

Senate Bill 138

By: Senators Dixon of the 45th, Still of the 48th, Cowser of the 46th, Setzler of the 37th and Anavitarte of the 31st

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 provide for the transition of certain services  
3 related to newly incorporated municipalities in certain counties; to provide definitions; to  
4 provide for the provision and cost allocation of police and law enforcement services for such  
5 municipalities; to provide for the ownership, control, and maintenance of road rights of ways  
6 and certain storm-water drainage infrastructure in such municipalities; to provide for the  
7 transfer of certain fees and taxes collected by such county to such municipalities; to exempt  
8 such counties from having to renegotiate service delivery strategy agreements and address  
9 the provision of services to such municipalities in lieu of such renegotiations; to provide that  
10 such municipalities shall not be obligated to pay certain election costs; to provide that a  
11 county shall cover the legal expenses of such a newly incorporated municipality in the event  
12 of legal challenges relating to or arising from the transition of such services; to provide for  
13 a limited waiver of sovereign immunity; to amend Chapter 8 of Title 33 of the Official Code  
14 of Georgia Annotated, relating to fees and taxes related to insurance, so as to revise  
15 provisions related to population data related to newly incorporated municipalities and  
16 municipal taxes on life insurance and other insurance companies; to provide for related  
17 matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 SECTION 1.

20 Chapter 31 of Title 36 of the Official Code of Georgia Annotated, relating to incorporation  
21 of municipal corporations, is amended by adding a new Code section to read as follows:

22 "36-31-11.2.

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

24 (1) 'County' means a county with more than 15 municipalities wholly or partially located  
25 within its boundaries.

26 (2) 'Qualified municipality' means any new municipality created by local Act which  
27 becomes law on or after January 1, 2024.

28 (3) 'Transition period' means the period for the transition of governmental services from  
29 a county to a qualified municipality as provided for by this chapter or the local Act  
30 incorporating such qualified municipality.

31 (b) Notwithstanding any provision of law to the contrary:

32 (1)(A) When a qualified municipality is created within a county which has a special  
33 district consisting of both the unincorporated area and certain incorporated areas of the  
34 county for the provision of police or law enforcement services, the territory within the  
35 new qualified municipality shall remain in such special district until the qualified  
36 municipality notifies the county of its intention to leave such special district and assume  
37 full responsibility for the provision of police and law enforcement services. In no event  
38 shall a qualified municipality be required to provide more than one year's notice prior  
39 to exercising the option provided for in this paragraph to leave such special district if  
40 the county police department is staffed at less than 95 percent of its authorized number  
41 of certified peace officers.

42 (B)(i) During the period that a qualified municipality remains within a police or law  
43 enforcement special district as provided for in subparagraph (A) of this paragraph, the

44 county shall continue to provide police and law enforcement services within the  
45 boundaries of the qualified municipality in the same manner as other parts of the  
46 special district.

47 (ii) In the event that, at the end of a fiscal year for the special district, the actual  
48 special district ad valorem taxes collected within the boundaries of the qualified  
49 municipality are greater than the actual costs incurred by the county in providing  
50 police or law enforcement services within the boundaries of the qualified  
51 municipality, within 60 days of the final day of such fiscal year, the county shall  
52 deliver such excess funds to the qualified municipality.

53 (iii) For the purpose of complying with division (ii) of this subparagraph, the actual  
54 costs of providing police or law enforcement services within the qualified  
55 municipality shall be calculated based upon the actual time county police or law  
56 enforcement officers spend providing police or law enforcement services within the  
57 boundaries of the qualified municipality. The costs of such police and law  
58 enforcement services shall include the costs of county police or law enforcement  
59 officers:

60 (I) Patrolling and responding to dispatches or calls for service within the qualified  
61 municipality; and

62 (II) Investigating crimes originating within the qualified municipality regardless of  
63 the physical location where such investigative activities occur.

64 (iv) The fiscal authority for a special district for the provision of police or law  
65 enforcement services shall have the duty of tracking all information and making all  
66 calculations necessary to comply with the provisions of this paragraph.

