

House Bill 604

By: Representatives Byrd of the 20<sup>th</sup>, England of the 108<sup>th</sup>, and Holt of the 112<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to  
2 annexation of territory, so as to provide for the comprehensive revision of annexation  
3 procedures; to provide for legislative intent; to provide for statutory construction; to change  
4 certain provisions regarding the effective date of annexation; to change certain provisions  
5 regarding reporting requirements; to change certain provisions regarding unincorporated  
6 islands; to change certain provisions regarding land use objections; to specify procedures  
7 with respect to the provision of services within areas to be annexed; to specify annexation  
8 compliance procedures; to provide for fees and costs; to provide for criminal penalties; to  
9 provide for status of certain actions; to provide for annexation contests; to redefine contiguity  
10 and to change certain provisions regarding the 100 percent method; to change certain  
11 provisions regarding the 60 percent method; to change certain provisions regarding  
12 definitions and procedures with respect to annexation of unincorporated islands; to provide  
13 for related matters; to provide an effective date; to repeal conflicting laws; and for other  
14 purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 style="text-align:center">**SECTION 1.**

17 Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to annexation of  
18 territory, is amended by adding a new Code section to read as follows:

19 "36-36-1.1.

20 (a) Notwithstanding any other provision of this chapter, it is declared to be the policy of  
21 this state that:

22 (1) Municipal annexation is authorized to accommodate the natural growth of a  
23 community through the provision of urban services not otherwise available to residents  
24 and property owners outside municipal boundaries; and

25 (2) Annexation is not authorized when the primary objective or purpose of an annexation  
26 is the generation of new municipal revenues rather than community building.

1 (b) The provisions of this chapter shall be strictly construed to ensure than any annexation  
 2 is mutually beneficial for all affected parties and does not occur at the expense of counties,  
 3 county school districts, or unincorporated residents affected by the annexation."

#### 4 SECTION 2.

5 Said chapter is further amended by revising Code Section 36-36-2, relating to effective date  
 6 of annexation, as follows:

7 "36-36-2.

8 (a) ~~Except as provided in subsection (c) of this Code section, all All annexation other than~~  
 9 ~~by local Act shall become effective for ad valorem tax purposes on December 31 of the~~  
 10 ~~year during which such annexation occurred and for all other purposes shall become~~  
 11 ~~effective on the first day of the month following the month during which the requirements~~  
 12 ~~of Article 2, 3, or 4 of this chapter, whichever is applicable, have been met is approved by~~  
 13 ~~the governing authority of the annexing municipality.~~

14 (b) ~~Except as provided in subsection (c) of this Code section, annexation Annexation by~~  
 15 ~~local Act shall become effective for ad valorem tax purposes on December 31 of the year~~  
 16 ~~in which such local Act is approved by the Governor or becomes law without such~~  
 17 ~~approval and for all other purposes shall become effective at the time such local Act~~  
 18 ~~becomes effective or such later date as provided in such local Act.~~

19 (c)(1) ~~Where an independent school system exists within the boundaries of a~~  
 20 ~~municipality, other effective dates may be established by the municipality solely for the~~  
 21 ~~purpose of determining school enrollment.~~

22 (2) ~~Unless otherwise agreed in writing by a county governing authority and the~~  
 23 ~~municipal governing authority, where property zoned and used for commercial purposes~~  
 24 ~~is annexed into a municipality with an independent school system, the effective date for~~  
 25 ~~the purposes of ad valorem taxes levied for educational purposes shall be December 31~~  
 26 ~~of the year after the year in which the requirements of Article 2, 3, or 4 of this chapter,~~  
 27 ~~whichever is applicable, have been met."~~

#### 28 SECTION 3.

29 Said chapter is further amended by revising subsections (a), (b), and (c) of Code Section  
 30 36-36-3, relating to reports identifying annexed property, as follows:

31 "(a) The clerk, city attorney, or other person designated by the governing authority of any  
 32 municipality annexing property shall file a report identifying any property annexed with  
 33 the Department of Community Affairs and with the county governing authority of the  
 34 county in which the property being annexed is located. Such reports shall be filed, at a  
 35 minimum, not more than 30 days following the last day of the quarter in which the

