

House Bill 394

By: Representatives Hamilton of the 23rd, Powell of the 171st, Riley of the 50th, Powell of the 29th, Baker of the 78th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 36 of Title 36 of the Official Code of Georgia Annotated,
2 relating to annexation pursuant to an application by 100 percent of the landowners, so as
3 provide for deannexation of property previously annexed; to provide for procedures,
4 conditions, and limitations; to require a plan for services by municipalities prior to
5 annexation; to provide for the appointment of a special master; to provide for related matters;
6 to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2 of Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to
10 annexation pursuant to an application by 100 percent of the landowners, is amended by
11 adding new Code sections to read as follows:

12 "36-36-24.

13 (a) A municipal corporation exercising authority under this article shall prepare a plan for
14 the extension of services or improvements to the area proposed to be annexed. The plan
15 shall be approved by a majority of the municipal governing authority and shall include:

16 (1) A map or maps of the municipality and adjacent territory showing the present and
17 proposed boundaries of the municipal corporation;

18 (2) A statement setting forth the plans of the municipal corporation, if any, for extending
19 to the area to be annexed any municipal service or property improvement and the
20 estimated time of completion for each such proposal; and

21 (3) A description of any other promise or commitment by the governing authority of the
22 municipality to the owners of the property who submitted the application for annexation,
23 including regulatory or service commitments, proposed changes in transportation, roads,
24 bridges, sidewalks, or schools, or other capital improvements, and the estimated time of
25 completion for each such improvement.

26 (b) The report and plan required by this Code section shall be prepared and made available
27 to the public and the property owners applying for annexation at least 30 days prior to any
28 final action by the municipal governing authority approving the application for annexation.

29 (c) Each property owner on the application for annexation shall acknowledge in writing
30 receipt of the plan required by this Code section prior to final action by the municipal
31 governing authority approving an application for annexation.

32 36-36-25.

33 (a) The deannexation procedure set forth in this Code section shall apply solely to property
34 annexed to a municipality pursuant to this article. The procedures provided by this Code
35 section shall be in addition to any other deannexation procedures which may be provided
36 by law and shall not affect rights and remedies available under any other available
37 deannexation process.

38 (b) Deannexation is contingent upon the property proposed for deannexation being
39 contiguous to the unincorporated area of the county. For purposes of this Code section,
40 property shall be considered contiguous to the unincorporated area of a county if the area
41 proposed for deannexation either abuts directly on an unincorporated area or would directly
42 abut on the unincorporated area if it were not otherwise separated from the unincorporated
43 boundary by lands owned by this state, a municipal corporation, the county, or some other
44 political subdivision or lands consisting of the definite width of any street or street right of
45 way, any creek or river, or any right of way of a railroad or other public service
46 corporation.

47 (c) Whenever all of the property owners, or their successors in interest, who submitted an
48 application for annexation pursuant to this article subsequently assert that an annexing
49 municipality failed to properly implement services or improvements as represented in the
50 plan for services required by Code Section 36-36-24, such property owners may apply to
51 the municipality for deannexation. The application shall be in writing and contain a
52 description of the lands proposed to be deannexed, an assertion that the plan for services
53 has not been reasonably implemented by the municipality, and the basis for such assertion.
54 Such application shall include the signatures of all property owners, or their successors in
55 interest, who had submitted an application for annexation pursuant to this article and who
56 are requesting deannexation, except the owners of any public street, road, highway, or right
57 of way. In addition, the application shall include a copy of a resolution by the governing
58 authority of the county in which such property is located consenting to such deannexation.

59 (d) Property that has been annexed to a municipal corporation shall not be eligible for
60 deannexation pursuant to the provisions of Code Section 36-36-26 until at least two
61 calendar years after the date the annexation of said property became effective.

62 36-36-26.

