

Senate Bill 43

By: Senators Price of the 56th, Moody of the 27th, Tanksley of the 32nd and Johnson of the 1st

**AS PASSED SENATE**

**A BILL TO BE ENTITLED  
AN ACT**

1 To amend Chapter 31 of Title 36 of the Official Code of Georgia Annotated, relating to  
2 incorporation of municipalities, so as to provide for legislative findings and authority; to  
3 provide for the creation of municipal charter commissions; to provide for definitions; to  
4 provide for petitions and the validation and invalidation thereof; to provide for the  
5 appointment and composition of the commissions and their organization, meetings,  
6 compensation, expenses, allowances, staffing, funding, duties, and powers; to provide for  
7 reports, incorporations of municipalities, charters, and special elections relating thereto; to  
8 provide for amendments of charters and applicability of laws relating thereto; to provide for  
9 exemptions from certain local laws; to retain existing incorporation methods; to provide an  
10 effective date; to repeal conflicting laws; and for other purposes.

11 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

12 **SECTION 1.**

13 Chapter 31 of Title 36 of the Official Code of Georgia Annotated, relating to incorporation  
14 of municipalities, is amended by adding at the end the following Code section:

15 "36-31-6.

16 (a) The General Assembly finds that certain populated areas within the most densely  
17 inhabited counties in this state require more intensive governmental services and control  
18 over those services and the taxation required to fund them than is available from those  
19 counties. The most suitable method of achieving such goals is by municipal incorporation  
20 of those areas wherein those areas which desire such goals are given the power to establish  
21 a municipal corporation for such areas without direct action by the General Assembly. The  
22 General Assembly further finds that Article IX, Section II, Paragraph II of the Constitution  
23 authorizes the General Assembly 'to delegate its power so that matters pertaining to  
24 municipalities may be dealt with without the necessity of action by the General Assembly.'  
25 Pursuant to this authority, the General Assembly thus delegates a portion of its legislative  
26 powers to create municipal corporations subject to the conditions of the Code section.

1 (b) As used in this Code section, the term:

2 (1) 'Affected county' means that county which includes all the area of a petitioning  
3 district.

4 (2) 'Commission' means any municipal charter commission established pursuant to this  
5 Code section.

6 (3) 'House district' means the geographical area contained in any House of  
7 Representatives district under Code Section 28-2-1.

8 (4) 'Petitioning district' means that geographical area which:

9 (A) Is wholly contained within the unincorporated area of a single county;

10 (B) Has a population of not less than 50,000 according to the United States decennial  
11 census of 2000 or any future such census.

12 (c) Only electors residing in a petitioning district are authorized to file a petition for  
13 incorporating that petitioning district. In order to initiate the creation of a municipal charter  
14 commission, any such elector may file a petition with the election superintendent of the  
15 county containing the petitioning district. The petition shall contain the signatures of at  
16 least 5 percent of the electors within the petitioning district who were qualified to vote in  
17 the last preceding general election. The petition shall define the petitioning district and  
18 state that its purpose is to seek incorporation of the petitioning district pursuant to the  
19 provisions of this Code section. The election superintendent shall determine the validity  
20 of such petition within 30 days of its being filed with the election superintendent. In the  
21 event the election superintendent determines that the petition is valid, the election  
22 superintendent shall notify the governing authority of the affected county and the members  
23 of the House of Representatives and Senate whose legislative districts contain any part of  
24 the petitioning district. In the event that the election superintendent determines that such  
25 petition is not valid, the election superintendent shall cause to be published in explicit detail  
26 the reasons why such petition is not valid; provided, however, that in any proceeding in  
27 which the validity of the petition is at issue, the tribunal considering such issue shall not  
28 be limited by the reasons assigned. Such publication shall be in the official organ of the  
29 county in the week immediately following the date on which such petition is declared to  
30 be not valid.