1 annexation becomes effective but may be filed more frequently. Each report shall include  
2 the following:

3 (1) The legal authority under which the annexation was accomplished, which shall be the  
4 ordinance or resolution number for any annexation effected pursuant to Article 2, 3, 4,  
5 or 6 of this chapter or the Act number if effected by local Act of the General Assembly;

6 (2)(A) A unique identification number for each annexation, which may be the same as  
7 the ordinance, resolution, or Act number as described in the preceding paragraph; The  
8 the name of the county in which the property being annexed is located; the total acreage  
9 being annexed; the enactment date and effective date of the annexation ordinance,  
10 resolution, or local Act of the General Assembly; and

11 (B) A procedure and standards for identifying annexed properties; such procedure and  
12 standards shall be established by the Department of Community Affairs and shall  
13 ensure that annexed properties are fully and clearly identified such that all services and  
14 functions of any affected county, school district, and municipality can be properly  
15 carried out and not impaired in any way by a change in boundaries as soon as the  
16 annexation is effective; and

17 (3) A letter from the governing authority of any municipality annexing property stating  
18 their intent to add the annexed area to maps provided by the United States Bureau of the  
19 Census during their next regularly scheduled boundary and annexation survey of the  
20 municipality and stating that the survey and map will be completed as instructed and  
21 returned to the United States Bureau of the Census.

22 (b) The submission of a report required under subsection (a) of this Code section shall be  
23 made in writing and ~~may~~ shall also be made in electronic format, ~~at the discretion of the~~  
24 ~~submitting municipality~~ if so specified by the Department of Community Affairs.

25 (c)(1) The Department of Community Affairs shall notify the clerk, city attorney, or  
26 other person designated by the governing authority of the annexing municipality within  
27 30 days after receipt of a report submitted under subsection (a) of this Code section if it  
28 determines the submission to be incomplete. The annexing municipality shall file a  
29 corrected report with the department and the county governing authority where the  
30 annexed property is located within 45 days from the date of the notice of any deficiency.

31 (2) No annexed area shall be added to the state map until such report has been properly  
32 submitted to the Department of Community Affairs. The Department of Community  
33 Affairs shall not provide a certification of annexation to the United States Census Bureau  
34 unless the governing authority of the annexing municipality has filed a completed report  
35 as required under subsection (a) of this Code section.

36 (3) Compliance with the requirements of this Code section shall be construed ~~to be~~  
37 ~~merely ancillary to and not~~ strictly as an integral part of the annexation procedure such

1 that an annexation shall, ~~if otherwise authorized by law, become effective even though~~  
 2 ~~required filings under this Code section are temporarily delayed~~ be voided if the filings  
 3 required by this Code section are not submitted in accordance with procedures and  
 4 standards adopted by the Department of Community Affairs."

#### 5 SECTION 4.

6 Said chapter is further amended by revising Code Section 36-36-4, relating to creation of  
 7 unincorporated islands, as follows:

8 "36-36-4.

9 (a) As used in this Code section, the term:

10 (1) 'County road' means a road designated as part of a county road system as provided  
 11 in Code Section 32-4-40.

12 (2) 'No reasonable means of physical access' means that after a parcel of land is annexed,  
 13 there would be an unincorporated area of the county where no county road connects that  
 14 unincorporated area to the remainder of the unincorporated area of the county without  
 15 passing through an incorporated area.

16 (3) 'Unincorporated island' shall have the same meaning as contained in paragraph (3)  
 17 of Code Section 36-36-90.

18 (b) The creation of unincorporated islands as described in paragraph (1), (2), or (3) of this  
 19 subsection shall be prohibited:

20 (1) Annexation or deannexation which would result in the creation of an unincorporated  
 21 area with its aggregate external boundaries abutting the annexing municipality;

22 (2) Annexation or deannexation which would result in the creation of an unincorporated  
 23 area with its aggregate external boundaries abutting any combination of the annexing  
 24 municipality and one or more other municipalities; or

25 (3) Annexation or deannexation which would result in the creation of an unincorporated  
 26 area to which the county would have no reasonable means of physical access for the  
 27 provision of services otherwise provided by the county governing authority solely to the  
 28 unincorporated area of the county.

