

House Bill 990 (AS PASSED HOUSE AND SENATE)

By: Representatives Jones of the 46th, Riley of the 50th, Martin of the 47th, Willard of the 49th, Dudgeon of the 24th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 31 of Title 36 of the Official Code of Georgia Annotated, relating to
2 incorporation of municipal corporations, so as to change certain provisions relating to
3 municipal control over parks and fire stations; to change certain provisions relating to special
4 districts divided into noncontiguous areas, information required in audits, informational
5 summary, and effect of creation of municipal corporation and distribution of excess proceeds
6 from special district taxes, fees, and assessments; to provide for applicability; to provide an
7 effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Chapter 31 of Title 36 of the Official Code of Georgia Annotated, relating to incorporation
11 of municipal corporations, is amended by revising Code Section 36-31-11.1, relating to
12 municipal control over parks and fire stations, as follows:

13 "36-31-11.1.

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

15 (1) 'County' means a county in which a tax is being levied and collected for purposes of
16 a metropolitan area system of public transportation ~~and in which a public safety and~~
17 ~~judicial facilities authority has been activated by the county pursuant to Chapter 75 of this~~
18 ~~title.~~

19 (2) 'Fire station' means any property or facility that is located wholly within the territory
20 of a qualified municipality, ~~including buildings and fixtures located on such property~~
21 owned by the county or subject to a lease-purchase or installment sale arrangement by the
22 county, and used by the county as of the date immediately prior to the date the local Act
23 incorporating a qualified municipality became law to provide fire protection services
24 authorized by Article IX, Section II, Paragraph III(a)(1) of the Constitution. Such term
25 shall include any buildings, fixtures, or other improvements on such property or in such
26 facilities.

27 (3) 'Park' means any property or facility that is located wholly within the territory of a
28 municipality, including but not limited to athletic fields, athletic courts, recreation
29 centers, playgrounds, swimming pools, arts centers, historical properties, and adjacent
30 greenspace, ~~and the fixtures located on such property or in such facility~~ owned by the
31 county, or subject to a lease-purchase or installment sale arrangement by the county and
32 used by the county as of the date immediately prior to the date the local Act incorporating
33 a qualified municipality became law to provide any services authorized by Article IX,
34 Section II, Paragraph III(a)(5) of the Constitution or to provide any services authorized
35 by Article IX, Section II, Paragraph III(a)(10) of the Constitution. Such term shall
36 include any buildings, fixtures, or other improvements on such property or in such
37 facilities.

38 (4) 'Qualified municipality' means any new municipality located in a county and created
39 by local Act which becomes law on or after January 1, 2008.

40 (b) A qualified municipality that succeeds to the control of local government services
41 pursuant to Article IX, Section II, Paragraph III(a) of the Constitution may take control of
42 and hold title to parks and fire stations as a trustee or agent for the public.

43 (c)(1) A qualified municipality located within a county which has a special district for
44 the provision of fire services shall continue to be part of such special fire district where
45 the local Act creating such qualified municipality so provides or where the governing
46 authority of the qualified municipality elects by formal resolution to continue to be part
47 of the special fire district and delivers a copy of such resolution to the governing
48 authority of the county within 30 days after the date the resolution is adopted.

49 (2) If a qualified municipality initially elected to remain in a fire services special district,
50 such municipality shall be removed from such fire services special district by adopting
51 a resolution stating its intent to be removed from the district and the date of removal,
52 provided the governing authority of the qualified municipality delivers a copy of such
53 resolution to the governing authority of the county. The fire services shall be
54 discontinued by the county on the first day of the next fiscal year of the county that
55 begins at least 180 days after the specified notice is received by the county.

56 (d) A qualified municipality located within a county that charges fees on a periodic basis
57 for the provision of water or sewer services, or both, may elect to continue receiving such
58 services for the same fees charged residents in the unincorporated area of the county.
59 Such election may be set forth in the local Act creating such qualified municipality or be
60 made by resolution of the governing authority of the qualified municipality provided the
61 governing authority of the qualified municipality delivers a copy of such resolution to the
62 governing authority of the county within 30 days after the date the resolution is adopted.

63 (e) The county shall not convey, otherwise encumber, move any fixtures or buildings,
64 or enter into or renew any contractual obligations with respect to any park or fire station
65 located in the qualified municipality. The governing authority of the county shall assign
66 to the governing authority of the qualified municipality all of its right, title, and interest
67 in any executory contract in effect on any park or fire station that the qualified
68 municipality elects to purchase as provided in this Code section. Such assignment shall
69 be effective on the date the municipality assumes ownership of any such park or fire
70 station or as otherwise may be agreed between the governing authority of the
71 municipality and the governing authority of the county.

72 (f) A municipality may elect to purchase parks within the territory of the municipality
73 from the county in which the municipality is located. Notwithstanding any other law to
74 the contrary, whenever a municipality elects to purchase any such parks, the governing
75 authority of the municipality shall provide written notice to the governing authority of the
76 county specifying the parks to be purchased and the date or dates the municipality will
77 assume ownership of such parks; the purchase price for such parks shall be \$100.00 per
78 acre. Such notice shall be provided for each such park no less than 30 days prior to the
79 date the municipality intends to assume ownership.

80 (g) Upon the payment of the purchase price, all of the county's right, title, and interest in
81 the parks that the municipality elects to purchase shall be transferred to the governing
82 authority of the municipality. Such transfer shall be effective on the date the municipality
83 intends to assume ownership of such parks and as stated in the notice given pursuant to
84 subsection (f) of this Code section. The governing authority of the county shall transfer,
85 execute, and deliver to the governing authority of the municipality such instruments as may
86 be necessary to record the transfer of such right, title, and interest. Notwithstanding any
87 provision in any property deed or law to the contrary, a municipality may purchase a park
88 from the county without permission of the state and may use such park for all purposes for
89 which the county was authorized under such deed or law.