63 (a) Upon receipt by the municipality of an application for deannexation, if the municipality
64 objects to the deannexation, the municipality shall file a petition in superior court seeking
65 appointment of a special master. A special master shall be appointed by the chief judge of
66 the superior court no later than 30 days following receipt of the application by the
67 municipality. The special master shall be an attorney licensed to practice law in this state
68 and have at least three years of legal experience. Compensation for the special master shall
69 be provided for by order of the court and shall be shared equally by the municipality and
70 the applicants. The questions for the special master's determination shall be limited to
71 whether all of the property owners, or their successors in interest, who were a part of the
72 original annexation are parties to the application for deannexation; whether the application
73 for deannexation is timely filed; and whether the municipality has reasonably met the
74 promises or commitments made to the applicants as expressed in the plan for services
75 required by Code Section 36-36-24. The special master shall hold a hearing at which time
76 the municipality and the applicants may present evidence. The burden shall be on the
77 applicants for deannexation to establish by a preponderance of the evidence that the
78 municipality has not reasonably satisfied the commitments made in the plan for services
79 that was prepared pursuant to Code Section 36-36-24. Except as provided in subsection
80 (c) of this Code section, the special master shall render a decision within 30 calendar days
81 following the hearing and not more than 60 days following his or her appointment.

82 (b) If the special master finds that the municipality has failed to reasonably satisfy the
83 commitments made to the applicants in the plan for services, the area or areas within the
84 existing corporate limits of a municipality that are the subject of the application shall be
85 deannexed. The special master shall submit a written decision to the chief judge of the
86 superior court and the parties. Within ten days after the special master reports his or her
87 decision to the chief judge, any party may file an objection to such decision; however,
88 such decision shall be accepted by the chief judge unless the chief judge finds that the
89 special master abused his or her discretion or the decision is not supported by the evidence.
90 Unless the decision of the special master is rejected by the chief judge, the chief judge shall
91 proceed to issue an order adopting the decision of the special master. If the special master
92 finds in favor of the applicants, then the chief judge shall enter an order that the applicants'
93 request for deannexation shall be effective in accordance with the provisions of
94 subsection (d) of this Code section. If the special master finds that the municipality has
95 reasonably met the commitments made to the applicants in the plan of services or if the
96 special master finds that the municipality has resolved any failure to meet its commitments
97 in accordance with subsection (c) of this Code section, the chief judge shall enter an order
98 denying the application for deannexation.

99 (c) Before any decision is rendered by the special master, the municipality may, by
100 resolution of the governing authority, offer to cure the failure by the municipality to
101 reasonably satisfy the commitments made to the applicants in the plan for services. Upon
102 service of the resolution upon the applicants and the special master, if a special master has
103 been appointed, any further deliberations on the merits of the applicants' assertions shall
104 be stayed for not more than six months to allow time for the municipality to satisfy its
105 commitments. No more than one stay shall be authorized, except by order of the special
106 master.

107 (d) Deannexation of land pursuant to this Code section shall be effective for ad valorem
108 tax purposes on December 31 of the year during which such application is submitted and
109 for all other purposes on the first day of the next calendar quarter which begins at least one
110 month after the month during which the requirements of this Code section have been met.

111 (e) An identification of the property so deannexed shall be filed with the Department of
112 Community Affairs and with the governing authority of the county in which the property
113 is located in accordance with Code Section 36-36-3.

114 (f) When deannexed pursuant to this Code section, such lands shall cease to constitute a
115 part of the lands within the corporate limits of the municipal corporation as completely and
116 fully as if the limits had been marked and defined by local Act of the General Assembly.

117 (g) Lands to be deannexed at any one time shall be treated as one body, regardless of the
118 number of owners, and all parts shall be considered contiguous to the unincorporated area
119 of the county when any one part of the entire body abuts such area.

120 (h) Deannexation pursuant to this Code section shall not be applicable to any property
121 unless such property was annexed pursuant to this article by a municipality on or after
122 July 1, 2011.

123 (i) Whenever land is deannexed from a municipal corporation pursuant to this article, any
124 bonded indebtedness of the municipality which is outstanding as of the effective date of the
125 deannexation and incurred while the land was within the municipal limits shall continue
126 to be assessed and collected in the same manner and to the same extent that such taxes,
127 fees, or assessments were previously imposed on such land by the municipality in
128 accordance with the terms of the obligations of the applicable bonded indebtedness of the
129 municipality.

130 (j) At any time after an application for deanexation pursuant to this Code section is
131 submitted to a municipality, the municipality may deannex the property proposed for
132 deannexation pursuant to Code Section 36-36-22."

133 **SECTION 2.**

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