

House Bill 560 (AS PASSED HOUSE AND SENATE)

By: Representatives Williams of the 4th, Dickson of the 6th, and Weldon of the 3rd

A BILL TO BE ENTITLED
AN ACT

To create and establish the Dalton-Whitfield County Charter and Consolidation Commission; to provide for a short title; to provide for definitions; to provide for the appointment of the members of said commission; to provide for the organizational meeting of the charter and consolidation commission and for the election of officers; to provide for the powers and duties of said commission; to provide for expenses of said commission and the payment thereof; to provide that said commission shall be authorized to study all matters relating to the governments of Whitfield County and the City of Dalton, with a view toward consideration of the establishment of a single county-wide government with powers and jurisdiction throughout the territorial limits of Whitfield County other than the municipalities of Tunnel Hill, Varnell, and Cohutta; provide for the submission of such proposed county-wide government charter to the qualified voters for approval or rejection; to provide for the conduct of such election and for the certification of the results thereof; to provide for election of a new governing authority and abolishment of old governing authorities under certain conditions; to provide for all procedures and other matters connected with the foregoing; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Dalton-Whitfield County Charter and Consolidation Commission Act" and is enacted pursuant to the authority granted by Article IX, Section III, Paragraph II of the Constitution of the State of Georgia.

SECTION 2.

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

(1) "Charter and consolidation commission" or "commission" shall mean the Dalton-Whitfield County Charter and Consolidation Commission provided for in this Act.

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

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

(4) "County-wide government" shall mean the local government that would be established in Whitfield County if the charter referred to in this Act be approved in the referendum in the manner provided for in Section 10 of this Act and that would replace the City of Dalton and Whitfield County and would serve as the local government for all of the incorporated and unincorporated area of Whitfield County except for the incorporated areas within Whitfield County constituting the cities of Tunnel Hill, Varnell, and Cohutta, Georgia.

(5) "Qualified voter" shall mean a voter of Whitfield County qualified to vote for members of the General Assembly of Georgia.

SECTION 3.

(a) There is created the Dalton-Whitfield County Charter and Consolidation Commission, which shall consist of 15 members to be appointed within 45 days of the effective date of this Act as provided in this section.

(b) Within 45 days of the effective date of this Act as provided in this section, the governing authority of the City of Dalton shall appoint six members to the charter and consolidation commission. Two of such appointments shall be aldermen appointed by the Mayor of the City of Dalton, who shall serve on the Commission during their respective terms as aldermen. The remaining four appointees shall be residents of the City of Dalton.

(c) Within 45 days of the effective date of this Act as provided in this section, the governing authority of Whitfield County shall appoint six members to the charter and consolidation commission. Two of such appointments shall be the Chairman of the Board of Commissioners of Whitfield County and another commissioner, who shall serve on the Commission during their respective terms as Chairman and commissioner. The remaining four appointees shall be residents residing within the limits of Whitfield County.

(d) If the governing authority of the City of Dalton or the governing authority of Whitfield County refuses or fails to appoint a member of the commission as required by this section, the chief superior court judge of the Conasauga Judicial Circuit shall make such appointment within ten days following the expiration of the 45 day period allowed for appointments provided for in subsection (a) of this section.

(e) Except for the appointments of two aldermen, the Chairman of the Board of Commissioners of Whitfield County, and one commissioner, no member of the charter and consolidation commission appointed by the governing authority of the City of Dalton or the governing authority of Whitfield County shall hold any other elective public office and shall not be a current employee of the City of Dalton, Whitfield County, or any local authority created by or for the city or county.

(f) Within 30 days of the effective date of this Act as provided in this section, the governing authorities of the City of Tunnel Hill, the City of Varnell, and the Town of Cohutta may each appoint one member of their respective governing authorities to the charter and consolidation commission. The failure of a governing authority to make an appointment as for in this subsection (f) shall preclude such governing authority from making a subsequent appointment, and the unfilled seats on the commission shall be appointed by the majority vote of the existing commission members.

(g) To be eligible for appointment as a member of the charter and consolidation commission, a person who is not otherwise an elected official 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 Whitfield County for a period of at least three years prior to his or her appointment.

