

The Senate State and Local Governmental Operations Committee offered the following substitute to HB 1015:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,
2 so as to change certain local government provisions with respect to newly created
3 municipalities; to provide for legislative intent; to provide for a limited period of time the
4 offer of sale to certain qualified municipalities of county property used as police stations, fire
5 stations, cultural properties, or vacant properties within the geographical boundaries of the
6 qualified municipality; to provide for procedures, conditions, and limitations; to specify
7 additional service delivery strategy requirements regarding garbage and solid waste
8 collection and disposal fees and fire protection services fees; to provide for additional
9 requirements regarding certain special district excess funds; to provide for limitations with
10 respect to the rezoning of territory proposed for inclusion in a new municipal corporation;
11 to provide for the defeasance of the rezoning of territory proposed for inclusion in a new
12 municipal corporation when such rezoning took place after a point in time; to provide for
13 additional limitations and requirements in the event a new municipality is created in a county
14 subsequent to a referendum in which bonded indebtedness is approved; to provide an
15 effective date; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

17 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
18 by adding new Code sections to read as follows:

19 "36-31-11.1.

20 (a) This Code section shall stand repealed in its entirety on December 31, 2009.

21 (b) As used in this Code section, the term:

22 (1) 'Appraised value' means the fair market value as determined by a Georgia general
23 certified appraiser as of December 31 of the year prior to the date of incorporation. The
24 county and the qualified municipality shall agree upon the appraiser; provided, however,
25 that, if the county and qualified municipality cannot agree on an appraiser, either party
26

1 may apply to the chief judge of the superior court of the county who shall appoint a
2 qualified appraiser.

3 (2) 'County's park cost' means the original acquisition cost for any land, including any
4 buildings located thereon at the time of acquisition, for use as a park, plus interest at the
5 rate of 3 percent per annum from the date the county paid any such amounts to the date
6 title to such property is transferred to the qualified municipality pursuant to this Code
7 section.

8 (3) 'Date of incorporation' means the date the local Act creating a municipality becomes
9 law.

10 (4) 'Police station,' 'fire station,' or 'park' means property, including buildings and fixtures
11 located within a qualified municipality and as used by the county to provide police, fire,
12 or park services to territory located within a qualified municipality during the calendar
13 year prior to the date of incorporation of the municipality. Such properties shall also
14 include equipment and vehicles located at such property or used by county employees
15 working at or stationed at such property as of December 31 of the year prior to the date
16 of incorporation. 'Park' includes any property or facility used for greenspace, recreational
17 purposes, cultural purposes, or educational purposes.

18 (5) 'Qualified municipality' means any new municipality created by local Act which
19 becomes law on or after January 1, 2008.

20 (c) It is the intent of the legislature that the residents of a qualified municipality receive
21 full credit for taxes paid for police stations, fire stations, and parks to be purchased by the
22 qualified municipality; to assure that qualified municipalities will have the facilities
23 necessary to deliver municipal services; and to provide certainty as to how the purchase
24 price for such properties will be determined.

25 (d) The governing authority of the county shall provide to each of the county
26 commissioners and members of the General Assembly whose district includes any portion
27 of a qualified municipality a listing of all county owned properties located in the qualified
28 municipality within 60 days after the date of incorporation.

29 (e) The county shall not convey, otherwise encumber, move any fixtures or buildings, or
30 enter into any contractual obligations with respect to any police station, fire station, or park
31 located in the qualified municipality on or after the date of incorporation to the end of the
32 transition period provided in Code Section 36-31-8. The governing authority of the county
33 shall assign to the governing authority of the qualified municipality all of its right, title, and
34 interest in any executory contract respecting any police station, fire station, or park to be
35 purchased by the qualified municipality. Such assignment shall be effective on the date the
36 municipality assumes ownership of such properties or as otherwise may be agreed between
37 the governing authority of the municipality and the governing authority of the county.

