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LOCAL GOVERNMENT

*Community Greenspace Preservation:
Create the Georgia Greenspace Commission;
Establish the Georgia Greenspace Trust Fund*

CODE SECTIONS: O.C.G.A. §§ 36-22-1 to -12 (new)
BILL NUMBER: SB 399
ACT NUMBER: 500
GEORGIA LAWS: 2000 Ga. Laws 392
SUMMARY: By adding several sections to the Georgia Code relating to local government, the Act creates the Georgia Greenspace Commission and provides for its membership, powers and duties, and operations. The Act provides a flexible framework of policies, rules, and regulations through which Georgia's populous and rapidly growing cities and counties can voluntarily develop programs to preserve community greenspace for recreational activities and protection of natural resources. The Act also creates the Georgia Greenspace Trust Fund, provides guidelines for appropriations and contributions to the fund, and defines how grants will be disbursed to local governments for preservation of greenspace.

EFFECTIVE DATE: April 16, 2000¹

History

In August 1999, Governor Roy Barnes announced his vision that one day Georgia's communities would be laced with connected "greenspace" areas that would provide a multitude of

1. See 2000 Ga. Laws 392, §§ 2-3, at 399. The Act took effect upon approval by the Governor. See *id.*

benefits, including preserving natural resources, enhancing the economy, and improving the quality of life for Georgia's citizens.² In October 1999, in preparation for the 2000 session of the General Assembly, Governor Barnes selected a diverse group of thirteen people with a broad range of interests to comprise the Community Greenspace Advisory Committee.³ The Governor charged the Committee with the tasks of studying the "preservation of local, accessible, neighborhood-type green space" and recommending a plan to achieve the goal of increasing greenspace acreage in Georgia.⁴ The Committee discussed several issues that relate to greenspace, such as "[u]rban sprawl, growth management, [and] the provision of affordable housing near workplaces."⁵

The Advisory Committee determined that greenspace is important to the State of Georgia for four main reasons. First, permanently preserving greenspace serves to protect Georgia's natural resources and environment.⁶ Second, greenspace provides recreational opportunities, thus promoting good health and possibly reducing health care costs.⁷ Third, greenspace that links schools, shopping centers, and work sites would provide an alternative transportation opportunity and lessen the public's reliance on automobiles.⁸ Finally, greenspace is "a valuable amenity that can increase property values, stimulate leisure-related economic opportunities, reduce the demand for public services, and improve the economic viability of a community."⁹

The Advisory Committee recommended that the Governor work with the General Assembly to establish a greenspace program, administered by the Georgia Department of Natural Resources (DNR), and to create a greenspace fund to help local

2. See *Georgia's Community Green Space Program: A Report of the Community Green Space Advisory Committee* 6 (Dec. 15, 1999) (on file with the *Georgia State University Law Review*) (electronic version available at <<http://www.cviog.uga.edu/projects/projects.htm>>).

3. See *id.* at 7. For a list of Advisory Committee members and staff, see *id.* app. at 54-57.

4. *Id.* at 7.

5. *Id.*

6. See *id.* at 14.

7. See *id.*

8. See *id.*

9. *Id.*

governments acquire greenspace.¹⁰ The program should achieve a goal of preserving at least twenty percent of Georgia's land as greenspace.¹¹ The Committee also advised that the program focus on large and rapidly growing cities and counties that must take immediate action to secure greenspace.¹²

Based on the Advisory Committee's recommendations, Governor Barnes proposed the greenspace legislation, which was introduced in the Senate as SB 399.¹³ To financially support the greenspace initiative, the Governor called for a \$30 million appropriation in the 2000 budget.¹⁴ The bill targeted forty of Georgia's fastest growing counties¹⁵ that, if they chose to participate in the greenspace program, would receive grants ranging from a few hundred thousand dollars to nearly six million dollars.¹⁶

10. *See id.* at 30. The greenspace program centers on local governments, and not the state government, because local governments are best equipped to determine the most effective means for meeting the twenty percent greenspace goal, given their own particular demographics, current development and land use patterns, financial resources, and natural resources. *See id.* at 30, 38. Local participation, cooperation, and support are necessary for the greenspace program's success. *See id.* at 30.

11. *See id.* at 30. The primary recommendations for the methods by which counties should acquire greenspace were: purchasing land in fee simple and acquiring conservation easements through purchase or donation. *See id.* at 39-40.

12. *See id.* at 30.

13. *See* SB 399, as introduced, 2000 Ga. Gen. Assem.