(h) If a member of the charter and consolidation 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 consolidation commission, said commission shall declare a vacancy in his or her office as a member of such commission and within 15 days thereafter the governing authority that appointed that member or the commission shall appoint a successor promptly to fill such vacancy.

(i) A certificate of appointment shall be issued by the appointing entity of each member of the charter and consolidation commission and filed in the office of the Probate Court of Whitfield County with a duplicate original of such certificate being transmitted to, and filed with, the chairperson or the secretary of the charter and consolidation commission.

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

(k) The charter and consolidation commission may appoint advisory committees or subcommittees from among the general populace to advise it with respect to its work;

provided, however, that the charter and consolidation commission may not delegate any of the duties, powers, or obligations imposed upon the commission and granted to it by this Act to any such advisory committee or subcommittee. Any such advisory committee or subcommittee so appointed shall serve at the discretion of the commission and shall serve subject to such terms, conditions, and charges as may be imposed upon it by the commission.

(l) All persons who shall, from time to time, serve as members of the charter and consolidation commission or its committees or subcommittees shall be afforded coverage and shall be included in the insured class, under the provision of such policies, riders, or other insurance contracts from time to time in force and held by the governing authority of Whitfield County, extending to members of such governing authority of the Whitfield County, and what is commonly referred to as "public official's liability insurance coverage," to the same extent and as nearly as practicable with identical coverage and limits as afforded to the individual members of the governing authority of Whitfield County. Any and all additional premium amounts payable by Whitfield County due to the extension of such coverage to the members of the charter and consolidation commission shall be paid, when due and payable, one-half by Whitfield County, and one-half by the City of Dalton, which payments shall be made in addition to all other amounts otherwise payable under the provisions of this Act.

(m) The governing authority of Whitfield County, the governing authority of the City of Dalton and the governing authority of any county-wide government created under a 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 consolidation 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 consolidation commission shall hold an organizational meeting not less than 45 days nor more than 60 days after the date this Act becomes effective. Any six or more members of the charter and consolidation commission composed of at least three members appointed by the governing authority of the City of Dalton and three members appointed by the governing authority of the Whitfield County 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.

(b) The first order of business at the organizational meeting shall be to elect a chairman of the commission, who shall be elected by majority vote of all members of the

commission. The second order of business shall be to elect a vice chairman of the commission, who shall be elected by majority vote of all members of the commission, who shall assume the duties of the chairman in the absence or disability of the chairman. The charter and consolidation commission shall also be authorized to elect a secretary, who may, but need not be, a member of the commission, and such other officers from the membership of the charter and consolidation commission as it shall deem necessary. The county attorney for Whitfield County and the city attorney for the City of Dalton shall jointly provide legal counsel to the commission and shall draft any proposed charter or other document necessary to carry out the responsibilities of the commission. The governing authorities of the City of Dalton and Whitfield County shall each be responsible for the legal fees of their counsel. The County Administrator of Whitfield County and the City Administrator of the City of Dalton, or his or her respective designee, shall attend all meetings of the commission as ex-officio non-voting members.

(c) The chairman or other presiding officer of the commission shall not vote on any question before the commission unless there is a tie vote, in which case the chairman shall cast the deciding vote unless he or she is otherwise disqualified.

(d) The members of the charter and consolidation commission shall not receive per diem or other compensation for their services, but the members may be reimbursed for actual expenses incurred by them in carrying out their duties. Any funding request of the commission shall require approval by a joint resolution of the governing authorities of the City of Dalton and Whitfield County.

(e) The charter and consolidation 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 Dalton and Whitfield County, upon request, shall furnish the charter and consolidation commission with all documents, books, records, data, and information necessary or appropriate in the opinion of the charter and consolidation commission for it to carry out its duties, except for information that is confidential or privileged by law; shall furnish such other assistance and aid to the commission as it shall request; and shall appear and give testimony, at the request of the commission, before the commission or before any of its committees, subcommittees, or advisory committees.

(g) The commission shall be subject to the provisions of Chapter 14 of Title 50 and Article 4 of Chapter 18 of Title 50 of the O.C.G.A. to the same extent as Whitfield County and the City of Dalton are subject to such provisions.

SECTION 5.

