

A BILL TO BE ENTITLED
AN ACT

1 To revise provisions of law relating to creation of new municipal corporations; to amend
2 Chapter 31 of Title 36 of the Official Code of Georgia Annotated, relating to incorporation
3 of municipal corporations, so as to eliminate certain minimum distance requirements; to
4 provide that new municipal corporations shall have a minimum amount of time to arrange
5 for service delivery; to provide that the Attorney General shall seek federal Voting Rights
6 Act preclearances required in connection with new incorporations; to provide for the
7 authorization and regulation of alcoholic beverage sales in new municipalities under certain
8 circumstances; to provide for the orderly transition of responsibilities and functions to a new
9 municipality from its county and provide for counties to retain certain functions and
10 responsibilities for certain periods of time; to provide that a chartering Act may specify any
11 length or lengths for initial terms of office; to authorize the appropriation of funds to the
12 Department of Community Affairs for loans or grants or both to new municipal corporations;
13 to amend Code Section 48-8-89.1 of the Official Code of Georgia Annotated, relating to
14 distribution of joint county and municipal local option sales tax with respect to new qualified
15 municipalities, so as to provide for distribution with respect to newly incorporated
16 municipalities; to provide for other related matters; to provide for an effective date and
17 applicability; to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

19 Chapter 31 of Title 36 of the Official Code of Georgia Annotated, relating to incorporation
20 of municipal corporations, is amended by striking Code Section 36-31-2 thereof, relating to
21 minimum distances between corporate boundaries, and inserting in its place the following:
22

23 "36-31-2.

24 ~~(a) No local Act granting a municipal charter shall be enacted wherein any part of the~~
25 ~~proposed corporate boundary is less than three miles distance from the corporate boundary~~
26 ~~of any existing municipal corporation in this state; provided, however, that, if the residents~~

1 of a certain geographical area within three miles of an existing municipal corporation have
 2 been denied annexation to the municipal corporation by the people of the municipal
 3 corporation, the residents of such geographical area shall be entitled to incorporate a new
 4 municipal corporation at any time within 12 months after such denial, and a local Act
 5 granting a municipal charter may be enacted; provided, further, that the population of the
 6 area proposed to be incorporated must exceed the population of the existing municipal
 7 corporation, and a certificate from the governing authority of the existing municipal
 8 corporation or from the judge of the superior court of the county, evidencing the denial of
 9 annexation and the population figures, must accompany the certificate of incorporation
 10 required by this chapter.

11 (b) ~~Any provision of subsection (a) of this Code section to the contrary, a local Act~~
 12 ~~granting a municipal charter to any area comprising the former boundaries of a municipal~~
 13 ~~corporation the charter of which was repealed by operation of Code Section 36-30-7.1 may~~
 14 ~~be enacted at the regular 1996 or 1997 session of the General Assembly without regard to~~
 15 ~~the proximity of the proposed municipal corporation to an existing municipal corporation.~~
 16 When a municipal corporation is created by local Act as authorized in this chapter, the
 17 provisions of Code Section 36-30-7.1 shall not apply for five years from the date the first
 18 elected officials of such municipal corporation take office. No later than July 1 following
 19 the expiration of such five-year period, the governing authority of the municipal
 20 corporation shall file a certification with the Department of Community Affairs stating
 21 whether the municipal corporation does or does not meet the standards for an active
 22 municipality under subsection (b) of Code Section 36-30-7.1."

23 SECTION 2.

24 Said Chapter 31 of Title 36 is further amended by adding at its end new Code sections to read
 25 as follows:

26 "36-31-6.

27 When a new municipal corporation is chartered by local Act, the Attorney General shall
 28 be responsible for seeking any and all preclearances required in connection with such Act
 29 and incorporation under the federal Voting Rights Act of 1965, as amended, until such time
 30 as the new municipal corporation notifies the Attorney General that it has the ability to seek
 31 any further preclearances required.

32 36-31-7.

33 When a new municipal corporation is chartered by local Act, the governing authority of the
 34 municipal corporation shall have all the same powers to license and regulate alcoholic
 35 beverages within its territory as did the governing authority of the county when such

1 territory was within the unincorporated area of the county. Without limiting the generality
2 of the foregoing, it is specifically provided that no petition, election, or other condition
3 precedent which might otherwise be required under Title 3 to authorize sales of any
4 alcoholic beverages shall be required in order for the governing authority of the
5 municipality to exercise such powers.

