

House Bill 854 (AS PASSED HOUSE AND SENATE)

By: Representative Jamieson of the 22nd

A BILL TO BE ENTITLED
AN ACT

1 To amend and supersede the laws pertaining to the governing authority of Banks County;
2 to provide for a Board of Commissioners of Banks County; to provide for the powers,
3 duties, and authority of the board of commissioners; to provide for the composition of the
4 board of commissioners; to provide for election districts; to provide for qualifications of
5 commissioners; to provide for terms of office for commissioners; to provide for filling
6 vacancies; to provide for meetings; to provide for a quorum; to provide for the
7 responsibilities of the chairperson; to provide for a vice chairperson; to provide for the
8 vice chairperson's responsibilities; to provide for oaths; to provide for bonds; to provide
9 for budgets; to provide for audits; to provide for a county administrator; to provide for a
10 clerk; to provide for minutes; to provide for purchasing; to provide for compensation and
11 expenses of commissioners; to provide for submission for preclearance under the federal
12 Voting Rights Act of 1965; to provide for a referendum; to provide for automatic repeal
13 under certain circumstances; to provide for effective dates; to provide for the specific
14 repeal of a certain local Act, as amended; to repeal conflicting laws; and for other
15 purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 The Board of Commissioners of Banks County ("the board") which existed on January 1,
19 2003, is continued in existence as the governing authority of Banks County but on and
20 after January 1, 2005, shall be constituted as provided in this Act.

21 **SECTION 2.**

22 The board shall have the power and authority to fix and establish by appropriate
23 resolution entered on its minutes policies, rules, and regulations governing all matters
24 reserved to the jurisdiction of the board. Such policies, rules, and regulations, when so
25 adopted with proper entry thereof made on the minutes of the board, shall be conclusive
26 and binding. The board shall exercise only those administrative powers which are
27 necessarily and properly incident to its functions as a policy-making or rule-making body

1 or which are necessary to compel enforcement of its adopted resolutions. The following
2 powers are vested in the board and reserved to its exclusive jurisdiction:

- 3 (1) To levy taxes;
- 4 (2) To fix fees;
- 5 (3) To make appropriations;
- 6 (4) To fix rates and charges for services provided by the county;
- 7 (5) To authorize the incurring of indebtedness;
- 8 (6) To order work done where the cost is to be assessed against benefited property
9 and to fix the basis for such assessment;
- 10 (7) To authorize and provide for the execution of contracts;
- 11 (8) To establish, alter, open, close, build, repair, or abolish public roads and bridges,
12 according to law; provided, however, that the chairperson shall have the authority to
13 adopt subdivision plats when the requirement established by the board for
14 subdivisions is met;
- 15 (9) To accept for the county the provisions of any optional statute where the statute
16 permits its acceptance by the governing authority of the county;
- 17 (10) To exercise all powers, duties, and authority in respect to zoning and planning;
- 18 (11) To create and change the boundaries of special taxing districts authorized by
19 law;
- 20 (12) To fix the bonds of county officers where same are not fixed by statute;
- 21 (13) To enact any ordinances or other legislation which the county may be given
22 authority to enact;
- 23 (14) To determine the priority of capital improvements;
- 24 (15) To call elections for the voting of bonds;
- 25 (16) To appoint retained legal counsel and an independent county auditor and
26 provide for their compensation;
- 27 (17) To exercise all of the power and authority which is or may be vested in the board
28 by the Constitution or laws of this state; and
- 29 (18) To exercise all power and authority formerly vested in the board.

30

SECTION 3.

31 (a) The chairperson and two members of the board who are serving as such on December
32 31, 2003, and any person selected to fill a vacancy in any such office shall continue to
33 serve as such members until the regular expiration of their respective terms of office and
34 upon the election and qualification of their respective successors. On and after January 1,
35 2005, the board shall consist of three members who shall be elected from the
36 commissioner posts described in subsection (b) of this section.

1 (b) For purposes of electing members of the board, Banks County is divided into three
2 commissioner posts. One member of the board shall be elected to represent each such
3 post.

4 **SECTION 4.**

5 (a) No person shall be a member of the board if that person is ineligible for such office
6 pursuant to Code Section 45-2-1 of the O.C.G.A. or any other general law applicable to
7 that office.

8 (b) Each member of the board may reside anywhere within Banks County and, if elected,
9 must receive the number of votes cast for that office as required by general law in the
10 entire county. At the time of qualifying for election as a member of the board from a
11 commissioner post, each candidate for such office shall specify the commissioner post for
12 which that person is a candidate. The member must continue to reside within the county
13 during that person's term of office or that office shall become vacant.

