

The Senate State and Local Governmental Operations Committee offered 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 certain 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:

**SECTION 1.**

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

"36-31-2.

~~(a) No local Act granting a municipal charter shall be enacted wherein any part of the proposed corporate boundary is less than three miles distance from the corporate boundary of any existing municipal corporation in this state; provided, however, that, if the residents of a certain geographical area within three miles of an existing municipal corporation have been denied annexation to the municipal corporation by the people of the municipal corporation, the residents of such geographical area shall be entitled to incorporate a new municipal corporation at any time within 12 months after such denial, and a local Act granting a municipal charter may be enacted; provided, further, that the population of the area proposed to be incorporated must exceed the population of the existing municipal corporation, and a certificate from the governing authority of the existing municipal corporation or from the judge of the superior court of the county, evidencing the denial of annexation and the population figures, must accompany the certificate of incorporation required by this chapter.~~

~~(b) Any provision of subsection (a) of this Code section to the contrary, a local Act granting a municipal charter to any area comprising the former boundaries of a municipal corporation the charter of which was repealed by operation of Code Section 36-30-7.1 may be enacted at the regular 1996 or 1997 session of the General Assembly without regard to the proximity of the proposed municipal corporation to an existing municipal corporation.~~

When a municipal corporation is created by local Act as authorized in this chapter, the provisions of Code Section 36-30-7.1 shall not apply for two years from the date the first elected officials of such municipal corporation take office. No later than July 1 following the expiration of such two-year period, the governing authority of the municipal corporation shall file a certification with the Department of Community Affairs stating whether the municipal corporation does or does not meet the standards for an active municipality under subsection (b) of Code Section 36-30-7.1."

**SECTION 2.**

Said Chapter 31 of Title 36 is further amended by striking Code section 36-31-4, relating to standards for areas to be incorporated, and inserting in its place a new Code section to read as follows:

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 inserting a new subsection (f) at  
 15 the end of Code Section 48-8-89.1, relating to distribution of the tax upon creation of a new  
 16 municipal corporation in certain counties, to read as follows:

17 "(f)(1) This subsection shall apply only to newly created municipalities when the  
 18 municipal corporation created by local Act meets or is subject to the description specified  
 19 in subsection (a) of Code Section 36-31-12.

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

33 (3) Within 60 days after the effective date of the notice referred to in paragraph (2) of  
 34 this subsection, a new distribution certificate shall be filed with the commissioner for the  
 35 special district. This distribution certificate shall address only the proceeds of the tax  
 36 available for distribution from the percentage allocated to the county in the current

1 distribution certificate and shall specify as a percentage of the total proceeds of the tax  
 2 what portion of the proceeds shall be received by the county in which the special district  
 3 is located and by the new qualified municipality.

4 (4) Except as otherwise provided in this paragraph, a distribution certificate required by  
 5 this subsection 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. If a new certificate is not filed within 60 days as  
 8 required by paragraph (3) of this subsection, the commissioner shall distribute the  
 9 proceeds of the tax available for distribution from the percentage allocated to the county  
 10 in the current distribution certificate such that the new qualified municipality receives an  
 11 allocation equal on a per capita basis to the average per capita allocation to the other  
 12 qualified municipalities in the county (according to population), to be expended as  
 13 provided in paragraph (2) of subsection (a) of Code Section 48-8-89. Every other  
 14 qualified municipality shall continue to receive the share provided by the existing  
 15 distribution certificate or otherwise provided by law. The county shall receive the  
 16 remaining proceeds of the tax, to be expended as provided in paragraph (2) of subsection  
 17 (a) of Code Section 48-8-89. For the purpose of determining the population of new  
 18 qualified municipalities, only that portion of the population of each such municipality  
 19 which is located within the special district shall be computed. For the purpose of  
 20 determining population under this Code section, all calculations of population shall be  
 21 according to the most recent decennial census.

22 (5) The commissioner shall begin to distribute the proceeds as specified in the certificate  
 23 applicable to the county and the new qualified municipality or, if such a certificate is not  
 24 filed, as specified in paragraph (4) of this subsection on the first day of the first month  
 25 which begins more than 60 days after the effective date of the notice referred to in  
 26 paragraph (2) of this subsection. The commissioner shall continue to distribute the  
 27 proceeds of the tax according to the existing certificate and the certificate applicable to  
 28 the county and the new qualified municipality or, if such a certificate is not filed, as  
 29 specified in paragraph (4) of this subsection until a subsequent certificate is filed and  
 30 becomes effective as provided in Code Section 48-8-89."

### 31 SECTION 5.

32 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared  
 33 or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other  
 34 sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full  
 35 force and effect as if the section, subsection, sentence, clause, or phrase so declared or  
 36 adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly

1 declares that it would have passed the remaining parts of this Act if it had known that such  
2 part or parts hereof would be declared or adjudged invalid or unconstitutional.

3 **SECTION 6.**

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

7 **SECTION 7.**

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