1 (f) When a qualified municipality is removed from a special district as provided in either
2 Code Section 36-31-11 or Code Section 36-31-11.2, the qualified municipality may elect
3 to purchase from the county any police station, fire station, or park. The qualified
4 municipality shall provide written notice to the governing authority of the county
5 specifying the properties to be purchased and the date or dates the qualified municipality
6 will assume ownership of such property. Such notice shall be provided with respect to
7 each such property no less than 30 days prior to the date the qualified municipality intends
8 to assume ownership of the property.

9 (g) The purchase price to be paid by the qualified municipality may be determined by
10 negotiation and agreement of the two governing authorities. In that event, all of the
11 county's right, title, and interest in such property shall be transferred to the governing
12 authority of the qualified municipality as provided in such agreement.

13 (h) In the event that the county and the qualified municipality fail to reach an agreement
14 as to the purchase price for any such properties, then the following process is available to
15 the parties:

16 (1) The county or qualified municipality may file a petition in the superior court of the
17 county seeking mandatory mediation. Such petition shall be assigned to a judge, pursuant
18 to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county
19 is located. The judge selected may also be a senior judge pursuant to Code Section
20 15-1-9.2 who resides in another circuit;

21 (2) The visiting or senior judge shall appoint a mediator within 30 days of receipt of the
22 petition. Mediation shall commence within 30 days of the appointment of a mediator.
23 The mandatory mediation process shall be completed within 60 days following the
24 appointment of the mediator. A majority of the members of the governing body of the
25 county and of the qualified municipality shall attend the initial mediation. Following the
26 initial meeting, the mediation shall proceed in the manner established at the initial
27 meeting. If there is no agreement on how the mediation should proceed, a majority of the
28 members of the governing body of the county and of the qualified municipality shall be
29 required to attend each mediation session unless another process is agreed upon. The cost
30 of alternative dispute resolution authorized by this subsection shall be shared by the
31 parties to the dispute pro rata based on each party's population according to the most
32 recent United States decennial census; and

33 (3) If no agreement is reached at the conclusion of the mediation, either the county or the
34 qualified municipality may petition the superior court and seek resolution of the items
35 remaining in dispute. The visiting or senior judge shall conduct an evidentiary hearing
36 or hearings as such judge deems necessary and render a decision with regard to the

1 disputed items. The judge shall consider the following factors to determine the purchase
2 price and shall make specific findings of fact relative to the following factors:

3 (A) The court shall determine a tax ratio by dividing the assessed value of the
4 residential property tax digest for the municipality by the assessed value of the
5 residential property tax digest for the entire special district from which the qualified
6 municipality was removed;

7 (B) The court shall determine a parks asset ratio by dividing the total number of park
8 acres to be purchased by the qualified municipality by the total number of park acres
9 located in the special district from which the qualified municipality was removed;

10 (C) The purchase price for the parks to be purchased by the qualified municipality shall
11 equal the county's park cost; provided, however, that there shall be a presumption that
12 the county's park cost for parks to be purchased by the qualified municipality has been
13 fully paid by the qualified municipality if the tax ratio is equal to or greater than the
14 asset ratio for parks; and provided further that there shall be a presumption that the
15 county's park cost of the parks to be purchased by the qualified municipality has been
16 partially paid by the qualified municipality residents if the tax ratio is less than the asset
17 ratio. The fraction the county's park cost that shall be considered paid shall be
18 determined by dividing the tax ratio by the asset ratio. The qualified municipality shall
19 pay to the county the portion of the county's park cost that has not been paid, which
20 portion shall equal one minus the fraction considered paid;

21 (D) There shall be a presumption that the purchase price for a police station or fire
22 station shall equal the appraised value times a fraction determined by dividing the area
23 served by the station outside of the qualified municipality by the total area served by
24 the station both inside and outside the municipality as of December 31 of the calendar
25 year prior to the date of incorporation. If such fraction is more than 20 percent of the
26 total service area, then from the date the municipality assumes ownership of such
27 station, the municipality shall be obligated to offer to lease the police station or fire
28 station back to the county for a period not to exceed one year for \$10.00 for the lease
29 period; and

30 (E) The purchase price determined in accordance with this paragraph shall be
31 presumed to be correct unless the judge determines that other unusual factors may be
32 considered consistent with the legislative intent expressed in subsection (c) of this Code
33 section. Such unusual factors may include the cost paid by the county for the
34 properties, the presence of facilities or buildings on such properties the value of which
35 is materially disproportionate to the value of the land being purchased, and whether the
36 residents of the qualified municipality will continue to pay taxes after incorporation to
37 repay bonds issued by the county for the facilities or buildings.