14. *See* Walter C. Jones, *Senate Passes Green-Space Bill: Barnes' Proposal To Set Aside 20 Percent of Land in Fastest-Growing Counties Makes Way to House*, AUGUSTA CHRON., Feb. 16, 2000, at C6; Kathy Pruitt, *2000 Georgia Legislature: Barnes Asks Funding for Green Space: \$30 Million-a-Year Proposal for Fastest-Growing Counties Gets Wide Support*, ATLANTA CONST., Feb. 2, 2000, at B1. Governor Barnes hoped that the \$30 million state appropriation would entice private organizations, companies, and foundations to donate money to the greenspace fund or contribute land for greenspace preservation. *See* Charles Seabrook, *2000 Georgia Legislature: Environmentalists: Green Bill a First Step: Barnes Plan Rolls to Passage; Critics Say It's Not Enough*, ATLANTA J. & CONST., Mar. 18, 2000, at D4.

15. *See* Pruitt, *supra* note 14. In 2000, the forty counties eligible to participate were: Barrow, Bartow, Bibb, Bryan, Bulloch, Camden, Carroll, Catoosa, Chatham, Cherokee, Clarke, Clayton, Cobb, Columbia, Coweta, DeKalb, Dougherty, Douglas, Effingham, Fayette, Floyd, Forsyth, Fulton, Glynn, Gwinnett, Hall, Henry, Houston, Jackson, Lee, Liberty, Lowndes, Murray, Muscogee, Newton, Paulding, Richmond, Rockdale, Walton, and Whitfield. *See id.*

16. *See* Kathy Pruitt, *Metro Area Would Get Most Funds: More Than Half of Money For Green Space Would Go to Five Crowded Counties*, ATLANTA CONST., Feb. 7, 2000, at E3. Five counties would receive over half the money, roughly \$16 million: Fulton, DeKalb, Douglas, Cobb, and Gwinnett. *See id.* Estimated greenspace grants for metro Atlanta counties: Cherokee \$740,000; Clayton \$770,000; Cobb \$3.7 million; Coweta \$397,000; DeKalb \$3.4 million; Douglas \$412,000; Fayette \$754,000; Forsyth \$811,000;

SB 399

Senators Steve Thompson, Charlie Tanksley, Connie Stokes, and Rick Price of the 33rd, 32nd, 43rd, and 56th Senate Districts, respectively, sponsored SB 399.¹⁷ The bill was introduced on February 2, 2000, and the Senate assigned the bill to its Natural Resources Committee.¹⁸ Without any changes, the Senate Natural Resources Committee favorably reported the bill to the Senate floor on February 10, 2000.¹⁹ The Senate unanimously passed the bill, as introduced, on February 15, 2000.²⁰

Upon introduction, the House assigned the bill to its Natural Resources & Environment Committee, which amended the bill by changing the number of members in the Georgia Greenspace Commission.²¹ Specifically, the Committee changed the number of members appointed by the Governor from one to three.²² The Committee favorably reported the bill, as amended, to the House on February 24, 2000.²³

On February 29, 2000, Representative Charlie Smith, Jr., at the Governor's behest, proposed a floor amendment to add an effective date provision to the bill.²⁴ The floor amendment provided that the Act would become effective upon approval by the Governor or upon its becoming law without such approval.²⁵ The House adopted Representative Smith's floor amendment

Fulton \$5.8 million; Gwinnett \$3 million; Rockdale \$380,000. *See* Seabrook, *supra* note 14.

17. *See* SB 399, as introduced, 2000 Ga. Gen. Assem.

18. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

19. *See id.*

20. *See* Georgia Senate Voting Record, SB 399 (Feb. 15, 2000).

21. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000. *Compare* SB 399, as introduced, 2000 Ga. Gen. Assem., *with* SB 399 (HCA), 2000 Ga. Gen. Assem.

22. *Compare* SB 399, as introduced, 2000 Ga. Gen. Assem., *with* SB 399 (HCA), 2000 Ga. Gen. Assem. .

23. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

24. *See* SB 399 (HCAFA), 2000 Ga. Gen. Assem.; Audio Recording of House Proceedings, Feb. 29, 2000 (remarks by Rep. Charlie Smith, Jr.) <<http://www.ganet.org/services/leg/audio/2000archive.html>> [hereinafter House Audio]. Representative Smith proposed this floor amendment so that state and local governments could "go ahead and get to work on this greenspace initiative." *Id.*

25. *Compare* SB 399 (HCA), 2000 Ga. Gen. Assem., *with* SB 399 (HCAFA), 2000 Ga. Gen. Assem.

and the Committee amendment without objection,²⁰ and the House passed the bill, as amended, by a vote of 171 to 2.²⁷

SB 399 returned to the Senate on March 7, 2000, and the Senate agreed to the House version of the bill.²³ Governor Roy Barnes signed SB 399 into law on April 16, 2000, and the Act took effect immediately upon the Governor's approval.²⁹

The Act

A. General Overview

The Act amends Title 36 of the Georgia Code by adding a new Chapter 22.³⁰ Recognizing that the unique characteristics of each region preclude a statewide legislative mandate for the preservation of greenspace, the General Assembly created a voluntary program.³¹ The greenspace program is intended to provide a flexible framework within which populous and rapidly

26. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000; House Audio, *supra* note 24 (vote on amendments). Representative Gene Callaway also moved twice to amend the bill; he wanted to add a requirement that the Governor's appointees to the Greenspace Commission be approved by the General Assembly and to strike the language mandating that counties' greenspace be connected. See Failed House Floor Amendments to SB 399, introduced by Rep. Gene Callaway, Feb. 29, 2000; see also House Audio, *supra* note 24 (remarks by Rep. Callaway and vote on amendments). However, both amendments failed by an overwhelming majority vote. See *id.*; see also Dick Pettys, *Barnes' 'Greenspace' Bill Sails to House Approval*, AP NEWSWIRE, Mar. 1, 2000, available in Westlaw, GANEWS.

27. See Georgia House of Representatives Voting Record, SB 399 (Feb. 29, 2000). The two Representatives that voted against the bill, Representatives Bobby Franklin and Gene Callaway, were suburban Republicans in fast-growing counties. Representative Franklin claimed that "if you limit development to only eighty percent of a county, you'll get higher density, lower quality of life," and Representative Callaway called the bill "a piece of blackmail legislation" that would allow state bureaucrats to micro-manage local planning decisions. See House Audio, *supra* note 24 (remarks by Reps. Bobby Franklin and Gene Callaway); see also Pettys, *supra* note 26; Kathy Pruitt, *House OKs Green Space Protection: Barnes' \$30 Million Plan for Undeveloped Land Would Benefit 40 Counties in the State*, ATLANTA CONST., Mar. 1, 2000, at A1.

28. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000. Compare SB 399 (HCAFA), 2000 Ga. Gen. Assem., with SB 399, as passed, 2000 Ga. Gen. Assem.

29. See 2000 Ga. Laws 392, §§ 2-3, at 399; State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

30. See 2000 Ga. Laws 392, § 1, at 392.

31. See Peter Mantius & Kathy Pruitt, *Cutoff for Bills To Advance Falls Wednesday: Dome Digest: A Weekly Recap and Preview of Activity in the Georgia Legislature*, ATLANTA J. & CONST., Mar. 5, 2000, at F4. Barnes' original greenspace initiative would have required all counties to participate; however, as the bill was written and passed by the General Assembly, participation in the greenspace program is voluntary. See *id.*

developing areas can voluntarily adopt community greenspace programs to preserve at least twenty percent of the state's land area as connected and open greenspace for informal recreational activities and protection of natural resources.³² To achieve this goal, the General Assembly also created a funding resource, which will augment currently available local, state, and federal funding, for the purchase and preservation of greenspace.³³

The Act creates the Georgia Greenspace Commission.³⁴ The Commission will be responsible for reviewing each county's greenspace program, awarding greenspace grants, raising additional funds, and auditing Community Greenspace Trust Funds.³⁵ For administrative purposes, the Commission is attached to the Department of Natural Resources (DNR), which will provide support to the Commission with personnel and funds already available to the Department.³⁶

The Act also establishes the Georgia Greenspace Trust Fund.³⁷ The Fund will consist of any money appropriated by the General Assembly, voluntary contributions to the Fund, any federal money deposited in the Fund, other money acquired through any fund-raising or promotions, and all interest.³⁸ The DNR will administer the Fund, conduct an annual accounting of the funds received and expended from the Fund, and prepare an annual report, which will be made available to the Commission, to the members of the General Assembly, and to members of the public upon request.³⁹

The Act also defines certain key terms.⁴⁰ Although the Act only refers to counties, the term 'county' includes consolidated counties and municipal governments.⁴¹ The Act broadly defines

32. See O.C.G.A. § 36-22-1 (2000).

33. See *id.*

34. See *id.* § 36-22-3. The members of the Commission include the Commissioner of the Department of Natural Resources, the Director of the State Forestry Commission, and three additional members appointed by the Governor. See *id.* § 36-22-3(a).