67 (v) Nothing in the paragraph shall affect or be affected by the provision of law  
68 enforcement services by a county sheriff.

69 (2) A qualified municipality during the transition period shall assume ownership or  
70 control over any road rights of way located within the area incorporated and shall have

71 the full power and authority to regulate the use of such rights of ways, including but not  
72 limited to the granting of franchises and collection of franchise fees related to the use of  
73 such rights of way. At the sole discretion of the qualified municipality, during any such  
74 transition period, the county shall continue to perform maintenance and care for such road  
75 rights of way in the same manner that the county maintains and cares for road rights of  
76 way owned and controlled by the county in the unincorporated parts of the county.

77 (3) A qualified municipality shall not take control of, maintain, be responsible for, or  
78 hold title to any infrastructure designed to temporarily retain 1,000 gallons or more of  
79 storm water or any dams or detention ponds located within the boundaries of such  
80 municipality that, prior to the creation of such municipality, were controlled, maintained,  
81 or the responsibility of the county unless such municipality explicitly agrees otherwise.  
82 Regardless of any transition period, the county shall continue to control, maintain, and  
83 be responsible for such infrastructure in the same manner and degree as it did prior to the  
84 incorporation of the qualified municipality until the qualified municipality and the county  
85 agree otherwise.

86 (4)(A) In the event that:

87 (i) A qualified municipality succeeds to the control of local government services  
88 pursuant to Article IX, Section II, Paragraph III(a) of the Constitution, this chapter,  
89 or the local Act incorporating the qualified municipality during the middle of a  
90 county's fiscal year;

91 (ii) The county, immediately prior to the qualified municipality succeed to the  
92 provision of such service, levied or collected any tax, fee, or other charge within  
93 territory that is then or subsequently within the boundaries of the qualified  
94 municipality; and

95 (iii) Such tax, fee, or charge is directly related to the provision of such service,  
96 the county shall remit to the qualified municipality funds equal to a pro rata share of  
97 such collections based upon the amount of time during such fiscal year that the county

98 verses the qualified municipality provide the service related to such tax, fee, or  
99 collection.

100 (B) This paragraph shall apply, but not be limited, to alcoholic beverage fees and taxes,  
101 business license fees, and occupation taxes collected within the qualified municipality,  
102 and shall not affect the validity of any permits or licences issued by the county upon the  
103 collection of such taxes, fees, or charges.

104 (5)(A) For the purposes of this paragraph, the term 'permit or other official approval  
105 of activity' mean any permitting or application process related to licenses or permits  
106 related, but not limited to, alcoholic beverages, building, community development, land  
107 use and zoning, and regulated businesses or industries.

108 (B) In the event that a county, prior to a qualified municipality succeeding to the  
109 control of a local government services pursuant to Article IX, Section II,  
110 Paragraph III(a) of the Constitution, this chapter, or the local Act incorporating the  
111 qualified municipality, accepts any application and fee related to the issuance of a  
112 permit or other official approval of activity relating to a governmental service assumed  
113 by the qualified municipality, and the related permitting or regulatory process is not  
114 fully completed by the county by the time the qualified municipality succeeds to the  
115 provision of such service, and such fees are not fully refunded to the applicant, the  
116 county shall transfer and remit to the qualified municipality the following percentage  
117 of such fees collected by the county:

118 (i) Ninety-five percent if no action beyond mere acceptance has been taken upon the  
119 application;

120 (ii) Seventy-five percent if the application has been processed but no required  
121 inspections have occurred; or

122 (iii) Fifty percent if the application or regulatory process has been completed but final  
123 approval or permits have not be issued.

124 (C) The county shall transfer all required funds to the qualified municipality within 30  
125 days of being obligated to remit fees as required by subparagraph (B) of this paragraph.

