

House Bill 791 (AS PASSED HOUSE AND SENATE)

By: Representative Cheokas of the 134th

A BILL TO BE ENTITLED
AN ACT

1 To create and establish the Ellaville-Schley County Charter and Unification Commission;
2 to provide for a short title; to provide for definitions; to provide for the appointment of the
3 members of said commission; to provide for the organizational meeting of the charter and
4 unification commission and for the election of a chairperson; to provide for the powers and
5 duties of said commission; to provide that the charter and unification commission shall be
6 authorized to employ a staff to assist it in carrying out its powers and duties; to provide for
7 the expenses of the charter and unification commission and for the payment of those
8 expenses by the governing authorities of the City of Ellaville and the County of Schley; to
9 provide that said commission shall be authorized to study all matters relating to the
10 governments of the County of Schley and the City of Ellaville and all matters relating to the
11 establishment of a single county-wide government with powers and jurisdiction throughout
12 the territorial limits of Schley County; to provide for the submission of such proposed
13 county-wide government charter to the qualified voters for approval or rejection; to provide
14 for the conduct of such election and for the certification of the results thereof; to provide for
15 all procedures and other matters connected with the foregoing; to provide an effective date;
16 to repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 This Act shall be known and may be cited as the "Ellaville-Schley County Charter and
20 Unification Commission Act" and is enacted pursuant to the authority granted by Article IX,
21 Section III, Paragraph II of the Constitution of the State of Georgia.

22 **SECTION 2.**

23 As used in this Act, the following terms shall have the meanings ascribed to them unless the
24 context clearly requires otherwise:

(1) "Charter and unification commission" or "commission" shall mean the Ellaville-Schley County Charter and Unification Commission provided for in this Act.

(2) "Governing authority of the City of Ellaville" shall mean the mayor and city council of the City of Ellaville, a municipal corporation of the State of Georgia.

(3) "Governing authority of the County of Schley" shall mean the Board of Commissioners of Schley County, a political subdivision of the State of Georgia.

SECTION 3.

(a) There is created the Ellaville-Schley County Charter and Unification Commission, which shall consist of 9 members to be appointed within 30 days of the effective date of this Act as provided in this section.

(b) The governing authority of the City of Ellaville shall appoint the mayor and two members to the charter and unification commission who shall be citizens of the City of Ellaville at the time of such appointment and for the duration of their respective terms as members of such commission.

(c) The governing authority of the County of Schley shall appoint the commission chair and two members to the charter and unification commission who shall be citizens of unincorporated Schley County at the time of such appointment and for the duration of their respective terms as members of such commission.

(d) The six members of the charter and unification commission provided for in subsections (b) and (c) of this section shall jointly appoint three members to the charter and unification commission who shall be citizens of Schley County at the time of such appointment and for the duration of their entire terms as members of such commission.

(e) If a governing authority refuses or fails to appoint a member of the commission as required by this section, the senior superior court judge of the Southwestern Judicial Circuit shall make such appointment within ten days following the expiration of the 30 day period allowed for appointments provided for in subsection (a) of this section.

(f) None of the members of said charter and unification commission shall hold any other elective public office, except the mayor and the commission chair.

(g) To be eligible for appointment as a member of the charter and unification commission, a person must be at least 21 years of age and shall have been a resident of the State of Georgia for a period of at least five years and registered as an elector to vote in Schley County for a period of at least two years prior to his or her appointment.

(h) If a member of the charter and unification commission should die, become disabled, remove his or her residence and place of domicile to a place outside the territorial limits of the appointing jurisdiction, resign, or become unable or decline to serve for any reason whatever as a member of the charter and unification commission, said commission shall

61 declare a vacancy in his or her office as a member of such commission and within 15 days
62 thereafter the governing authority or authorities that appointed that member shall appoint a
63 successor promptly to fill such vacancy.

64 (i) A certificate of appointment shall be issued by the appointing authority of each member
65 of the charter and unification commission and filed in the office of the Probate Court of
66 Schley County with a duplicate original of such certificate being transmitted to, and filed
67 with, the chairperson or the secretary of the charter and unification commission.

