

The House Committee on Governmental Affairs offers the following substitute to
HB 36:

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 change provisions relating to development requirements for areas to
6 be incorporated; to provide that the Attorney General shall seek federal Voting Rights Act
7 preclearances required in connection with new incorporations; to provide for the
8 authorization and regulation of alcoholic beverage sales in new municipalities under certain
9 circumstances; to provide for the orderly transition of responsibilities and functions to a new
10 municipality from its county and provide for counties to retain certain functions and
11 responsibilities for certain periods of time; to provide that a chartering Act may specify any
12 length or lengths for initial terms of office; to authorize the appropriation of funds to the
13 Department of Community Affairs for loans or grants or both to new municipal corporations;
14 to provide for temporary limitations on the amount of certain special district fees,
15 assessments, and taxes following the creation of a new municipal corporation in certain
16 counties; to provide for certain auditing and reporting requirements with respect to special
17 district revenues and expenditures in certain counties; to amend Article 2 of Chapter 8 of
18 Title 48 of the Official Code of Georgia Annotated, relating to joint county and municipal
19 local option sales tax, so as to change provisions for distribution with respect to newly
20 incorporated municipalities and other local governments in the county; to provide for other
21 related matters; to provide for severability; to provide for an effective date and applicability;
22 to repeal conflicting laws; and for other purposes.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

1 "36-31-4.

2 To be eligible for original incorporation as a municipal corporation, the area embraced
 3 shall be so developed that at least 60 percent of the total number of lots and tracts in the
 4 area at the time of incorporation are used for residential, commercial, industrial,
 5 institutional, recreational, or governmental purposes and shall be subdivided into lots and
 6 tracts such that at least 60 percent of the total acreage, not counting the acreage ~~used~~ which
 7 at the time of incorporation is used for, held for future use for, or subject to a contract for
 8 future use for commercial, industrial, governmental, recreational, or institutional purposes,
 9 consists of lots and tracts of five acres or less in size."

10 **SECTION 3.**

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

13 "36-31-6.

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

19 36-31-7.

20 When a new municipal corporation is chartered by local Act, the governing authority of the
 21 municipal corporation shall have all the same powers to license and regulate alcoholic
 22 beverages within its territory as did the governing authority of the county when such
 23 territory was within the unincorporated area of the county. Without limiting the generality
 24 of the foregoing, it is specifically provided that no petition, election, or other condition
 25 precedent which might otherwise be required under Title 3 to authorize sales of any
 26 alcoholic beverages shall be required in order for the governing authority of the
 27 municipality to exercise such powers.

28 36-31-8.

29 (a) When a new municipal corporation is chartered by local Act, the local Act may provide
 30 for a transition period not to exceed 24 months for the orderly transition of governmental
 31 factions from the county to the new municipal corporation. The local Act may specify the
 32 time or times during the transition period (or the method or methods for determining the
 33 time or times during the transition period) at which:

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

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

5 (b) When a chartering local Act so provides for a transition period, the county in which the
6 new municipality is located shall continue to provide within the territory of the new city
7 all government services and functions which it provided as of the date of enactment of the
8 chartering local Act. The county shall continue to provide such services and functions until
9 the end of the transition period; provided, however, that the new city may assume the
10 provision of any service or function at such earlier time as may be specified in the
11 chartering local Act or at such earlier time as may be agreed upon by the county and the
12 new city.

13 (c) When a chartering local Act so provides for a transition period, the new municipality
14 shall collect within the territory of the new city all taxes, fees, assessments, fines and
15 forfeitures, and other moneys as of the first day the initial governing authority takes office.
16 Where a particular tax, fee, assessment, fine, forfeiture, or other amount collected is
17 specifically related to the provision of a particular government service or function by the
18 county, the service or function shall continue to be provided by the county during the
19 transition period contingent upon payment by the city of the actual cost of providing such
20 service or function unless otherwise provided in a written agreement between the new city
21 and the county.

22 (d) When a chartering local Act so provides for a transition period, the county in which the
23 new city is located shall not from the time of enactment of the charter until the end of the
24 transition period remove from the county road system any road within the territory of the
25 new city except with the agreement of the new city.

26 (e) When a chartering local Act so provides for a transition period, the new municipality
27 shall not be subject to the laws specified in this subsection during the transition period;
28 provided, however, that the new city and other political subdivisions may during the
29 transition period commence planning, negotiations, and other actions necessary or
30 appropriate for compliance after the transition period. During the transition period, the new
31 municipality shall not be subject to:

32 (1) Chapter 70 of this title, relating to planning and service delivery strategies;

33 (2) Provisions of Code Sections 12-8-31.1 and 12-8-39.2, relating to solid waste planning
34 and solid waste management reporting;

35 (3) Provisions of Code Section 48-13-56, relating to reporting of excise taxes collected
36 and expended pursuant to Article 3 of Chapter 13 of Title 48; and

1 (4) Provisions of Code Section 36-81-8, relating to reporting of local government
2 finances, reporting of revenues derived from a tax levied pursuant to Article 3 of Chapter
3 13 of Title 48, and reporting of local government services and operations.

