

SENATE SUBSTITUTE TO HB 36

AS PASSED SENATE

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 for a
 4 certain period of time; to provide that new municipal corporations shall have a minimum
 5 amount of time to arrange for service delivery; to change provisions relating to development
 6 requirements for areas to be incorporated; to provide that the Attorney General shall seek
 7 federal Voting Rights Act preclearances required in connection with new incorporations; to
 8 provide for the authorization and regulation of alcoholic beverage sales in new municipalities
 9 under certain circumstances; to provide for the orderly transition of responsibilities and
 10 functions to a new municipality from its county and provide for counties to retain certain
 11 functions and responsibilities for certain periods of time; to provide that a chartering Act may
 12 specify any length or lengths for initial terms of office; to authorize the appropriation of
 13 funds to the Department of Community Affairs for loans or grants or both to new municipal
 14 corporations; to provide for temporary limitations on the amount of certain special district
 15 fees, 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 1.1.

Said Chapter 31 of Title 36 is further amended by striking Code Section 36-31-3, relating to population standards for incorporation, and inserting in its place a new Code section to read as follows:

"36-31-3.

1 (a) To be eligible for original incorporation as a municipal corporation, the minimum
 2 population standards of the area embraced within the proposed municipal boundary shall
 3 be as follows:

4 (1) A total resident population of at least 200 persons; and

5 (2) An average resident population of at least 200 persons per square mile for the total
 6 area.

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

20 SECTION 2.

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

24 "36-31-4.

25 To be eligible for original incorporation as a municipal corporation, the area embraced
 26 shall be so developed that at least 60 percent of the total number of lots and tracts in the
 27 area at the time of incorporation are used for residential, commercial, industrial,
 28 institutional, recreational, or governmental purposes and shall be subdivided into lots and
 29 tracts such that at least 60 percent of the total acreage, not counting the acreage ~~used~~ which
 30 at the time of incorporation is used for, held for future use for, or subject to a contract for
 31 future use for commercial, industrial, governmental, recreational, or institutional purposes,
 32 consists of lots and tracts of five acres or less in size."

33 SECTION 3.

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

36 "36-31-6.

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

6 36-31-7.

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

15 36-31-8.

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

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

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

25 (b) When a chartering local Act so provides for a transition period, the county in which the
26 new municipality is located shall continue to provide within the territory of the new city
27 all government services and functions which it provided as of the date of enactment of the
28 chartering local Act. The county shall continue to provide such services and functions until
29 the end of the transition period; provided, however, that the new city may assume the
30 provision of any service or function at such earlier time as may be specified in the
31 chartering local Act or at such earlier time as may be agreed upon by the county and the
32 new city.

33 (c) When a chartering local Act so provides for a transition period, the new municipality
34 shall collect within the territory of the new city all taxes, fees, assessments, fines and
35 forfeitures, and other moneys as of the first day the initial governing authority takes office.

1 Where a particular tax, fee, assessment, fine, forfeiture, or other amount collected is
2 specifically related to the provision of a particular government service or function by the
3 county, the service or function shall continue to be provided by the county during the
4 transition period contingent upon payment by the city of the actual cost of providing such
5 service or function unless otherwise provided in a written agreement between the new city
6 and the county.

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

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

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

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

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

22 (4) Provisions of Code Section 36-81-8, relating to reporting of local government
23 finances, reporting of revenues derived from a tax levied pursuant to Article 3 of Chapter
24 13 of Title 48, and reporting of local government services and operations.

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

29 (g) As of the date a chartering local Act is approved by the Governor or becomes law
30 without such approval, the Governor is authorized to appoint five persons to serve as
31 interim representatives of the newly incorporated municipality until the election of the
32 municipality's first governing authority. The interim representatives shall cease to serve
33 as of the time the members of the first governing authority take office. The function of the
34 interim representatives shall be to facilitate the provision of municipal services and
35 facilities, the collection of taxes and fees, and the negotiation of intergovernmental
36 agreements in preparation of the establishment of the new municipality. The interim
37 representatives shall not have the ability to enter into any binding agreements, to expend

1 public funds, or to incur any liability on behalf of the new municipality. Any person who
2 is serving as or has served as an interim representative shall be ineligible to qualify for
3 election as a member of the initial governing authority of the new municipality.

4 36-31-9.

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

9 36-31-10.

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

18
19 36-31-11.

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

27 36-31-12.

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

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

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

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

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

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

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

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

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

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

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

26 (d) When a municipal corporation is chartered by local Act within a county subject to this
 27 Code section, the fees, assessments, and taxes, if any, imposed only within the special
 28 district shall not be increased during the calendar year in which the municipal corporation
 29 is chartered and shall not be increased at any time during the next two calendar years.
 30 During such time period, no new special district shall be created within the unincorporated
 31 area of the county to evade the purposes of this prohibition."

32 **SECTION 4.**

33 Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to joint
 34 county and municipal local option sales tax, is amended by inserting a new subsection (f) at
 35 the end of Code Section 48-8-89.1, relating to distribution of the tax upon creation of a new
 36 municipal corporation in certain counties, to read as follows:

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

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

17 (3) Within 60 days after the effective date of the notice referred to in paragraph (2) of
18 this subsection, a new distribution certificate shall be filed with the commissioner for the
19 special district. This distribution certificate shall address only the proceeds of the tax
20 available for distribution from the percentage allocated to the county in the current
21 distribution certificate and shall specify as a percentage of the total proceeds of the tax
22 what portion of the proceeds shall be received by the county in which the special district
23 is located and by the new qualified municipality.

24 (4) Except as otherwise provided in this paragraph, a distribution certificate required by
25 this subsection must be executed by the governing authorities of the county within which
26 the special district is located and each new qualified municipality located wholly or
27 partially within the special district. If a new certificate is not filed within 60 days as
28 required by paragraph (3) of this subsection, the commissioner shall distribute the
29 proceeds of the tax available for distribution from the percentage allocated to the county
30 in the current distribution certificate such that the new qualified municipality receives an
31 allocation equal on a per capita basis to the average per capita allocation to the other
32 qualified municipalities in the county (according to population), to be expended as
33 provided in paragraph (2) of subsection (a) of Code Section 48-8-89. Every other
34 qualified municipality shall continue to receive the share provided by the existing
35 distribution certificate or otherwise provided by law. The county shall receive the
36 remaining proceeds of the tax, to be expended as provided in paragraph (2) of subsection
37 (a) of Code Section 48-8-89. For the purpose of determining the population of new

1 qualified municipalities, only that portion of the population of each such municipality
 2 which is located within the special district shall be computed. For the purpose of
 3 determining population under this Code section, all calculations of population shall be
 4 according to the most recent decennial census.

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

14 **SECTION 5.**

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

22 **SECTION 6.**

23 (a) Except as otherwise provided in this Act, this Act shall become effective upon its
 24 approval by the Governor or upon its becoming law without such approval and shall apply
 25 with respect to any local Act enacted at the 2005 regular session of the General Assembly
 26 or any future session.

27 (b) Section 1.1 of this Act, amending Code Section 36-31-3, shall become effective
 28 December 31, 2007, and shall apply with respect to any local Act enacted after that date.

29 **SECTION 7.**

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