68 (j) A majority of the members of the charter and unification commission shall constitute a
69 quorum for the transaction of business. Such quorum shall not be applicable with respect to
70 any committees or subcommittees which, at the discretion of the charter and unification
71 commission, may be appointed. A majority of the members of each such committee or
72 subcommittee shall constitute a quorum for the conduct of its business.

73 (k) The charter and unification commission may appoint advisory committees or
74 subcommittees from among the general populace to advise it with respect to its work;
75 provided, however, that the charter and unification commission may not delegate any of the
76 duties, powers, or obligations imposed upon the commission and granted to it by this Act to
77 any such advisory committee or subcommittee. Any such advisory committee or
78 subcommittee so appointed shall serve at the discretion of the commission and shall serve
79 subject to such terms, conditions, and charges as may be imposed upon it by the commission.

80 (l) All persons who shall, from time to time, serve as members of the charter and unification
81 commission or its committees or subcommittees and all agents, employees, and staff
82 appointed or hired by the charter and unification commission from time to time shall be
83 afforded coverage and shall be included in the insured class, under the provision of such
84 policies, riders, or other insurance contracts from time to time in force and held by the
85 governing authority of the County of Schley, extending to members of such governing
86 authority of the County of Schley, and what is commonly referred to as "public official's
87 liability insurance coverage," to the same extent and as nearly as practicable with identical
88 coverage and limits as afforded to the individual members of the governing authority of the
89 County of Schley. Any and all additional premium amounts payable by the County of Schley
90 due to the extension of such coverage to the members of the charter and unification
91 commission and its appointees, agents, employees, and staff shall be paid, when due and
92 payable, one-half by the County of Schley and one-half by the City of Ellaville, which
93 payments shall be made in addition to all other amounts otherwise payable under the
94 provisions of this Act.

95 (m) The governing authority of the County of Schley, the governing authority of the City
96 of Ellaville, and the governing authority of any county-wide government created under a
97 charter adopted pursuant to this Act are authorized and directed to expend funds for fees,

costs, and expenses incurred in providing for the defense of the members of the charter and unification commission arising out of their activity as members of such commission and in providing for the defense of any proposed charter submitted by the commission, whether prior to the referendum thereon or after the referendum thereon is conducted.

SECTION 4.

(a) The charter and unification commission shall hold an organizational meeting not less than 30 days nor more than 45 days after the date this Act becomes effective. Any three or more members of the charter and unification commission, composed of at least one member appointed by the governing authority of the City of Ellaville and one member appointed by the governing authority of the County of Schley, shall call such organizational meeting. The call of such organizational meeting shall designate the time, date, and place that such organizational meeting shall be held. All state laws regarding open meetings and open records shall be applicable to meetings held pursuant to this subsection.

(b) The first order of business at the organizational meeting shall be the designation, by the majority vote of those members present, of a temporary chairperson to preside until a permanent chairperson is elected. The second order of business at the organizational meeting shall be the election of a permanent chairperson who shall be elected by the majority vote of all members of the charter and unification commission.

(c) The charter and unification commission shall be authorized to elect a secretary, who need not be a member of the commission, and such other officers from the membership of the charter and unification commission as it shall deem necessary. The charter and unification commission shall be further authorized to employ such staff as may be required to assist it in studying all matters relating to the government of the City of Ellaville and the County of Schley and in drafting a charter.

(d) The members of the charter and unification commission shall not receive per diem or other compensation for their services, but the members shall be reimbursed for actual expenses incurred by them in carrying out their duties. The staff employed by the commission shall be paid compensation as determined by the commission within the limits of funds available to it. The governing authority of the City of Ellaville and the governing authority of the County of Schley are authorized to expend public funds in carrying out the provisions of this Act and shall share equally the expense thereof. Each of the said governing authorities shall initially appropriate up to \$5,000.00 for the charter and unification commission and the treasurer or other fiscal authority of each of those governing authorities shall honor, from time to time, vouchers or warrants signed by the chairperson of the charter and unification commission for amounts up to an aggregate total of such amount. The governing authorities shall appropriate such additional funds in equal amounts as may be

necessary to meet the expenses of the charter and unification commission, provided that such additional expenditures shall be first approved by both governing authorities.

(e) The charter and unification commission is also authorized to solicit, receive, and expend contributions, grants, gifts, and other funds from other sources to be utilized by it in the conduct of its business.