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

8 (g) As of the date a chartering local Act is approved by the Governor or becomes law
9 without such approval, the Governor is authorized to appoint five persons to serve as
10 interim representatives of the newly incorporated municipality until the election of the
11 municipality's first governing authority. The interim representatives shall cease to serve
12 as of the time the members of the first governing authority take office. The function of the
13 interim representatives shall be to facilitate the provision of municipal services and
14 facilities, the collection of taxes and fees, and the negotiation of intergovernmental
15 agreements in preparation of the establishment of the new municipality. The interim
16 representatives shall not have the ability to enter into any binding agreements, to expend
17 public funds, or to incur any liability on behalf of the new municipality. Any person who
18 is serving as or has served as an interim representative shall be ineligible to qualify for
19 election as a member of the initial governing authority of the new municipality.

20 36-31-9.

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

25 36-31-10.

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

1 36-31-11.

2 When a municipal corporation is chartered by local Act within a county which has a special
3 district for the provision of local government services consisting of the unincorporated area
4 of the county, the territory within the new municipal corporation shall be removed from the
5 special district except to the extent otherwise provided by Code Section 36-31-8 during a
6 transition period and except that the county may continue to levy within such territory any
7 previously imposed tax for the purpose of retiring any special district debt until such time
8 as such debt is retired.

9 36-31-12.

10 (a) This Code section shall apply only when:

11 (1) A municipal corporation is chartered by local Act within a county which has a special
12 district for the provision of local government services consisting of the unincorporated
13 area of the county; and

14 (2) The population of the unincorporated area of the county will, after removal of the
15 population of the new municipality from the unincorporated area, constitute less than 20
16 percent of the population of the county according to the most recent decennial census.

17 (b) When a municipal corporation is chartered by local Act within a county subject to this
18 Code section, the county shall for the fiscal year in which the municipal corporation is
19 chartered and for each of the next two fiscal years have included in its annual audit detailed
20 findings as to:

21 (1) The amount of any special district taxes, assessments, and fees collected in the
22 special district consisting of the unincorporated area of the county which shall be reported
23 as the 'actual special district tax, assessment, and fee collections';

24 (2) The amount of proceeds collected by the county pursuant to any tax under Article 2
25 of Chapter 8 of Title 48 which would be allocated to the unincorporated area of the
26 county if the unincorporated area received an allocation equal on a per capita basis to the
27 average per capita allocation to the cities in the county which shall be reported as the
28 'deemed allocation of local option sales tax proceeds';

29 (3) The total amount of expenditures by the county for:

30 (A) The provision of services within the special district consisting of the
31 unincorporated area of the county, including only those services which are provided by
32 the county only in that special district; and

33 (B) The construction and maintenance of facilities for the provision of services referred
34 to in subparagraph (A) of this paragraph; and

35 (4) The amount by which expenditures stated in paragraph (3) of this subsection exceed
36 or are less than the total of the amounts stated in paragraphs (1) and (2) of this subsection.

1 (c) The party performing the audit required by subsection (b) of this Code section shall
 2 prepare as promptly as is practicable a brief informational summary of the audit findings
 3 required by this Code section; and after each year's summary becomes available, a copy
 4 of the summary shall be included with the next ad valorem tax bills mailed by the county
 5 to residents of the special district consisting of the unincorporated area of the county.

6 (d) When a municipal corporation is chartered by local Act within a county subject to this
 7 Code section, the fees, assessments, and taxes, if any, imposed only within the special
 8 district shall not be increased during the calendar year in which the municipal corporation
 9 is chartered and shall not be increased at any time during the next two calendar years.

10 During such time period, no new special district shall be created within the unincorporated
 11 area of the county to evade the purposes of this prohibition."

12 SECTION 4.

13 Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to joint
 14 county and municipal local option sales tax, is amended by striking Code Section 48-8-89.1,
 15 relating to distribution of the tax upon creation of a new municipal corporation, and inserting
 16 in its place a new Code section to read as follows:

17 "48-8-89.1.

18 (a) If there exists within any special district in which the tax authorized by this article is
 19 imposed a qualified municipality which was not a qualified municipality on the date of
 20 filing with the commissioner of the most recently filed certificate under Code Section
 21 48-8-89, such qualified municipality may request the commissioner to give notice of the
 22 qualified municipality's existence and status as a qualified municipality as provided in this
 23 subsection. Upon receipt of such a request, the commissioner shall, unless he or she
 24 determines that the requesting entity is not a qualified municipality, within 30 days give
 25 written notice of the qualified municipality's existence and status to the county which is
 26 conterminous with the special district in which the qualified municipality is located and to
 27 each other qualified municipality within the special district. Such written notice shall
 28 include the name of the new qualified municipality, the effective date of the notice, and a
 29 statement of the provisions of this Code section.