90 (h) In the event a park is transferred by a county to a municipality under this Code section,
91 the municipality shall be prohibited from imposing or collecting user fees from residents
92 of the county in excess of the amount of such fees imposed or collected from residents of
93 the municipality.

94 (i) Where residents of a municipality are required pursuant to Code Section 36-31-11 to
95 continue to pay taxes for the purpose of retiring any special district debt created by the
96 issuance of bonds by the county on behalf of the special district for the purpose of
97 improving parks and the municipality elects to purchase any such park pursuant to this
98 Code section, the county shall transfer to the municipality as an agent of the special district
99 the portion of the bond proceeds that the county planned to spend on such park at the time

100 of the referendum on the bonds, based upon any statements of intention or representations
101 concerning use of the bond proceeds by the governing authority of the county. Such
102 amount shall be determined based on county resolutions and any attachments thereto, staff
103 recommendations, or similar documents presented at the time of passage of a resolution,
104 county records, and any public statements or representations made by county managers,
105 representatives, officials, or their agents as to the amount that would be spent on such park
106 in order to solicit voter support for the referendum; provided, however, that the amount to
107 be transferred by the county to the municipality shall be reduced by any amount spent by
108 the county to improve such park prior to the date of the municipality's notice of its election
109 to purchase the park as provided in subsection (f) of this Code section. The transfer shall
110 be due within 30 days after the municipality assumes ownership of any such park. The
111 municipality shall be required to expend any such funds for and on behalf of the special
112 district in a manner consistent with the purpose and intent of the issuance of the bonds.

113 (j) A qualified municipality may elect to purchase one or more fire stations from the
114 county in which it is located. Notwithstanding any other law to the contrary, whenever a
115 qualified municipality elects to purchase a fire station from the county, the governing
116 authority of the qualified municipality shall provide written notice to the governing
117 authority of the county specifying the fire station to be purchased and the date or dates the
118 qualified municipality will assume ownership of such fire station. Such notice shall be
119 provided with respect to each such property no less than 30 days prior to the date the
120 qualified municipality intends to assume ownership of the fire station.

121 (k)(1) Except as otherwise provided in paragraph (2) of this subsection, if a qualified
122 municipality elects to purchase a fire station that serves only territory wholly within the
123 qualified municipality, the purchase price shall be \$5,000.00 for each such fire station.

124 (2) If the county uses a fire station to serve an area located outside the qualified
125 municipality, the purchase price for each such fire station shall be \$5,000.00 plus an
126 additional amount determined as provided in this paragraph. Such additional amount
127 shall be the product of the fair market value of such fire station multiplied by the
128 percentage of the total service area of such fire station which is located outside of the
129 corporate limits of the qualified municipality. If the portion served outside the qualified
130 municipality exceeds 20 percent of the total service area, then from the date the qualified
131 municipality assumes ownership of such fire station, the qualified municipality shall be
132 obligated to offer to lease the fire station back to the county for a period not to exceed
133 two years for an amount of \$10.00 for the lease period.

134 (l) If a county and municipality fail to reach an agreement on the amount to be paid or
135 any related matter under this Code section, either the county or the municipality may
136 petition the superior court to seek resolution of the items in dispute. Such petition shall

137 be assigned to a judge, pursuant to Code Section 15-1-9.1 or 15-6-13, who is not a judge
 138 in the circuit in which the county is located. The judge selected may also be a senior
 139 judge pursuant to Code Section 15-1-9.2 who resides in another circuit. The visiting or
 140 senior judge shall conduct an evidentiary hearing or hearings as such judge deems
 141 necessary and render a decision with regard to the disputed items."

142 **SECTION 2.**

143 Said chapter is further amended by revising subsection (b) of Code Section 36-31-12, relating
 144 to special districts divided into noncontiguous areas, information required in audits,
 145 informational summary, and effect of creation of municipal corporation and distribution of
 146 excess proceeds from special district taxes, fees, and assessments, as follows:

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

155 (2) If, on or after May 14, 2008:

156 (A) Excess proceeds derived from the collection of any special district taxes, fees, and
 157 assessments or from any earnings thereon remain following the expenditure required
 158 under paragraph (1) of this subsection; and

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

161 then the excess proceeds shall be disbursed within 60 days to the governing authority of
 162 each municipality which has incorporated any portion of the area of the special district;
 163 and the county shall continue to make such disbursements for so long as such excess
 164 proceeds continue to be received. The amount of proceeds to be disbursed to each
 165 municipality shall be determined on a pro rata basis using as a denominator the total
 166 value of all tax parcels within the special district and as a numerator the total value of all
 167 tax parcels which were incorporated within each municipality.

168 (3) If, on or after May 14, 2008:

169 (A) Excess proceeds remain from the collection of any special district taxes, fees, and
 170 assessments or from any earnings thereon; and

171 (B) A new municipality shall have been created from within such special district such
172 that the special district shall have been diminished in size but not all of the special
173 district shall have been incorporated within one or more municipalities,
174 then the excess proceeds shall be disbursed within 60 days to the governing authority of
175 each municipality which has incorporated any portion of the area of the special district;
176 and the county shall continue to make such disbursements for so long as such excess
177 proceeds continue to be received. The amount of proceeds to be disbursed to each
178 municipality shall be determined on a pro rata basis using as a denominator the total
179 value of all tax parcels within the special district and as a numerator the total value of all
180 tax parcels which were incorporated within each municipality."

181 **SECTION 3.**

182 This Act shall not be applied to impair any obligation of contract entered into prior to the
183 date this Act becomes effective.

184 **SECTION 4.**

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

187 **SECTION 5.**

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