1 (i) A qualified municipality may elect to pay the purchase price for one or more county
2 properties amortized over a 25 year period at an interest rate equal to two percentage points
3 less than the legal rate of interest specified in subparagraph (a)(1)(A) of Code
4 Section 7-4-2. If the governing bodies do not reach agreement as to the purchase price to
5 be paid prior to the date the date the municipality intends to assume ownership of such
6 properties as stated in the notice given pursuant to subsection (f) of this Code section, then
7 upon payment of \$5,000.00 into escrow in the registry of the superior court and delivery
8 of written notice from the governing authority of the municipality to the governing
9 authority of the county that the municipality intends to pay the balance of the purchase
10 price over a 25 year period as provided in this Code section, all of the county's right, title,
11 and interest in the police stations, fire stations, or parks the qualified municipality elects
12 to purchase shall be transferred to the governing authority of the qualified municipality.
13 Such transfer shall be effective on the date the municipality intends to assume ownership
14 of such properties as stated in the notice given pursuant to subsection (f) of this Code
15 section. The governing authority of the county shall promptly transfer, execute, and deliver
16 to the governing authority of the qualified municipality such instruments as may be
17 necessary to record the transfer of such right, title, and interest. Upon final determination
18 of the purchase price either by agreement or by the court under subsection (h) of this Code
19 section, the qualified municipality shall either pay the balance due or execute and deliver
20 to the county a note to pay the balance due over 25 years.

21 (j) In the event a park is transferred by a county to a qualified municipality under this Code
22 section, the qualified municipality shall be prohibited from imposing or collecting user fees
23 from residents of the county in excess of the amount of such fees imposed or collected
24 from residents of the qualified municipality.

25 (k) Property transferred to a qualified municipality from a county pursuant to this Code
26 section shall not be sold, leased, assigned, or transferred, in whole or in part, to any private
27 person or entity for a nonpublic use other than to the county from which it was transferred.
28 Any such sale to a county pursuant to this subsection shall be on the same terms as the
29 original transfer from the county to the municipality.

30 36-31-11.2.

31 (a) A qualified municipality located within a county which has a special district for the
32 provision of fire services shall continue to be part of such special fire district where the
33 local Act creating such qualified municipality so provides or where the governing authority
34 of the qualified municipality, within 30 days of taking office, elects by formal resolution
35 to continue to be part of the special fire district by formal resolution, provided the
36 governing authority of the qualified municipality delivers a copy of such resolution to the

1 governing authority of the county within ten business days after the date the resolution is
2 adopted.

3 (b) If a qualified municipality elected initially to remain in a fire services special district,
4 such municipality shall be removed from such fire services special district by adopting a
5 resolution stating its intent to be removed from the district and the date of removal,
6 provided the governing authority of the qualified municipality delivers a copy of such
7 resolution to the governing authority of the county at least 30 days prior to the date of
8 removal.

9 (c) If the local Act does not provide that fire services shall be provided through the county
10 special district or if the qualified municipality decides not to continue receiving fire
11 services through the county, the fire services shall be discontinued by the county on the
12 first day of the next fiscal year of the county that begins at least 180 days after the specified
13 notice is received by the county.

14 (d) A qualified municipality located within a county that charges fees on a periodic basis
15 for the provision of water or sewer services, or both, may elect to continue receiving such
16 services for the same fees charged residents in the unincorporated area of the county. Such
17 election may be set forth in the local Act creating such qualified municipality or be made
18 by resolution of the governing authority of the qualified municipality within 30 days of
19 taking office, provided the governing authority of the qualified municipality delivers a copy
20 of such resolution to the governing authority of the county within ten business days after
21 the date the resolution is adopted.