35. See Letter from Russell W. Hinton, State Auditor, to Hugh Gillis, Chairman, Senate Natural Resources Committee (Feb. 8, 2000) (attached to SB 399, as introduced, 2000 Ga. Gen. Assem.).

36. See O.C.G.A. § 36-22-3(c) (2000).

37. See *id.* § 36-22-4.

38. See *id.* § 36-22-4(a).

39. See *id.*

40. See *id.* § 36-22-2.

41. See *id.* § 36-22-2(2).

'greenspace' as: "permanently protected land and water, including agricultural and forestry land, that is in its undeveloped, natural state."⁴²

B. Eligibility Requirements for Counties To Participate in the Greenspace Program

A county in Georgia is eligible to participate in the greenspace program if the county has a population of 60,000 or more pursuant to the most recent U.S. census or if the county has experienced average population growth of at least 800 persons per year since the last census.⁴³ The DNR will determine eligibility and notify eligible counties.⁴⁴

C. Preparation and Submission of a Greenspace Program

Each county eligible to submit a greenspace program may initiate the program development process by providing written notice to the Georgia Greenspace Commission.⁴⁵ The county must hold a public meeting at which designated representatives of all local governing bodies and other interested persons can assemble to discuss and develop a county greenspace program.⁴⁶

Eligible counties must follow several criteria in developing a greenspace program.⁴⁷ First, the program must promote the permanent protection of greenspace constituting a minimum of twenty percent of the county's geographic area.⁴⁸ Second, the program must: (1) identify legal and structural barriers to

42. *Id.* § 36-22-2(3). Greenspace may be developed or restored only to the extent that it is consistent with one or more of the following goals: water quality protection for rivers, streams, and lakes; flood protection; wetlands protection; reduction of erosion; protection of riparian buffers and other areas that serve as natural habitat for native plant and animal species; scenic protection; protection of archaeological and historic resources; provision of recreation in the form of boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, and similar outdoor activities; and connection of existing or planned areas contributing to the goals of greenspace preservation. *See id.*

43. *See id.* § 36-22-10. Population growth is measured by the population change between the U.S. decennial census of 1990 or any future census and the most recent year for which the U.S. Census Bureau has prepared official estimates of population. *See id.*

44. *See id.*

45. *See id.* § 36-22-5.

46. *See id.*

47. *See id.* § 36-22-6.

48. *See id.* § 36-22-6(1).

achieving the twenty-percent goal of permanently protected greenspace; (2) propose a ten-year strategy to mitigate or eliminate such barriers by local action, including, but not limited to, changing zoning and land use ordinances and creating local conservation and preservation ordinances; and (3) identify existing local land use ordinances, policies, and regulations that can be used to protect greenspace.⁴⁹ Third, the program must specify a method by which the county will allocate greenspace funds to municipalities electing to participate in a cooperative greenspace program with the county.⁵⁰

Each greenspace program must include six components.⁵¹ A greenspace program must identify all greenspace already permanently protected within the county,⁵² any specific parcels of land or water which have been designated for acquisition or protection under the greenspace program,⁵³ and any changes made in the county's comprehensive plan to assure that the plan is consistent with the greenspace program.⁵⁴ The program must also assign a division, branch, or other subdivision of county government to be responsible for identifying and preserving greenspace.⁵⁵ The program must include certified copies of any resolutions adopted by municipalities that elect to cooperate with the county in a greenspace program.⁵⁶ Finally, the program must include certification that the county has authorized a Community Greenspace Trust Fund and a description of the sources of funding for greenspace available to the county, other than funds from the Georgia Greenspace Trust Fund.⁵⁷

49. *See id.* § 36-22-6(2).

50. *See id.* § 36-22-6(3).

51. *See id.* § 36-22-7.

52. *See id.* § 36-22-7(1).

53. *See id.* § 36-22-7(2).

54. *See id.* § 36-22-7(3).

55. *See id.* § 36-22-7(4).

56. *See id.* § 36-22-7(5). A municipality's resolution must approve cooperation with the county in the greenspace program, authorize a Community Greenspace Trust Fund for the municipality, and provide a description of the sources of funding for greenspace available to the municipality, other than funds from the Georgia Greenspace Trust Fund. *See id.*

57. *See id.* § 36-22-7(6).