14 **SECTION 5.**

15 (a) The members of the reconstituted Board of Commissioners of Banks County shall be
16 elected as provided in this subsection. The first member from Commissioner Post 1 shall
17 be elected at the general election on the Tuesday next following the first Monday in
18 November, 2004. The member of the board elected thereto from Commissioner Post 1 in
19 2004 shall take office the first day of January immediately following that election and
20 shall serve for an initial term of office which expires December 31, 2008, and upon the
21 election and qualification of his or her successor. The first members from Commissioner
22 Posts 2 and 3 shall be elected at the general election on the Tuesday next following the
23 first Monday in November, 2006. Those members of the board elected thereto from
24 Commissioner Posts 2 and 3 in 2006 shall take office the first day of January immediately
25 following that election and shall serve for initial terms of office which expire December
26 31, 2010, and upon the election and qualification of their respective successors. Those
27 and all future successors to members of the board whose terms of office are to expire
28 shall be elected at the time of the state-wide general election immediately preceding the
29 expiration of such terms, shall take office the first day of January immediately following
30 that election, and shall serve for terms of office of four years each. Members of the board
31 shall serve for the terms of office specified therefor in this subsection and until their
32 respective successors are elected and qualified.

33 (b) All members of the board who are elected thereto shall be nominated and elected in
34 accordance with Chapter 2 of Title 21 of the O.C.G.A., the "Georgia Election Code."

35 (c) Commissioner Posts 1, 2, and 3, as they existed on January 1, 2003, shall continue to
36 be designated as Commissioner Posts 1, 2, and 3, respectively, and on and after the date
37 this Act becomes effective such members of the board who are serving from those former

1 commissioner posts shall be deemed to be serving from and representing their respective
2 posts as provided under this Act.

3 **SECTION 6.**

4 (a) Any vacancy in office upon the board which occurs for any reason other than
5 expiration of term shall be filled as follows:

6 (1) If the vacancy occurs during the final 27 months of a term of office, within 30
7 days after such occurrence, the remaining members of the board shall appoint a person
8 to fill such vacancy; or

9 (2) If the vacancy occurs at any time prior to the time specified in subparagraph (A)
10 of this paragraph, within 30 days after such occurrence, the remaining members of the
11 board shall appoint a person to fill such vacancy until a successor is elected at a
12 special election and qualified, which special election shall be held on the same date as
13 the state-wide general election which is first held following the date of the vacancy.

14 (b) Any person appointed to fill a vacancy in office pursuant to paragraph (1) of this
15 subsection shall meet the same eligibility requirements specified for persons who are
16 elected to such office. Any person appointed to fill a vacancy under subparagraph (A) of
17 paragraph (1) of this subsection or elected to fill a vacancy under subparagraph (B) of
18 paragraph (1) of this subsection shall serve out the remainder of the unexpired term and
19 until a successor is elected and qualified.

20 **SECTION 7.**

21 The board shall hold a minimum of one regular meeting per month for the transaction of
22 business as may legitimately come before it. The board may convene in special meetings
23 on the call of the chairperson, as the business of the board may require. The members of
24 the board may at any time convene a special meeting of the board upon call by any one of
25 them as the business of the board may require, provided that the chairperson is unable or
26 fails to call such meeting upon request.

27 **SECTION 8.**

28 Two members shall constitute a quorum.

29 **SECTION 9.**

30 The chairperson shall be the official head of the board. The chairperson shall cause an
31 agenda to be established for and preside at all meetings of the board unless absent. The
32 chairperson shall have all the rights, powers, duties, and responsibilities of a member of
33 the board, including the right and power to make motions and nominations, except that
34 the chairperson shall not vote on matters before the board except to express unanimity or
35 where there is an equal division on the question. The chairperson may serve as a member

1 of boards, commissions, and committees required by law or requested by the board and
2 shall perform such other duties as may be required by law.

3 **SECTION 10.**

4 The board shall elect one of the members to serve as chairperson and one of the members
5 to serve as vice chairperson. The vice chairperson shall cause an agenda to be established
6 for and preside at all meetings at which the chairperson is absent. In such event, the vice
7 chairperson shall retain all of his or her rights, duties, powers, and responsibilities as a
8 member of the board, including the right to make motions and to vote on matters before
9 the board.

10 **SECTION 11.**

11 Before entering upon the discharge of their duties, the members shall subscribe to an oath
12 for the true and faithful performance of their duties and that they are not the holders of
13 any unaccounted for public funds.