30 (b) Within 60 days after the effective date of the notice referred to in subsection (a) of this
 31 Code section, a new distribution certificate shall be filed with the commissioner for the
 32 special district. This distribution certificate shall address only the proceeds of the tax
 33 available for distribution from the percentage allocated to the county in the current
 34 distribution certificate and shall specify by as a percentage of the total proceeds of the tax
 35 ~~what portion of the proceeds of the tax available for distribution within the special district~~
 36 shall be received by the county in which the special district is located and by ~~each qualified~~

1 ~~municipality located wholly or partially within the special district, including the new~~
 2 ~~qualified municipality. No distribution certificate may contain a total of specified~~
 3 ~~percentages in excess of 100 percent.~~

4 (c) Except as otherwise provided in this subsection, a distribution certificate required by
 5 this Code section must be executed by the governing authorities of the county within which
 6 the special district is located and each new qualified municipality located wholly or
 7 partially within the special district, ~~including the new qualified municipality.~~
 8 ~~Notwithstanding the fact that a certificate shall not contain an execution in behalf of one~~
 9 ~~or more qualified municipalities within the special district, if the combined total of the~~
 10 ~~populations of all such absent municipalities is less than one-half of the aggregate~~
 11 ~~population of all qualified municipalities located within the special district, the submitting~~
 12 ~~political subdivisions shall, in behalf of the absent municipalities, specify a percentage of~~
 13 ~~that portion of the remaining proceeds which each such municipality shall receive, which~~
 14 ~~percentage shall not be less than that proportion which each absent municipality's~~
 15 ~~population bears to the total population of all qualified municipalities within the special~~
 16 ~~district multiplied by that portion of the remaining proceeds which are received by all~~
 17 ~~qualified municipalities within the special district. If a new certificate is not filed within~~
 18 ~~60 days as required by subsection (b) of this Code section, the commissioner shall~~
 19 ~~distribute the proceeds of the tax available for distribution from the percentage allocated~~
 20 ~~to the county in the current distribution certificate such that the new qualified municipality~~
 21 ~~receives an allocation equal on a per capita basis to the average per capita allocation to the~~
 22 ~~other qualified municipalities in the county (according to population), to be expended as~~
 23 ~~provided in paragraph (2) of subsection (a) of Code Section 48-8-89. Every other qualified~~
 24 ~~municipality shall continue to receive the share provided by the existing distribution~~
 25 ~~certificate or otherwise provided by law. The county shall receive the remaining proceeds~~
 26 ~~of the tax, to be expended as provided in paragraph (2) of subsection (a) of Code Section~~
 27 ~~48-8-89.~~ For the purpose of determining the population of ~~the absent~~ new qualified
 28 municipalities, only that portion of the population of each such municipality which is
 29 located within the special district shall be computed. For the purpose of determining
 30 population under this Code section, all calculations of population shall be according to the
 31 most recent decennial census.

32 (d) ~~If a new certificate is not filed for any special district as required by this Code section,~~
 33 ~~the authority to impose the tax authorized by Code Section 48-8-82 within that special~~
 34 ~~district shall cease on the first day of January of the year following the year in which the~~
 35 ~~required distribution certificate could last have been timely filed. In any special district in~~
 36 ~~which the authority to impose the tax is terminated pursuant to this subsection, the tax may~~

1 ~~thereafter be reimposed only pursuant to the procedures specified in Code Sections 48-8-84~~
 2 ~~through 48-8-86.~~

3 ~~(e) If a new certificate is filed as required by this Code section, the~~ The commissioner shall
 4 begin to distribute the proceeds as specified in the ~~new~~ certificate applicable to the county
 5 and the new qualified municipality or, if such a certificate is not filed, as specified in
 6 subsection (c) of this Code section on the first day of January of the first calendar year the
 7 first month which begins more than 60 days after the effective date of the notice referred
 8 to in subsection ~~(b)~~ (a) of this Code section. The commissioner shall continue to distribute
 9 the proceeds of the tax according to the ~~new~~ existing certificate and the certificate
 10 applicable to the county and the new qualified municipality or, if such a certificate is not
 11 filed, as specified in subsection (c) of this Code section until a subsequent certificate is
 12 filed and becomes effective as provided in Code Section 48-8-89."

13 SECTION 5.

14 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared
 15 or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other
 16 sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full
 17 force and effect as if the section, subsection, sentence, clause, or phrase so declared or
 18 adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly
 19 declares that it would have passed the remaining parts of this Act if it had known that such
 20 part or parts hereof would be declared or adjudged invalid or unconstitutional.

21 SECTION 6.

22 This Act shall become effective upon its approval by the Governor or upon its becoming law
 23 without such approval. This Act shall apply with respect to any local Act enacted at the 2005
 24 regular session of the General Assembly or any future session.

25 SECTION 7.

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