The commission shall be authorized to study all matters relating to the governments of the City of Dalton and Whitfield County and all matters relating to the establishment of a single county-wide government, with powers and jurisdiction throughout the territorial limits of Whitfield County, except within the incorporated limits of those municipalities of Whitfield County which have, acting through their local governing bodies, decided not to participate in consolidation. 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 consolidation commission shall deem it to be in the best interests of the governments proposed to be affected, the 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 Dalton and Whitfield County. If the charter and consolidation 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 the incorporated and unincorporated areas of Whitfield 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 consolidation 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 of the items 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 Dalton and Whitfield County and for the creation of a new single government which may have all powers formerly exercised by the City of Dalton and Whitfield County 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 transfer of any powers, duties, and obligations of public authorities and special service districts located in Whitfield County or the City of Dalton to the new countywide government or to any agency thereof or from one such authority or special service district to another in such manner as the 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 Whitfield and any public authorities or special service districts located or operating within Whitfield County or the City of Dalton 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 consolidation 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 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 the 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 the 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 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 Dalton and Whitfield County and the creation of a successor government.

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

(1) The City of Dalton and Whitfield County are authorized, after approval by a joint resolution, to contract with any public or private institution or body, including the Carl Vinson Institute of Government, for any special studies or assistance deemed necessary; 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 Dalton and Whitfield County.

(d) Notwithstanding any other provisions of this Act, the charter and consolidation commission and the charter proposed by the commission and subsequently adopted shall not:

(1) Alter or affect the status of the Whitfield County School System, the Dalton Independent School System, the Board of Education for Whitfield County, the Board of Education for the Dalton Independent School System, or any provision of the Constitution or laws of the State of Georgia by which said school systems are constituted, empowered, or preserved or to transfer any of their powers, duties, or obligations;

(2) Impair or diminish any pension or retirement rights for existing employees; or

(3) Abolish the Office of Sheriff, Clerk of Superior Court, Judge of Probate Court, Chief Magistrate, or Tax Commissioner.

(e) None of the foregoing limitations shall be construed as prohibiting the General Assembly from exercising any legislative power with respect to any municipality or to the said school districts, boards of education, Office of Sheriff, Clerk of Superior Court, Judge of Probate Court, Chief Magistrate, Tax Commissioner, pension rights, and homestead exemptions which existed prior to the adoption of this Act.

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

SECTION 7.

(a) The charter and consolidation commission shall be required to hold at least two public hearings to determine the sentiment of the citizens of the City of Dalton and Whitfield County regarding the work of the charter and consolidation commission. The first public hearing shall be held within 30 days of the issuance of the commission's final written report on the feasibility of establishing a single county-wide government within Whitfield County, and a second public hearing shall be held within 15 days of the submission of any proposed charter for such consolidated government to the Whitfield County Board of Elections and Registration. The charter and consolidation commission is authorized to hold more than two public hearings if it determines that additional public hearings are desirable. The charter and consolidation commission shall cause the date, time, and place of each such hearing to be advertised in the official organ of Whitfield County once a week for two consecutive weeks during the two weeks next preceding the week in which the public hearing is held. The charter and consolidation 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 Dalton and Whitfield County may, but shall not be required, to conduct separate public hearings to determine the sentiments of their citizens regarding the work of the charter and consolidation commission. Notice of such hearings shall be advertised in the same manner as required for hearings held by the charter and consolidation

commission. Representatives of the charter and consolidation commission shall be invited to present the final report to such governing authorities.

SECTION 8.

(a) The charter and consolidation commission shall complete its studies and shall prepare, complete, and file any proposed charter no later than April 30, 2012; provided, however, that the above-described time period may be extended for such additional periods of time as may be authorized by resolutions duly adopted by the governing authorities of the City of Dalton and Whitfield County and may also be extended by an Act of the General Assembly and shall be automatically extended for a period of time equal to the period of time that any proposed charter shall be under consideration by the United States Department of Justice or by any courts.

(b) Certified copies of the charter shall be filed by the charter and consolidation commission with the respective clerks of the governing authorities of the City of Dalton and Whitfield County and shall be authenticated by the signature of the chairperson of the charter and consolidation commission. Such copies shall be public records and shall be available for inspection or examination by any interested person.