14 **SECTION 12.**

15 Each member of the board shall give a satisfactory surety bond, as determined by the
16 judge of the Probate Court of Banks County, and payable to the judge of the Probate
17 Court of Banks County and filed in the office of the judge of the Probate Court of Banks
18 County, in the sum of \$1,000.00, conditioned upon the faithful performance of the duties.
19 The costs of said bonds shall be paid from county funds.

20 **SECTION 13.**

21 The board shall adopt and operate under annual budgets in accordance with the laws of
22 this state.

23 **SECTION 14.**

24 The board shall provide for and cause to be made annual audits in accordance with the
25 laws of this state.

26 **SECTION 15.**

27 The board shall create in and for Banks County the office of county administrator and
28 vest in such office powers, duties, and responsibilities of an administrative nature in
29 accordance with the laws of this state.

SECTION 16.

The board may appoint a clerk in and for Banks County consistent with the laws of this state. The clerk shall be a resident of Banks County. The board shall specify the duties of the clerk and the salary of the clerk.

SECTION 17.

The board shall cause minutes of its meetings to be kept in accordance with the laws of this state.

SECTION 18.

(a) The chairperson and each other member of the board of commissioners shall be compensated by an annual salary of \$9,600.00.

(b) The salaries of the chairperson and other members of the board of commissioners shall be paid in equal monthly installments from county funds.

(c) The chairperson and other members of the board shall receive no other or further compensation or expenses for their services as members of the board; but, upon a motion duly made and adopted by the board, the chairperson or other members may be compensated for actual expenses reasonably incurred in the performance of their duties or for any work performed for the county not in their capacity as chairperson or as a member of the board, and the amount of such compensation shall be the same as the regular rate paid to county employees for such work.

(d) On and after January 1, 2005, salaries, compensation, expenses, and expenses in the nature of compensation to which members of the board are entitled shall be fixed pursuant to the laws of this state.

SECTION 19.

The board shall also establish a procedure for purchasing all county supplies, materials, equipment, and other needs where the same exceeds \$15.00 in cost. Such procedure shall provide that all departments requesting the purchase of necessary supplies and materials shall submit a purchase order to the purchasing agent for the county, who shall by competitive methods purchase such supplies and materials. The county administrator shall be the county purchasing agent. All county supplies, materials, equipment, and other necessary items exceeding \$15.00 in cost shall be required to be purchased in accordance with this section and through the use of the county purchasing agent.

SECTION 20.

The board shall not have the right to contract with any member of the board for any supplies nor with anyone related to any member of the board for any work to be done or for any supplies to be furnished to the county.

SECTION 21.

An Act creating the Board of Commissioners of Banks County, Georgia, approved August 19, 1916 (Ga. L. 1916, p. 349), as amended, is repealed in its entirety.

SECTION 22.

Unless prohibited by the federal Voting Rights Act of 1965, as amended, the election superintendent of Banks County shall call and conduct an election as provided in this section for the purpose of submitting this Act to the electors of Banks County for approval or rejection. The election superintendent shall conduct that election on the date of the 2004 presidential preference primary and shall issue the call and conduct that election as provided by general law. The superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of Banks County. The ballot shall have written or printed thereon the words:

"() YES Shall the Act be approved which changes the form of government of Banks County to three elected commissioners and a county administrator?"
 () NO

All persons desiring to vote for approval of the Act shall vote "Yes," and those persons desiring to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on such question are for approval of the Act, then Sections 1 through 21 of this Act shall become of full force and effect as follows: those provisions of Sections 1 through 21 of this Act necessary for the election of members of the board in 2004 shall become effective immediately; the remaining provisions of Sections 1 through 21 of this Act shall become effective January 1, 2005. If Sections 1 through 21 of this Act are not so approved or if the election is not conducted as provided in this section, Sections 1 through 21 of this Act shall not become effective and this Act shall be automatically repealed on the first day of January immediately following that election date. The expense of such election shall be borne by Banks County. It shall be the election superintendent's duty to certify the result thereof to the Secretary of State.

SECTION 23.

The governing authority of Banks County shall through its legal counsel cause this Act to be submitted for preclearance under the federal Voting Rights Act of 1965, as amended; and such submission shall be made to the United States Department of Justice or filed with the appropriate court no later than 45 days after the date on which this Act is approved by the Governor or otherwise becomes law without such approval.

1 **SECTION 24.**

2 This section and Sections 22 and 23 of this Act shall become effective upon the approval
3 of this Act by the Governor or upon its becoming law without such approval. The
4 remaining provisions of this Act shall become effective only as provided under Section
5 22 of this Act.

6 **SECTION 25.**

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