29 ~~(b)(c)~~ (c) When requested by resolution of the county governing authority, a municipality is  
 30 authorized to provide any service or exercise any function within an unincorporated island.  
 31 Such authority shall be in addition to any other authority of the municipality to provide  
 32 extraterritorial services or functions. ~~For purposes of this subsection, 'unincorporated~~  
 33 ~~island' shall have the same meaning as contained in paragraph (3) of Code Section~~  
 34 ~~36-36-90."~~



1 report shall be presented in a public hearing to be held between 15 and 30 calendar days  
2 prior to the meeting at which a decision to annex property will be held. Such meeting shall  
3 be advertised at least two times in the legal organ of the jurisdiction at least 15 but no more  
4 than 30 calendar days prior to the hearing. At least seven calendar days shall separate the  
5 two advertised notices.

6 (b) The report required in subsection (a) of this Code section shall include:

7 (1) A map or maps of the municipal corporation and adjacent territory showing the  
8 present and proposed boundaries of the municipal corporation, the present major trunk  
9 water mains and sewer interceptors and outfalls, the proposed extensions of such mains  
10 and outfalls as required in paragraph (2) of this subsection, and the general land use  
11 pattern in the area to be annexed; and

12 (2) A statement setting forth the plans of the municipal corporation for extending to the  
13 area to be annexed each major municipal service performed within the municipality at the  
14 time of annexation.

15 (c) The plans required in subsection (a) of this Code section shall:

16 (1) Provide for extending police protection, fire protection, garbage collection, and street  
17 maintenance services to the area to be annexed, on the date of annexation, on  
18 substantially the same basis and in the same manner as such services are provided within  
19 the rest of the municipality prior to annexation. If a water distribution system is not  
20 available in the area to be annexed, the plans must call for reasonable, effective fire  
21 protection services until such time as water lines are made available in such area under  
22 existing municipal policies for the extension of water lines;

23 (2) Provide for extension of major trunk water mains and sewer outfall lines into the area  
24 to be annexed so that when such lines are constructed, property owners in the area to be  
25 annexed will be able to secure public water and sewer service according to the policies  
26 in effect in such municipality for extending water and sewer lines to individual lots or  
27 subdivisions;

28 (3) If extension of major trunk water mains and sewer outfall lines into the area to be  
29 annexed is necessary, set forth a proposed timetable for construction of such mains and  
30 outfalls as soon as possible following the effective date of annexation. In any event, the  
31 plans shall call for contracts to be let and construction to begin within 18 months  
32 following the effective date of annexation;

33 (4) Set forth the methods under which the municipal corporation plans to finance  
34 extension of services into the area to be annexed;

35 (5) Provide that services required pursuant to this Code section may be provided by the  
36 annexing municipality or through an intergovernmental agreement with another local

1 government whereby the required services will be provided in a manner consistent with  
2 the requirements of this Code section; and

3 (6) Provide that if the annexing municipality is unable to or does not provide fire  
4 protection, law enforcement, garbage collection or street maintenance services to the area  
5 annexed as of the date of annexation as required by this subsection, any other government  
6 providing such service to the annexed area shall be fully reimbursed by the annexing  
7 municipality for the costs of providing such services to the annexed area. In the event  
8 there is a disagreement as to the cost of services provided by the government providing  
9 the service, the question shall be submitted to a special master appointed by the chief  
10 judge of the superior court. The special master shall determine the actual costs the  
11 annexing municipality shall pay to the government providing the service in the absence  
12 of the annexing municipality doing so. The decision of the special master shall be  
13 rendered within 30 calendar days of the appointment. The annexing municipality shall  
14 reimburse the local government providing the service the amount specified by the special  
15 master within 30 calendar days of such decision."

#### 16 **SECTION 7.**

17 Said chapter is further amended by adding a new Code section to read as follows:

18 "36-36-13.