6 36-31-8.

7 (a) When a new municipal corporation is chartered by local Act, a period of time may be
8 needed for an orderly transition of various government functions from the county to the
9 new municipal corporation. Accordingly, when a new municipal corporation is chartered
10 by local Act, the local Act may provide for a transition period not to exceed 13 months.
11 The local Act may specify the time or times during the transition period (or the method or
12 methods for determining the time or times during the transition period) at which:

13 (1) Various governmental functions, services, and responsibilities will be assumed by the
14 new municipal corporation within its territory;

15 (2) The new municipal corporation shall commence collection of various taxes, fees,
16 assessments, fines and forfeitures, and other moneys within its territory; and

17 (3) The municipal court of the new municipality shall begin to exercise its jurisdiction
18 over various subject matters.

19 (b) When a chartering local Act so provides for a transition period, the county in which the
20 new municipality is located shall continue to provide within the territory of the new city
21 all government services and functions which it provided as of the first day of January next
22 preceding enactment of the chartering local Act. The county shall continue to provide such
23 services and functions until the end of the transition period; provided, however, that the
24 new city may assume the provision of any service or function at such earlier time as may
25 be specified in the chartering local Act or at such earlier time as may be agreed upon by the
26 county and the new city.

27 (c) When a chartering local Act so provides for a transition period, the county in which the
28 new municipality is located shall continue to collect within the territory of the new city
29 taxes, fees, assessments, fines and forfeitures, and other moneys in the same manner as
30 authorized as of the first day of January next preceding enactment of the local chartering
31 Act. The county shall continue to collect such amounts until the end of the transition
32 period; provided, however, that the new city may assume the collection of any such amount
33 at such earlier time as may be specified in the chartering local Act or at such earlier time
34 as may be agreed upon by the county and the new city. Where a particular tax, fee,
35 assessment, fine, forfeiture, or other amount collected is specifically related to the
36 provision of a particular government service or function, a chartering local Act shall not

1 transfer the collection of such amount to the new city prior to the assumption of the related
 2 service or function by the new city, except pursuant to agreement between the new city and
 3 the county.

4 (d) When a chartering local Act so provides for a transition period, the county in which the
 5 new city is located shall not during the transition period remove from the county road
 6 system any road within the territory of the new city, except with the agreement of the new
 7 city.

8 (e) When a chartering local Act so provides for a transition period, the new municipality
 9 shall not be subject to Chapter 70 of this title, relating to planning and service delivery
 10 strategies, during the transition period; provided, however, that the new city and other
 11 political subdivisions may during the transition period commence planning, negotiations,
 12 and other actions necessary or appropriate for compliance after the transition period.

13 (f) When a chartering local Act so provides for a transition period, upon the termination
 14 of the transition period subsections (b) through (e) of this Code section shall cease to apply
 15 and the new city shall be a fully functioning municipal corporation and subject to all
 16 general laws of this state.

17 36-31-9.

18 When a new municipal corporation is chartered by local Act, the chartering local Act may
 19 provide for the initial terms of office of members of the governing authority to be of any
 20 length or lengths; and the provisions of this Code section shall control over any conflicting
 21 provisions of Code Sections 21-2-541.1 and 21-2-541.2.

22 36-31-10.

23 The General Assembly may, in connection with the incorporation of a new municipal
 24 corporation, at any time (before, after, or contemporaneously with the passage of the
 25 chartering Act) appropriate to the Department of Community Affairs funds for grants or
 26 loans or both to a specific existing or proposed municipal corporation. When funds are so
 27 appropriated, the department shall make grants or loans or both as specified by amount,
 28 recipient, and purpose in the appropriation unless the chartering Act fails to secure passage
 29 or otherwise fails to become effective."

30 SECTION 3.

31 Article 2 of Chapter 8 of Title 48, relating to joint county and municipal local option sales
 32 tax, is amended by striking Code Section 48-8-89.1, relating to distribution of the tax upon
 33 creation of a new municipal corporation, and inserting in its place a new Code section to read
 34 as follows:

1 "48-8-89.1.