(c) The charter and consolidation commission shall also make available a copy of the charter to the Dalton Daily Citizen and to each radio or television station with an office located in Whitfield County. The commission shall take such other steps, as it deems reasonable and appropriate, to inform the public throughout the county of the contents of the proposed charter. The charter and consolidation commission may also cause a summary of the proposed charter to be printed in pamphlets or booklets and made available for general distribution throughout the county.

(d) The charter and consolidation commission is authorized to adopt such rules and regulation as it deems necessary or desirable to carry out its powers and perform its duties and functions.

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

meet requirements for the Department of Justice's approval in the event that any initial proposed charter fails to obtain Department of Justice approval.

SECTION 9.

(a) A certified copy of the proposed charter shall be submitted by the commission to the Board of Elections and Registration of Whitfield County, and it shall be the duty of such Board to call and hold a referendum election for ratification or rejection of the proposed charter as provided in Section 10 of this Act.

(b) The charter and consolidation commission shall be abolished by operation of law at midnight of the day the results of the special referendum election on the proposed charter become final and effective pursuant to the laws of the State of Georgia or December 31, 2012, whichever shall occur sooner.

SECTION 10.

(a) After receipt of the certified copy of the proposed charter and unless otherwise prohibited by the federal Voting Rights Act of 1965, as amended, the Board of Elections and Registration of Whitfield County shall call a special election for approval or rejection of the proposed charter to be held on the date of the state-wide general election in November, 2012. The Board of Elections and Registration shall cause the date and purpose of the election to be published once a week for two calendar weeks immediately preceding the date thereof in the official organ of Whitfield County. The ballot shall have written or printed thereon the following:

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

(b) All persons desiring to vote for approval of the charter shall vote "Yes," and those persons desiring to vote for rejection of the charter shall vote "No." The votes cast on such question by the qualified voters of Whitfield County residing within the corporate limits of the City of Dalton and the votes cast on such question by the qualified voters of Whitfield County shall be counted separately. If more than one-half of the votes cast by the qualified voters of Whitfield County residing within the corporate limits of the City of Dalton are for approval of the charter and if more than one-half of the total votes cast by the qualified voters residing within Whitfield County but without the corporate limits of the City of Dalton are for approval of the charter, then the charter shall become effective as to the City of Dalton and Whitfield County as provided therein, but not sooner than January 1, 2013. If the charter is not so approved or if the election is not conducted as provided in this section, then the charter shall be void and of no force and effect. The

expense of such election shall be borne equally by the City of Dalton and Whitfield County.

(c) The special election shall be conducted in accordance with Chapter 2 of Title 21 of the O.C.G.A., the "Georgia Election Code."

(d) The Board of Elections and Registration shall certify the returns to the Secretary of State. The Board of Elections and Registration shall also furnish a certified copy of the charter to the Secretary of State. The Secretary of State shall issue his or her proclamation showing and declaring the result of the election on the approval or rejection of the charter. One copy of the proclamation shall be attached to the copy of the charter certified to the Secretary of State. One copy of the proclamation shall be delivered to the clerk of the governing authority of the City of Dalton, who shall attach the same to the copy of the charter previously certified to him or her. One copy of the proclamation shall be delivered to the clerk of the governing authority of Whitfield County, who shall attach the same to the copy of the charter previously certified to him or her.

(e) Whenever a charter for the consolidation of the governments of the City of Dalton and Whitfield County has been adopted, the above-certified copies thereof, with the proclamation of the Secretary of State of Georgia attached thereto, shall be deemed duplicate original copies of the charter of the consolidated government for all purposes. The certified copy of the charter and proclamation deposited with the clerks of the governing authorities of the City of Dalton, the municipalities participating in the commission, and Whitfield County shall subsequently be delivered by them to the successor government. The successor government may issue certified copies of the charter, and any copy so certified shall be deemed a duplicate original copy of the charter of the consolidated government for all purposes, the Secretary of State is authorized to issue certified copies of the charter on file with him or her, and copies so certified by him or her shall be deemed duplicate original copies of the charter of the consolidated government for all purposes.

SECTION 11.

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

418

SECTION 12.

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