(f) All public officials and employees of the City of Ellaville and the County of Schley upon request shall furnish the charter and unification commission with all documents, books, records, data, and information necessary or appropriate in the opinion of the charter and unification commission for it to carry out its duties, except for information that is confidential or privileged by law and shall furnish such other assistance and aid to the commission as it shall request and shall also appear and give testimony, at the request of the commission, before the commission or before any of its committees, subcommittees, or advisory committees.

SECTION 5.

The commission shall be authorized to study all matters relating to the governments of the City of Ellaville and the County of Schley and all matters relating to the establishment of a single county-wide government with powers and jurisdiction throughout the territorial limits of Schley County. The commission shall upon completion of its study issue a written report of its findings, conclusions, and recommendations. If, after conducting such study, the charter and unification commission shall deem it to be in the best interests of the governments proposed to be affected, said commission shall draft a proposed charter creating a single county-wide government, and if such charter is approved by the voters under the provisions of this Act, then the newly created county-wide government shall supersede and replace the existing governments of the City of Ellaville and the County of Schley and may also supersede and replace any public authorities and special service districts located and operating within Schley County. If the charter and unification commission does not deem it to be in the best interests of the governments proposed to be affected to recommend the establishment of a single county-wide government but concludes from its study that it is feasible to consolidate specific governmental services, programs, and activities, then the commission may issue such findings, conclusions, and recommendations in writing together with reasons why such recommendations will make government operations more efficient.

SECTION 6.

(a) The charter so drafted shall be submitted to the qualified voters of Schley County for approval or rejection of the referendum provided for in Section 10 of this Act.

(b) The General Assembly delegates its powers to the charter and unification commission to draft such a charter which may include any provisions necessary to effectuate its purposes. Without limiting the generality of the foregoing, the proposed charter may provide for any one or more, or a combination, of the matters listed below. Where it is indicated that an item shall be included, the inclusion of that particular item shall be mandatory:

(1) The charter shall provide for the abolishment of the existing governments of the City of Ellaville and the County of Schley and for the creation of a new single government which may have all powers formerly exercised by the City of Ellaville and the County of Schley and such other powers as may be necessary or desirable. The new single government may be given, and may have, such rights, privileges, exemptions, preferences, discretions, immunities, powers, duties, and liabilities as are now or hereafter granted to, or vested in, municipalities or counties or both by the Constitution and laws of the State of Georgia. The form and composition of the new government shall be as the charter shall provide;

(2) The charter may authorize the new government to continue to be eligible to have, hold, enjoy, and be entitled to any assistance, credits, benefits, moneys, grants, grants-in-aid, funds, loans, aid, appropriations, and matching funds to the same extent that any municipality or county of the State of Georgia now or may hereafter enjoy or possess under the Constitution and laws of the State of Georgia or by other provisions of law or under any present or future state or federal programs;

(3) The charter may provide for the abolishment, modification, consolidation, or merger of any court unless otherwise prohibited by the Constitution or general law;

(4) The charter may provide for the abolishment, modification, consolidation, or merger of any public authorities and special service districts located within Schley County created by law and for the transfer of any powers, duties, and obligations of such authorities and districts to the new county-wide government or to any agency thereof or from one such authority or special service district to another in such manner as said charter shall provide unless otherwise prohibited by the Constitution or general law;

(5) The charter may provide for the abolishment, modification, consolidation, or merger of any one or more public offices or positions of public employment of any municipality merged in the county-wide government and the County of Schley and any public authorities or special service districts located or operating within Schley County unless otherwise prohibited by the Constitution or general law. The charter may provide for administrative division or changes with reference to the duties and responsibilities of any public office or official as the charter and unification commission shall deem necessary for the efficient functioning of the new county-wide government;

(6) The charter shall provide for the creation of the governing authority of the new single county-wide government, including the number of members of the governing authority, their powers, duties, terms of office, manner, and time of election or appointment, compensation, method of removal, and all other matters incidental or necessary to the creation of said county-wide governing authority. The charter shall provide for the name or names of the new county-wide government and governing authority;

