

House Bill 36 (AS PASSED HOUSE AND SENATE)

By: Representatives Willard of the 49<sup>th</sup>, Geisinger of the 48<sup>th</sup>, and Wilkinson of the 52<sup>nd</sup>

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  
4 applicable to new incorporations; to provide that new municipal corporations shall have a  
5 minimum amount of time to arrange for service delivery; to change provisions relating to  
6 development requirements for areas to be incorporated; to provide that the Attorney General  
7 shall seek federal Voting Rights Act preclearances required in connection with new  
8 incorporations; to provide for the authorization and regulation of alcoholic beverage sales in  
9 new municipalities under certain circumstances; to provide for the orderly transition of  
10 responsibilities and functions to a new municipality from its county and provide for counties  
11 to retain certain functions and responsibilities for certain periods of time; to provide for  
12 intergovernmental relations; to provide for delayed application of certain laws; to authorize  
13 appointment of interim representatives; to provide that a chartering Act may specify any  
14 length or lengths for initial terms of office; to authorize the appropriation of funds to the  
15 Department of Community Affairs for loans or grants or both to new municipal corporations;  
16 to provide for effect with respect to certain county special districts and provide certain  
17 protections for the residents of such districts; to provide for the manner of expenditure of  
18 certain county special district taxes, fees, and assessments under certain circumstances; to  
19 provide for certain auditing and reporting requirements with respect to special district  
20 revenues and expenditures in certain counties; to amend Article 2 of Chapter 8 of Title 48  
21 of the Official Code of Georgia Annotated, relating to joint county and municipal local  
22 option sales tax, so as to change provisions for distribution with respect to certain newly  
23 incorporated municipalities and other local governments in the county; to provide for other  
24 related matters; to provide for severability; to provide for effective dates and applicability;  
25 to repeal conflicting laws; and for other purposes.

26 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 created by local Act, the Attorney General shall be  
 15 responsible for seeking any and all preclearances required in connection with such Act and  
 16 incorporation under the federal Voting Rights Act of 1965, as amended, until such time as  
 17 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 created 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 created 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 functions 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, on and after the first  
14 day the initial governing authority takes office, the governing authority may from time to  
15 time adopt appropriate measures to initiate collection within the territory of the new city  
16 during the transition period of all taxes, fees, assessments, fines and forfeitures, and other  
17 moneys. Where a particular tax, fee, assessment, fine, forfeiture, or other amount collected  
18 by the city during the transition period is specifically related to the provision of a particular  
19 government service or function by the county, the service or function shall continue to be  
20 provided by the county during the transition period contingent upon payment by the city  
21 of the actual cost of providing such service or function unless otherwise provided in a  
22 written agreement between the new city and the county.

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

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

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

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

36 (3) Provisions of Code Section 48-13-56, relating to reporting of excise taxes collected  
37 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 created 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 created 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) The General Assembly finds that:

11 (1) The purpose of a special services district is to provide special services to a given  
12 geographic area and to finance the provision of those services from taxes, fees, and  
13 assessments levied in the geographic area which benefits from the services;

14 (2) The creation of a municipal corporation within a county which has a special services  
15 district for the unincorporated area of the county may result in the special services district  
16 being divided into noncontiguous areas or in existing noncontiguous areas of such district  
17 being even more remote from each other; and

18 (3) The purpose of a special services district is defeated if it becomes divided into  
19 noncontiguous areas which are remote from each other and one or more of such  
20 noncontiguous areas is subsidizing the provision of services in other such noncontiguous  
21 areas.

22 (b) When a municipal corporation is created by local Act within a county which has a  
23 special district for the provision of local government services consisting of the  
24 unincorporated area of the county and following the creation of said municipal corporation  
25 the special district is divided into two or more noncontiguous areas, any special district  
26 taxes, fees, and assessments collected in such a noncontiguous area shall be spent to  
27 provide services in that noncontiguous area.

28 (c) When a municipal corporation is created by local Act within a county subject to this  
29 Code section, the county shall for the fiscal year in which the municipal corporation is  
30 chartered and for each of the next two fiscal years have included in its annual audit detailed  
31 findings as to:

32 (1) The amount of any special district taxes, assessments, and fees collected in each  
33 noncontiguous area of the special district;

34 (2) The total amount of expenditures by the county for:

1 (A) The provision of services within each noncontiguous area of the special district,  
 2 including only those services which are provided by the county only in the special  
 3 district; and

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

6 (3) The amount by which expenditures stated in paragraph (2) of this subsection exceed  
 7 or are less than the amount stated in paragraph (1) of this subsection.

8 (d) The party performing the audit required by subsection (c) of this Code section shall  
 9 prepare as promptly as is practicable a brief informational summary of the audit findings  
 10 required by that subsection. The informational summary shall also include a statement of  
 11 the amount of proceeds collected by the county pursuant to any tax under Article 2 of  
 12 Chapter 8 of Title 48 which would be allocated to each noncontiguous area of the special  
 13 district if such area received an allocation equal on a per capita basis to the average per  
 14 capita allocation to the cities in the county. After each year's summary becomes available,  
 15 a copy of the summary shall be included with the next ad valorem tax bills mailed by the  
 16 county to residents of the special district consisting of the unincorporated area of the  
 17 county.

18 (e) For purposes of determining applicability of this Code section, a county shall be  
 19 considered to have a special district for the provision of local government services when  
 20 a county has created a special district for such purposes pursuant to Article IX, Section II,  
 21 Paragraph VI of the Constitution or has created a similar district for the provision of  
 22 services under any other provision of any past or present Constitution or law."

#### 23 SECTION 4.

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

28 "(f)(1) This subsection shall apply only when:

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

32 (B) 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  
 34 20 percent of the population of the county according to the most recent decennial  
 35 census.

1 (2) Notwithstanding any other provision of this Code section, if there exists within any  
2 special district in which the tax authorized by this article is imposed a qualified  
3 municipality described in paragraph (1) of this subsection which was not a qualified  
4 municipality on the date of filing with the commissioner of the most recently filed  
5 certificate under Code Section 48-8-89, such qualified municipality may request the  
6 commissioner to give notice of the qualified municipality's existence and status as a  
7 qualified municipality as provided in this subsection. Upon receipt of such a request, the  
8 commissioner shall, unless he or she determines that the requesting entity is not a  
9 qualified municipality, within 30 days give written notice of the qualified municipality's  
10 existence and status to the county which is conterminous with the special district in which  
11 the qualified municipality is located and to each other qualified municipality within the  
12 special district. Such written notice shall include the name of the new qualified  
13 municipality, the effective date of the notice, and a statement of the provisions of this  
14 subsection.

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

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



1 determining population under this Code section, all calculations of population shall be  
2 according to the most recent decennial census.

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

#### 12 **SECTION 5.**

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

#### 20 **SECTION 6.**

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

#### 24 **SECTION 7.**

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