19 (a) The superior courts of this state shall have jurisdiction to enforce compliance with the  
20 provisions of this chapter, including the power to grant injunctions or other equitable relief.  
21 An action may be brought by any person or county governing authority affected or  
22 potentially affected by an annexation.

23 (b) In any action brought to enforce the provisions of this chapter in which the court  
24 determines that a municipality acted without substantial justification in not complying with  
25 this chapter, the court shall, unless it finds that special circumstances exist, assess in favor  
26 of the complaining party reasonable attorney's fees and other reasonably incurred litigation  
27 costs. Whether the position of the complaining party was substantially justified shall be  
28 determined on the basis of the record as a whole which is made in the proceeding for which  
29 fees and other expenses are sought.

30 (c) Any public official knowingly and willfully participating in adoption of an annexation  
31 resolution or ordinance that would result in an annexation which violates the requirements  
32 of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished  
33 by a fine not to exceed \$500.00.

34 (d) Any official action by a municipality in violation of this chapter shall be void. Any  
35 action contesting an annexation must be commenced within 90 days of the date the  
36 contested annexation was approved by the governing authority of the municipality if the

1 annexation is approved after April 1, 2007. If the contested annexation was approved prior  
 2 to April 1, 2007, the action contesting an annexation must be commenced prior to July 1,  
 3 2008."

#### 4 SECTION 8.

5 Said chapter is further amended by revising Code Section 36-36-20, relating to the definition  
 6 of "contiguous area," as follows:

7 "36-36-20.

8 (a) As used in this article, the term 'contiguous area' means, at the time the annexation  
 9 procedures are initiated, any area that meets the following conditions:

10 (1) At least ~~one-eighth~~ one-fourth of the aggregate external boundary or ~~50~~ 150 feet of  
 11 the area to be annexed, whichever is ~~less~~ more, either abuts directly on the municipal  
 12 boundary or would directly abut on the municipal boundary if it were not otherwise  
 13 separated from the municipal boundary ~~by lands owned by the municipal corporation or~~  
 14 ~~some other political subdivision, by lands owned by this state, or by the definite width~~  
 15 of:

16 (A) Any street or street right of way;

17 (B) Any creek or river; or

18 (C) Any right of way of a railroad or other public service corporation

19 which divides the municipal boundary and any area proposed to be annexed;

20 (2) The entire parcel or parcels of real property owned by the person seeking annexation  
 21 is being annexed; provided, however, that lots shall not be subdivided in an effort to  
 22 evade the requirements of this paragraph; and

23 (3) The private property annexed, excluding any right of way of a railroad or other public  
 24 service corporation, complies with the annexing municipality's minimum size  
 25 requirements, if any, to construct a building or structure occupiable by persons or  
 26 property under the policies or regulations of the municipal development, zoning, or  
 27 subdivision ordinances.

28 (b) Notwithstanding the limitations of subsection (a) of this Code section, an area may be  
 29 annexed by agreement between the municipal corporation and the governing body of the  
 30 county in which the territory proposed to be annexed is located.

31 ~~(c) If, at the time annexation procedures are initiated, the entire area to be annexed is~~  
 32 ~~owned by the municipal governing authority to which the area is to be annexed and if the~~  
 33 ~~annexation of municipally owned property is approved by resolution of the governing~~  
 34 ~~authority of the county wherein the property is located, then the term 'contiguous area' shall~~  
 35 ~~mean any area which, at the time annexation procedures are initiated, abuts directly on the~~  
 36 ~~municipal boundary or which would directly abut on the municipal boundary if it were not~~

1 ~~otherwise separated from the municipal boundary by lands owned by the municipal~~  
 2 ~~corporation or some other political subdivision, by lands owned by this state, or by the~~  
 3 ~~definite width or by the length of:~~

4 ~~(1) Any street or street right of way;~~

5 ~~(2) Any creek or river; or~~

6 ~~(3) Any right of way of a railroad or other public service corporation~~

7 ~~which divides the municipal boundary and any area proposed to be annexed."~~

## 8 **SECTION 9.**

9 Said chapter is further amended by revising Code Section 36-36-21, relating to the authority  
 10 of municipality to annex, as follows:

11 "36-36-21.