31 (d) When it is established that the petition submitted to the election superintendent is valid  
32 under subsection (c) of this Code section, notice shall be given by the election  
33 superintendent to the chairperson of the county commission of the affected county. That  
34 chairperson shall appoint, within 15 days of receiving the notice regarding the validity of  
35 the petition, a charter commission constituted of not less than 12 nor more than 15 citizens  
36 of the affected county to serve on the commission, of which not less than two-thirds of the  
37 appointees shall be residents of the petitioning district. The county chairperson of that

1 affected county shall designate one commission appointee to serve as chairperson of the  
2 charter commission.

3 (e) The commission shall meet upon the call of the chairperson. Members of the  
4 commission shall receive no per diem, allowances, or expenses. The Carl Vinson Institute  
5 of State Government shall provide staff support for the commission. Unless private funds  
6 are available to pay for such staff support, the costs thereof shall be paid from county funds  
7 by the affected county.

8 (f) A majority of the commission shall constitute a quorum and shall be authorized to  
9 transact the business of the commission. The commission may establish such bylaws as  
10 necessary for its operation. The affirmative vote of a majority of the members of the  
11 commission shall be required to approve any official action of the commission, including  
12 but not limited to adoption of the commission's bylaws or reports. The commission shall  
13 study all issues necessary to determine the feasibility of incorporating a municipality within  
14 the petitioning district. The corporate limits of any such municipality shall not include any  
15 area located within the corporate limits of another municipality. The commission shall  
16 study the tax base, service delivery system, and sources of services for the petitioned for  
17 municipality, the likely impact of such municipality upon its residents and other  
18 governments within the affected county, and all other matters necessary or desirable for  
19 incorporating a municipality. The commission shall, within 60 days of its appointment,  
20 hold at least two public hearings and issue its final report setting forth its recommendations  
21 within 60 days after the last public hearing.

22 (g) If incorporation is recommended by the commission in its final report, the commission  
23 shall so notify the election superintendent of the affected county and provide the election  
24 superintendent with a certified copy of the final report within 15 days after issuance  
25 thereof. That election superintendent shall call a special election to approve or disapprove  
26 the municipal incorporation as contained in the final report of the commission. That  
27 special election shall be conducted at the soonest time permissible therefor under general  
28 law following issuance of such report. The only electors eligible to vote in such election  
29 on the question of incorporation shall be those persons otherwise eligible to vote who  
30 reside within the geographical boundaries of the municipality recommended by the  
31 commission as contained in the final report filed with the election superintendent. The  
32 expenses of such election shall be borne by the affected county.

33 (h) If an incorporation recommendation in a final report is approved by a majority of  
34 electors voting under subsection (g) of this Code section, the election superintendent shall  
35 notify the affected county and that final report shall constitute the municipal charter for the  
36 new municipality named in the report; provided, however, that no precinct in which the  
37 electors voting in such special election do not vote in favor of approving the final report

1 shall be included within the municipal boundaries of the new municipality unless the  
2 exclusion of such precinct would create an unincorporated island prohibited by Code  
3 Section 36-36-4, in which case the precinct shall be included within the municipal  
4 boundaries of such municipality. That report shall become effective as a charter at the  
5 time specified in the final report. That final report which thereby becomes a municipal  
6 charter shall be subject to all general laws of this state relating to municipalities, except  
7 Code Section 36-31-2, and the boundary for the municipality established by that report  
8 shall be subject to the conditions established by this Code section. That final report shall  
9 be filed with the Secretary of State who shall provide for the publication and distribution  
10 thereof.

11 (i) The first election of municipal officers as called for in the final report shall be called  
12 by the election superintendent of the affected county and shall be held at the first special  
13 election which may be conducted within 120 days from the date of the election at which  
14 the recommendation to incorporate was approved. Qualification and election of municipal  
15 officers shall be conducted as provided for in the final report.

16 (j) A municipality incorporated under this Code section shall be subject to all general laws  
17 relating to municipalities, except Code Section 36-31-2, and the charter thereof may be  
18 amended by local Act of the General Assembly or by home rule action by the municipality  
19 subject to the Constitution and general laws of this state. The method of incorporating a  
20 municipality under this Code section shall be in addition to any other method for  
21 incorporating a municipality now authorized."

22 **SECTION 2.**

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

25 **SECTION 3.**

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