(7) The charter may provide for the creation of the various departments, boards, bureaus, offices, commissions, and positions of public employment of the new county-wide government and for any matters necessary or incidental thereto;

(8) The charter shall provide for the creation of special tax districts consisting of the territory lying within the former boundaries of the affected governments for the purpose of the successor county-wide government levying a tax therein sufficient to retire any bonded indebtedness of such governments which is outstanding on the effective date of the abolishment of such government;

(9) The charter may provide for the assumption by the new government of all bonded indebtedness and all other obligations of whatever kind of all governmental units, public authorities, and special service districts which are altered by said charter and a method by which the new county-wide government shall assume the payment of any obligations issued under Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," or other similar legislation;

(10) The charter may provide for the transfer to the new county-wide government of assets, contracts, and franchises of all governmental units and any public authorities and special service districts which are merged with the new county-wide government or are altered by the charter;

(11) The charter may provide the purposes for which the new county-wide government or governing authority or any agency thereof may levy taxes;

(12) The charter shall provide for the method or methods by which it may be amended. The General Assembly expressly reserves the right to amend any charter adopted pursuant to this Act. The charter may provide for an additional method or methods by which the charter may be amended and shall provide for any amendments adopted by any such other method or methods to be filed with the Secretary of State so that they may be published in the *Georgia Laws*;

(13) The charter shall provide for the repeal of conflicting laws; and

(14) The charter may contain such other provisions as are necessary and needful to achieve the objectives of consolidation of the governments and functions of the City of Ellaville and the County of Schley and the creation of a successor government.

(c) The following additional provisions shall govern proceedings of the charter and unification commission and any successor county-wide government created by a charter drafted by the commission:

(1) The charter and unification commission is authorized to contract with any public or private institution or body, including the Carl Vinson Institute of Government, for any special studies or assistance it deems necessary, subject to the limitation that any expenditure therefor shall be within the limits of the funds made available to the commission by the respective governing authorities; and

(2) Any successor government created and established shall, without the necessity or formality of deed, bill of sale, or other instrument of transfer, be and become the owner of all property, assets, and rights previously belonging to the City of Ellaville and the County of Schley and any other authorities or special service districts merged into the new government.

(d) The charter and unification commission shall have all the powers of the superior courts to compel the attendance of witnesses before the commission and any of its committees, subcommittees, or advisory committees; to compel witnesses to testify thereat; and to subpoena any person or entity and all such books, records, data, papers, documents, and other tangible items which may be deemed by the commission to be material to any question or issue deemed by it to be relevant to the duties or prerogatives imposed upon or granted to the commission by this Act. Such subpoenas shall be issued in the name of the commission, shall be signed by either the chairperson or the secretary of the commission, and shall be served in the manner provided by law for the service of subpoenas in civil cases pending in the superior courts. Witnesses subject to such subpoenas shall be entitled to the same compensation as witnesses attending superior court, which compensation shall be collected in the same manner as that of witnesses in the superior courts except that such compensation shall be paid from funds of the commission. Should any such subpoenaed person or witness fail or refuse to answer questions propounded or fail or refuse to produce any books, records, data, papers, documents, or other tangible items required to be produced by the commission, except upon a legal excuse which would relieve such person of such obligation in a civil case pending in the superior court, the person so failing or refusing shall be guilty of contempt and may be cited by the commission to appear before a judge of the Superior Court of Schley County. The judge of said court shall have the same power and jurisdiction to punish the person cited for contempt and to require and compel the attendance, the giving of testimony, or the production of items as in cases of contempt committed in the presence of the court and as in cases pending before the court.

(e) Notwithstanding any other provisions of this Act, the charter and unification commission and the charter proposed by the commission and subsequently adopted may not:

(1) Alter or affect the status of the Schley County School System or the Schley County Board of Education or any provision of the Constitution or laws of the State of Georgia by which the Schley County School System is constituted, empowered, or preserved or to transfer any of its powers, duties, or obligations;

(2) Impair or diminish any pension or retirement rights;

(3) Abolish the office of sheriff, clerk of superior court probate judge, or tax commissioner; or

(4) Create a unified government police department.