2 (a) If there exists within any special district in which the tax authorized by this article is
 3 imposed a qualified municipality which was not a qualified municipality on the date of
 4 filing with the commissioner of the most recently filed certificate under Code Section
 5 48-8-89, such qualified municipality may request the commissioner to give notice of the
 6 qualified municipality's existence as provided in this subsection. Upon receipt of such a
 7 request, the commissioner shall, unless he determines that the requesting entity is not a
 8 qualified municipality, within 30 days give written notice of the qualified municipality's
 9 existence to the county which is conterminous with the special district in which the
 10 qualified municipality is located and to each other qualified municipality within the special
 11 district. Such written notice shall include the name of the new qualified municipality, the
 12 effective date of the notice, and a statement of the provisions of this Code section.

13 (b) Within 60 days after the effective date of the notice referred to in subsection (a) of this
 14 Code section, a new distribution certificate shall be filed with the commissioner for the
 15 special district. This distribution certificate shall specify by percentage what portion of the
 16 proceeds of the tax available for distribution within the special district shall be received by
 17 the county in which the special district is located and by each qualified municipality
 18 located wholly or partially within the special district, including the new qualified
 19 municipality. No distribution certificate may contain a total of specified percentages in
 20 excess of 100 percent.

21 (c) Except as otherwise provided in this subsection, a distribution certificate required by
 22 this Code section must be executed by the governing authorities of the county within which
 23 the special district is located and each qualified municipality located wholly or partially
 24 within the special district, including the new qualified municipality. ~~Notwithstanding the~~
 25 ~~fact that a certificate shall not contain~~ A certificate may be filed without an execution in
 26 behalf of one or more qualified municipalities within the special district, if ~~the~~ and only if:

27 (1) The combined total of the populations of all such absent municipalities is less than
 28 one-half of the aggregate population of all qualified municipalities located within the
 29 special district, ~~the;~~ and

30 (2) No one of the absent municipalities has a population which is more than 10 percent
 31 of the total population of the county.

32 When a certificate is so filed without an execution in behalf of one or more qualified
 33 municipalities, the submitting political subdivisions shall, in behalf of the absent
 34 municipalities, specify a percentage of that portion of the remaining proceeds which each
 35 such municipality shall receive, which percentage shall not be less than that proportion
 36 which each absent municipality's population bears to the total population of all qualified
 37 municipalities within the special district multiplied by that portion of the remaining

1 proceeds which are received by all qualified municipalities within the special district. For
 2 the purpose of determining the population of the absent municipalities, only that portion
 3 of the population of each such municipality which is located within the special district shall
 4 be computed.

5 (d) If a new certificate is not filed for any special district as required by this Code section,
 6 the authority to impose the tax authorized by Code Section 48-8-82 within that special
 7 district shall ~~cease~~ continue on and after the first day of January of the year following the
 8 year in which the required distribution certificate could last have been timely filed, but on
 9 and after such first day of January the distribution shall be as provided in this subsection
 10 until such time as a new distribution certificate is filed under Code Section 48-8-89 or the
 11 authority to impose the tax is terminated under paragraph (4) of subsection (d) of Code
 12 Section 48-8-89. In any special district in which the authority to impose the tax is
 13 ~~terminated~~ continued pursuant to this subsection, the ~~tax may thereafter be reimposed only~~
 14 ~~pursuant to the procedures specified in Code Sections 48-8-84 through 48-8-86~~ distribution
 15 shall be as follows:

16 (1) Determine the population of the new qualified municipality as a percentage of the
 17 total population of the special district and allocate to the new qualified municipality that
 18 percentage of the total net tax proceeds; and

19 (2) Allocate to the county and each other qualified municipality in the special district a
 20 percentage of the net tax proceeds remaining after allocation to the new qualified
 21 municipality's as provided in paragraph (1) of this subsection. The percentage of the
 22 remaining net tax proceeds so allocated to each such political subdivision shall be the
 23 same as the percentage of the total net tax proceeds which it received prior to the
 24 allocation to the new qualified municipality, so that each such political subdivision shall
 25 bear its pro rata share of reduction due to the allocation to the new qualified municipality.

26 (e) If a new certificate is filed as required by this Code section, the commissioner shall
 27 begin to distribute the proceeds as specified in the new certificate on the first day of
 28 January of the first calendar year which begins more than 60 days after the effective date
 29 of the notice referred to in subsection (b) of this Code section. The commissioner shall
 30 continue to distribute the proceeds of the tax according to the new certificate until a
 31 subsequent certificate is filed and becomes effective as provided in Code Section 48-8-89.

32 (f) All calculations of population under this Code section shall be according to the most
 33 recent United States decennial census."

