any committee or subcommittee of either the Senate or the
322 House of Representatives and shall not be subject to any amendment."

323 **SECTION 5.**

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

326 **SECTION 6.**

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