12 Authority is granted to the governing bodies of the several municipal corporations of this  
 13 state to annex to the existing corporate limits thereof unincorporated areas contiguous to  
 14 the existing corporate limits at the time of such annexation, in accordance with the  
 15 procedures provided in this article and in Article 1 of this chapter, upon the written and  
 16 signed applications of all of the owners of all of the land, ~~except the owners of any public~~  
 17 ~~street, road, highway, or right of way,~~ proposed to be annexed, containing a complete  
 18 description of the lands to be annexed. Lands to be annexed at any one time shall be treated  
 19 as one body, regardless of the number of owners, and all parts shall be considered as  
 20 adjoining the limits of the municipal corporation when any one part of the entire body abuts  
 21 such limits. When such application is acted upon by the municipal authorities and the land  
 22 is, by ordinance, annexed to the municipal corporation, an identification of the property so  
 23 annexed shall be filed with the Department of Community Affairs and with the governing  
 24 authority of the county in which the property is located in accordance with Code Section  
 25 36-36-3. When so annexed, such lands shall constitute a part of the lands within the  
 26 corporate limits of the municipal corporation as completely and fully as if the limits had  
 27 been marked and defined by local Act of the General Assembly. ~~Except as provided in~~  
 28 ~~subsection (c) of Code Section 36-36-20, nothing~~ Nothing in this article shall be construed  
 29 to authorize annexation of the length of any public right of way except to the extent that  
 30 such right of way adjoins private property otherwise annexed by the municipal  
 31 corporation."

## 32 **SECTION 10.**

33 Said chapter is further amended by revising subsection (f) of Code Section 36-36-32, relating  
 34 to application requirements, in its entirety as follows:

1 ~~"(f) Signatures of owners of public roads and other public land within the area to be~~  
 2 ~~annexed shall not be required in satisfying the requirements of subsection (a) of this Code~~  
 3 ~~section and the acreage of such public properties shall be excluded from acreage~~  
 4 ~~calculations pertaining to the landowner approval required by subsection (a) of this Code~~  
 5 ~~section. This subsection applies only where the public properties are included in the area~~  
 6 ~~to be annexed Reserved."~~

## 7 SECTION 11.

8 Said chapter is further amended by revising Code Section 36-36-90, relating to definitions,  
 9 as follows:

10 "36-36-90.

11 As used in this article, the term:

12 (1) 'Contiguous area' means any unincorporated area which, on or after January 1, 1999,  
 13 had an aggregate external boundary directly abutting a municipal boundary. Any area  
 14 shall be considered 'contiguous' if the aggregate external boundary would directly abut  
 15 the municipal boundary if not otherwise separated, in whole or in part, from the  
 16 municipal boundary by lands owned by the municipal corporation, by lands owned by a  
 17 county, or by lands owned by this state or by the definite width of:

18 (A) Any street or street right of way;

19 (B) Any creek or river; or

20 (C) Any right of way of a railroad or other public service corporation.

21 ~~(2) 'Municipal corporation' means a municipal corporation which has a population of 200~~  
 22 ~~or more persons according to the United States decennial census of 1980 or any future~~  
 23 ~~such census.~~

24 ~~(3)~~ 'Unincorporated island' means:

25 (A) An unincorporated area in existence on January 1, 1991, with its aggregate external  
 26 boundaries abutting the annexing municipality;

27 (B) An unincorporated area in existence as of January 1, 1991, with its aggregate  
 28 external boundaries abutting any combination of the annexing municipality and one or  
 29 more other municipalities; or

30 (C) An unincorporated area in existence as of January 1, 1991, which the county  
 31 governing authority has by resolution adopted not later than 90 days following ~~July 1,~~  
 32 ~~1992~~ December 31, 2008, that identifies any unincorporated area of the county to which  
 33 the county has no reasonable means of physical access for the provision of services  
 34 otherwise provided by the county governing authority solely to the unincorporated area  
 35 of the county."