(f) None of the foregoing limitations shall be construed as prohibiting the General Assembly from exercising any legislative power with respect to any municipality electing to be excluded as provided in this Act or the school district, board of education, industrial development authority, office of sheriff, clerk of superior court, or tax commissioner, pension rights, and homestead exemptions which existed prior to the adoption of this Act.

(g) The powers granted in this Act to the charter and unification commission by the General Assembly are remedial in nature and shall be liberally construed to effectuate their purpose.

SECTION 7.

(a) The charter and unification commission shall be required to hold at least two public hearings to determine the sentiment of the citizens of the City of Ellaville and the County of Schley regarding the work of the charter and unification commission. The first public hearing shall be held not less than 30 days prior to the issuance of the commission's final written report on the feasibility of establishing a single county-wide government within Schley County, and a second public hearing shall be held not less than 15 days prior to the submission of any proposed charter for such consolidated government to the Schley County Board of Elections. The charter and unification commission is authorized to hold more than two public hearings if it determines that additional public hearings are desirable. The charter and unification commission shall cause the date, time, and place of each such hearing to be advertised in the official organ of Schley County once a week for the two consecutive weeks preceding the week in which the public hearing is held. The charter and unification commission shall cause to be made a transcript of each public hearing held and shall file the same in its minutes and records.

(b) Following issuance of the commission's final written report, the governing authorities of the City of Ellaville and the County of Schley shall each hold and conduct a public hearing to determine the sentiments of their citizens regarding the work of the charter and unification commission. Notice of such hearings shall be advertised in the same manner as required for hearings held by the charter and unification commission. Representatives of the charter and

312 unification commission shall be invited to present the final report to said governing
313 authorities.

314 **SECTION 8.**

315 (a) The charter and unification commission shall complete its studies and shall prepare,
316 complete, and file any proposed charter no later than December 31, 2009; provided, however,
317 that the above-described time period may be extended for such additional periods of time as
318 may be authorized by a resolution duly adopted by the governing authority of the City of
319 Ellaville and by a similar resolution being duly adopted by the governing authority of the
320 County of Schley and may also be extended by an Act of the General Assembly and shall be
321 automatically extended for a period of time equal to the period of time that any proposed
322 charter shall be under consideration by the United States Department of Justice or by any
323 courts.

324 (b) Certified copies of the charter shall be filed by the charter and unification commission
325 with the clerks of the governing authorities of the City of Ellaville and the County of Schley
326 and shall be authenticated by the signature of the chairperson of the charter and unification
327 commission. Such copies shall be public records and shall be available for inspection or
328 examination by any interested person.

329 (c) The charter and unification commission shall also make available a copy of the charter
330 to every daily or weekly newspaper published in Schley County and to each radio or
331 television station operating within the county. The commission shall take such other steps,
332 within the limitation of its available funds, as it deems reasonable and appropriate to inform
333 the public throughout the county of the contents of the proposed charter. The charter and
334 unification commission shall also cause a summary of the proposed charter to be printed in
335 pamphlets or booklets and made available for general distribution throughout the county.

336 (d) The charter and unification commission is authorized to adopt such rules and regulations
337 as it deems necessary or desirable to carry out its powers and perform its duties and
338 functions.

339 (e) Following the completion of the proposed charter by the charter and unification
340 commission and prior to the time of filing or submission thereof as provided in this Act, the
341 same shall be presented for review by the United States Department of Justice as may be
342 required by law. The failure of any proposed charter submitted by the charter and unification
343 commission to the Department of Justice to obtain preclearance by the Department of Justice
344 shall not prevent the charter and unification commission from revising said charter in a
345 manner so as to enable the proposed charter to meet Department of Justice objections with
346 respect thereof, and the charter and unification commission is empowered to redraft any such
347 proposed charter in such manner so as to meet requirements for the Department of Justice's

348 approval in the event that any initial proposed charter fails to obtain Department of Justice
349 approval.

350 **SECTION 9.**

351 (a) A certified copy of the proposed charter shall be submitted by the commission to the
352 election superintendent of Schley County, and it shall be the duty of such superintendent to
353 call and hold a referendum election for ratification or rejection of the proposed charter as
354 provided in Section 10 of this Act.

355 (b) The charter and unification commission shall be abolished by operation of law at
356 midnight of the day the results of the special referendum election on the proposed charter
357 become final and effective pursuant to the laws of the State of Georgia.