22 (e)(1) A qualified municipality located within a county that charges fees on a periodic
23 basis for the provision of sanitation services, including garbage and solid waste disposal
24 and collection, may elect to continue receiving such services for the same fees charged
25 residents of the unincorporated area of the county. Such election may be set forth in the
26 local Act creating such qualified municipality or be made by resolution of the governing
27 authority of the qualified municipality within 30 days of taking office, provided the
28 governing authority of the qualified municipality delivers a copy of such resolution to the
29 governing authority of the county within ten business days after the date the resolution
30 is adopted.

31 (2) Such qualified municipality may elect to terminate sanitation services by adopting
32 a resolution stating the date of removal, provided the governing authority of the qualified
33 municipality delivers a copy of such resolution to the governing authority of the county
34 at least 30 days prior to the date of removal.

35 (3) If the qualified municipality decides not to continue receiving sanitation services
36 through the county, the sanitation services shall be discontinued by the county on the first

1 day of the next fiscal year of the county which begins at least 180 days after the specified
2 notice is received by the county."

3 SECTION 2.

4 Said title is further amended in Code Section 36-31-12, relating to special districts divided
5 into noncontiguous areas, by revising subsection (b) as follows:

6 "(b)(1) When a municipal corporation is created by local Act within a county which has
7 a special district for the provision of local government services consisting of the
8 unincorporated area of the county and following the creation of said municipal
9 corporation the special district is divided into two or more noncontiguous areas, any
10 special district taxes, fees, and assessments collected in such a noncontiguous area shall
11 be spent to provide services in that noncontiguous area. Effective January 1, 2006, for
12 the purposes of this Code section, a noncontiguous area located within ten miles of
13 another noncontiguous area may be treated as the same noncontiguous area.

14 (2) If, on the effective date of this paragraph:

15 (A) Excess proceeds remain following the expenditure required under paragraph (1)
16 of this subsection; and

17 (B) All of the area within the special district shall have become incorporated within
18 one or more municipalities,

19 then the excess proceeds shall be disbursed within 60 days to the governing authority of
20 each municipality which has incorporated any portion of the area of the special district.
21 The amount of proceeds to be disbursed to each municipality shall be determined on a pro
22 rata basis using as a denominator the total value of all tax parcels within the special
23 district and as a numerator the total value of all tax parcels which were incorporated
24 within each municipality.

25 (3) If, on the effective date of this paragraph:

26 (A) Excess proceeds remain from the collection of any special district taxes, fees, and
27 assessments; and

28 (B) A new municipality shall have been created from within such special district such
29 that the special district shall have been diminished in size but not all of the special
30 district shall have been incorporated within one or more municipalities,

31 then the excess proceeds shall be disbursed within 60 days to the governing authority of
32 each municipality which has incorporated any portion of the area of the special district.
33 The amount of proceeds to be disbursed to each municipality shall be determined on a pro
34 rata basis using as a denominator the total value of all tax parcels within the special
35 district and as a numerator the total value of all tax parcels which were incorporated
36 within each municipality."

SECTION 3.

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

"36-31-13.

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

(1) 'Charter' means a local Act of the General Assembly creating or proposing the creation of a new municipal corporation.

(2) 'New municipal corporation' means a new municipal corporation of this state created by or proposed to be created by a charter.

(3) 'Rezoning action' means:

(A) Adoption of a new zoning ordinance;

(B) Adoption of an amendment to a zoning ordinance which has the effect of rezoning real property from one zoning classification to another or changing the permitted use of property;

(C) Granting of a variance, conditional use, or other treatment which has the effect of allowing real property to be used for a use not otherwise permitted under a zoning ordinance; or

(D) Any other action which has the effect of changing the permitted use of property.