Once a county has prepared its greenspace program, it must submit the program to the Georgia Greenspace Commission for approval.⁵⁸ The county must submit a resolution embodying the county greenspace program to the Commission between July 1 and December 1 of any year in which the county is eligible for and wishes to obtain a greenspace grant.⁵⁹ Once the Greenspace Commission reviews the county's greenspace program and determines that the program complies with all relevant terms and conditions, the county is eligible for and will receive a greenspace grant.⁶⁰

Each county having an approved greenspace program must review, and revise if necessary, its greenspace program at least once every two years.⁶¹ Each county must then resubmit its greenspace program and a progress report for the Commission's approval.⁶²

D. Administration of the Georgia Greenspace Trust Fund and Distribution of Funds to Participating Counties

Each fiscal year, the General Assembly will appropriate funds to the Georgia Greenspace Trust Fund to be made available for greenspace grants to counties having approved greenspace programs.⁶³ The money available to each county will be based on the amount of tax the county levies each year on residential property and returns to the state.⁶⁴ As a general rule, an eligible

58. *See id.* § 36-22-8.

59. *See id.* § 36-22-8(b).

60. *See id.* § 36-22-8(c). If the Commission decides that a county greenspace program does not comply with all relevant terms and conditions, the Commission will provide the county with a written explanation of the deficiencies found in its program, together with suggestions for their correction, and the county may resubmit its program at any time for approval. *See id.*

61. *See id.* § 36-22-9.

62. *See id.*

63. *See id.* § 36-22-4(b).

64. *See id.* § 36-22-4(b)(1).

The ratio of funds that each county is entitled to is determined by taking the one-quarter percent of the property tax levied that goes to the state as it applies to residential property, totaling the [sic] for all of the counties that are eligible, and then distributing the money on a pro rata basis among all those counties. If any county chooses not to participate, the money that county would receive goes back into the pool and is distributed on a pro rata basis among the counties who do elect to participate in the plan.

House Audio, *supra* note 24.

county could get back approximately seventy-five percent of the property taxes it pays to the state each year.⁶⁵ Once the Greenspace Commission approves an eligible county's greenspace program, it will disburse the appropriate calculated amount and deposit the grant into the county's Community Greenspace Trust Fund.⁶⁶ After the deadline for distributing greenspace grants,⁶⁷ any appropriated funds that are unclaimed because certain eligible counties chose not to participate will be divided among the counties having an approved greenspace program in proportion to the ratio of each county's grant to the total amount of grants in the fiscal year.⁶⁸

All money deposited into a Community Greenspace Trust Fund by grant from the Georgia Greenspace Trust Fund and any matching funds,⁶⁹ together with interest, must be expended *solely* to defray the costs of acquiring land for greenspace preservation or acquiring conservation, scenic, and other easements that contribute to the goals set out for greenspace.⁷⁰

Furthermore, counties that do not qualify to participate in the greenspace program may still apply for discretionary grants for preservation of greenspace.⁷¹ Money in the Georgia Greenspace Trust Fund, other than money appropriated to the Fund by the General Assembly (i.e. private donations), will be made available to *all* cities and counties for discretionary grants.⁷² The Commission is authorized to accept and review applications for discretionary grants and to make such grants in appropriate amounts.⁷³ Any discretionary grant will be deposited into a Community Greenspace Trust Fund, which must be established

65. *See* Pruitt, *supra* note 16.

66. *See* O.C.G.A. § 36-22-4(b)(2) (2000).

67. The DNR's regulations in implementing the Act will provide for a date certain, reasonably close to the end of the state's fiscal year, on and after which the Commission cannot approve greenspace programs for that fiscal year. *See id.* § 36-22-4(b)(3).

68. *See id.*; *see also* Pruitt, *supra* note 27.

69. The DNR is authorized to match, from funds appropriated to or otherwise available to the Department, all or any part of an expenditure from a city or county's Community Greenspace Trust Fund for the purpose of acquiring property adjacent to or within the watershed of the Chattahoochee River, the Flint River, the Altamaha River, or any other river which the Department designates by regulation as eligible for matching funds. *See* O.C.G.A. § 36-22-4(e) (2000).

70. *See id.* § 36-22-4(d).

71. *See id.* § 36-22-11.

72. *See id.*

73. *See id.*

by a city or county as a condition of receiving a discretionary grant, and the trust fund and grant must be administered in a manner consistent with purposes of the Act and any regulations promulgated by the DNR applicable to trust funds and grants, together with the terms and conditions of the grant itself.⁷⁴

Finally, the Act authorizes the DNR to promulgate rules and regulations necessary to implement the Act.⁷⁵ The Department is also authorized to audit any city or county Community Greenspace Trust Fund that receives greenspace grants or discretionary grants and to investigate the use of grant money or the use of properties obtained in whole or in part by the use of grant money.⁷⁶

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74. *See id.*

75. *See id.* § 36-22-12.

76. *See id.*