358 **SECTION 10.**

359 (a) As soon as practicable after receipt of the certified copy of the proposed charter and after
360 receipt of preclearance, or the usual notice of no current objections, by the United States
361 Department of Justice of such proposed charter, it shall be the duty of the election
362 superintendent of Schley County to call a special election for approval or rejection of the
363 proposed charter. The election superintendent shall set the date of the election for the earliest
364 date therefor permissible under general law after the filing of any proposed charter as
365 provided for in Section 8 of this Act. The election superintendent shall cause the date and
366 purpose of the election to be published once a week for two calendar weeks immediately
367 preceding the date thereof in the official organ of Schley County. The ballot shall have
368 written or printed thereon the following:

369 "() YES Shall the charter reorganizing and consolidating the governments of the City
370 of Ellaville and the County of Schley and creating a single county-wide
371 () NO government to supersede and replace those governments be approved?"

372 (b) All persons desiring to vote for approval of the charter shall vote "Yes," and those
373 persons desiring to vote for rejection of the charter shall vote "No." The votes cast on such
374 question by the qualified voters of Schley County residing within the corporate limits of the
375 City of Ellaville and the votes cast on such question by the qualified voters of Schley County
376 shall be counted separately. If more than one-half of the votes cast by the qualified voters
377 of Schley County residing within the corporate limits of the City of Ellaville are for approval
378 of the charter and if more than one-half of the total votes cast by the qualified voters residing
379 within both the incorporated and unincorporated areas of Schley County are for approval of
380 the charter, then the charter shall become effective. Otherwise, it shall be void and of no
381 force and effect. The expense of such election shall be borne equally by the City of Ellaville
382 and the County of Schley.

383 (c) The special election shall be conducted pursuant to Chapter 2 of Title 21 of the
384 O.C.G.A., the "Georgia Election Code," except to the extent specifically provided otherwise
385 by this Act.

386 (d) A qualified voter, as used in this Act, shall mean a voter of Schley County qualified to
387 vote for members of the General Assembly of Georgia. The election superintendent shall
388 certify the returns to the Secretary of State. The election superintendent shall also furnish
389 a certified copy of the charter to the Secretary of State. The Secretary of State shall issue his
390 or her proclamation showing and declaring the result of the election on the approval or
391 rejection of the charter. One copy of the proclamation shall be attached to the copy of the
392 charter certified to the Secretary of State. One copy of the proclamation shall be delivered
393 to the secretary or clerk of the governing authority of the City of Ellaville, who shall attach
394 the same to the copy of the charter previously certified to him or her. One copy of the
395 proclamation shall be delivered to the clerk of the governing authority of the County of
396 Schley, who shall attach the same to the copy of the charter previously certified to him or
397 her.

398 (e) Whenever a charter for the consolidation of the governments of the City of Ellaville and
399 the County of Schley has been adopted, the above-certified copies thereof, with the
400 proclamation of the Secretary of State of Georgia attached thereto, shall be deemed duplicate
401 original copies of the charter of the consolidated government for all purposes. The certified
402 copy of the charter and proclamation deposited with the secretary of the governing authority
403 of the City of Ellaville and the certified copy of the charter and proclamation deposited with
404 the clerk of the governing authority of the County of Schley shall subsequently be delivered
405 by them to the successor government. The successor government may issue certified copies
406 of the charter and any copy so certified shall be deemed a duplicate original copy of the
407 charter of the consolidated government for all purposes. The Secretary of State is authorized
408 to issue certified copies of the charter on file with him or her, and copies so certified by him
409 or her shall be deemed duplicate original copies of the charter of the consolidated
410 government for all purposes.

411 **SECTION 11.**

412 In the event the proposed single county-wide government charter is approved by voters as
413 provided in Section 10 of this Act, an election shall be held in accordance with the provisions
414 of the charter to elect the members of the governing authority of the county-wide
415 government. Upon the election of the members of the governing authority and their taking
416 office as the governing authority of the county-wide government, the existing governments
417 of the City of Ellaville and the County of Schley shall stand abolished, all in accordance with
418 the provisions of the charter of the new county-wide government.

419 **SECTION 12.**

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

422 **SECTION 13.**

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