(b) During the period commencing with the effective date of charter until the date the new municipal corporation begins exercising planning and zoning powers, no county shall take any rezoning action affecting any part of the territory described in the charter as included or proposed for inclusion within the new municipal corporation. This prohibition shall be dissolved if the creation or continued existence of the proposed new municipal corporation under the charter definitively ceases to be possible because of defeat at a referendum election, definitive final failure to secure approval under the federal Voting Rights Act of 1965, as amended, or definitive failure of any other condition specified in the charter."

SECTION 4.

Said title is further amended in Code Section 36-82-1, relating to elections and requirements regarding bonded debt, by adding a new subsection to read as follows:

"(e.1)(1) As used in this subsection, the term:

(A) 'Bonds' means any bond to purchase properties or for capital improvements to existing properties or facilities which, at the time of the issuance of the bonds, were to be used by the county for the provision of any of the services listed in Article IX, Section II, Paragraph III of the Constitution of the State of Georgia and, subsequent to the issuance of the bonds, a new municipality took over the provision of such services.

(B) 'Bond proceeds' means the proceeds received by the county as the result of the sale of bonds.

1 (C) 'Net homestead digest' means for each qualified municipality the total net assessed
2 value of all qualified homestead property located in that portion of a new municipality
3 located in the county remaining after all other homestead exemptions are applied.

4 (D) 'Total homestead digest' means the total net assessed value of all qualified
5 homestead property located in the county remaining after all other homestead
6 exemptions are applied.

7 (2) This subsection shall apply only to a new municipal corporation created by local Act
8 within a county which has a special district for the provision of local government services
9 consisting of the unincorporated area of the county. In the event a new municipality lying
10 wholly or partially in such a county is incorporated subsequent to the issuance of any
11 bonds by the county, the governing authority of the county shall pay to the governing
12 authority of the new municipality a portion of the bond proceeds. The amount to be paid
13 shall be determined as follows:

14 (A) If the resolution of the governing authority of the county pursuant to which such
15 bonds were issued specifies the amount to be spent in the area included in the new
16 municipality for the purchase of properties and for capital improvements, then such
17 amount plus a proportionate amount of the interest earned by the county on the bond
18 proceeds prior to the date payment to the new municipality is due, less any credit due
19 under subparagraph (C) of this paragraph shall be paid to the new municipality;

20 (B) If such resolution does not specify the amount to be spent in the area included in
21 the new municipality for the purchase of properties and for capital improvements, then
22 the amount to be paid shall be a portion of the bond proceeds plus a proportionate
23 amount of the interest earned by the county on such proceeds prior to the date payment
24 to the new municipality is due, less any credit due under subparagraph (C) of this
25 paragraph. Such portion shall equal the net homestead digest for the new municipality
26 divided by the total homestead digest;

27 (C) The county shall be given a credit against the amount due under either
28 subparagraph (A) or (B) of this paragraph for any payments that were made:

29 (i) By the county from bond proceeds to any third party prior to the date the payment
30 to the new municipality is due;

31 (ii) Pursuant to a valid contract in existence as of the effective date of the local Act
32 creating the new municipality; and

33 (iii) For the purchase of new properties or for capital improvements in the area
34 included in the new municipality; and

35 (D) The payment determined in accordance with subparagraphs (A) and (B) of this
36 paragraph shall be due ten days after a majority of the members of the initial city
37 council take the oath of office.

1 (3) If the county and municipality fail to reach an agreement as to the amount to be paid
2 or any related matter, either the county or the municipality may petition the superior court
3 and seek resolution of the items in dispute. Such petition shall be assigned to a judge,
4 pursuant to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which
5 the county is located. The judge selected may also be a senior judge pursuant to Code
6 Section 15-1-9.2 who resides in another circuit. The visiting or senior judge shall
7 conduct an evidentiary hearing or hearings as such judge deems necessary and render a
8 decision with regard to the disputed items."

9 **SECTION 5.**

10 This Act shall become effective upon its approval by the Governor or upon its becoming law
11 without such approval.

12 **SECTION 6.**

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