126 (6) The incorporation of a qualified municipality shall not require the county or any  
127 municipalities located within such county to renegotiate any service delivery strategy  
128 agreement enacted pursuant to Chapter 72 of this title that is in place on the date that the  
129 qualified municipality is incorporated. In lieu of such agreement being renegotiated  
130 during any transition period, the qualified municipality may elect to have the county  
131 provide within the boundaries of the qualified municipality any service or services that  
132 the county is providing to either another municipality or the unincorporated areas of the  
133 county pursuant to the then-current service delivery strategy agreement. The county shall  
134 provide any such elected services to the qualified municipality under the same conditions  
135 and in the same manner as it provides to the other municipality or the unincorporated area  
136 of the county. Such elections shall occur within six months of either the effective date  
137 of this Code section or the date of incorporation, whichever is later.

138 (7) A qualified municipality shall have no obligation to repay the costs of any special  
139 election conducted either to:

140 (A) Present a question to the voters on the incorporation of such municipality; or

141 (B) Elect the initial governing authority of such municipality.

142 (c)(1) In the event that:

143 (A) A county fails to comply with the transition provisions provided for in this Code  
144 section, a qualified municipality is forced to seek judicial remedies for such failure to  
145 comply, and the qualified municipality is ultimately successful in such legal action; or

146 (B) A qualified municipality is subject to a legal action initiated by a third party  
147 seeking to enforce its rights as a result of the qualified municipality's failure to meet a  
148 duty or obligation provided by law, and the qualified municipality's failure to meet such  
149 duty or obligation was the direct result of actions taken by a county relating to the  
150 transition of services between the county and qualified municipality.

151 then the county shall be responsible for reimbursing the qualified municipality for all  
152 legal expenses incurred by such qualified municipality in prosecuting or defending such  
153 action as well as any damages paid by the qualified municipality to such injured third  
154 party. The sovereign immunity of the county is waived to the extent necessary to  
155 effectuate this paragraph.

156 (2) In the event that a county is found by a court of competent jurisdiction to have  
157 violated any duty or obligation arising from this chapter, the sovereign immunity of such  
158 county and the governmental immunity of all local officials of such local governing body  
159 is waived in all matters arising during a period of one year from the date of such judicial  
160 finding."

161 **SECTION 2.**

162 Chapter 8 of Title 33 of the Official Code of Georgia Annotated, relating to fees and taxes  
163 related to insurance, is amended by revising subsection (h) of Code Section 33-8-8.1, relating  
164 to county and municipal corporation taxes on life insurance companies, as follows:

165 "(h) For purposes of this Code section, population shall be measured by the United States  
166 decennial census of 1990 or any future such census plus any corrections or revisions  
167 contained in official statements by the United States Bureau of the Census made prior to  
168 the first day of September immediately preceding the distribution of the proceeds of such  
169 taxes by the Commissioner and any additional official census data received by the  
170 Commissioner from the United States Bureau of the Census or its successor agency  
171 pertaining to any newly incorporated municipality. Any such official census data relating  
172 to any newly incorporated municipality shall be backdated to the initial filing provided for  
173 in subsection (e) of this Code section. Such corrections, revisions, or additional data shall  
174 be certified to the Commissioner by the Office of Planning and Budget on or before August  
175 31 of each year."

176 **SECTION 3.**

177 Said chapter is further amended by revising subsection (c) of Code Section 33-8-8.2, relating  
178 to county and municipal corporation taxes on other than life insurance companies, as follows:  
179 "(c) For purposes of this Code section, population shall be measured by the United States  
180 decennial census of 1990 or any future such census plus any corrections or revisions  
181 contained in official statements by the United States Bureau of the Census made prior to  
182 the first day of September immediately preceding the distribution of the proceeds of such  
183 taxes by the Commissioner and any additional official census data received by the  
184 Commissioner from the United States Bureau of the Census or its successor agency  
185 pertaining to any newly incorporated municipality. Any such official census data relating  
186 to any newly incorporated municipality shall be backdated to the initial filing provided for  
187 in paragraph (1) of subsection (b) of this Code section. Such corrections, revisions, or  
188 additional data shall be certified to the Commissioner by the Office of Planning and Budget  
189 on or before August 31 of each year."

190 **SECTION 4.**

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

193 **SECTION 5.**

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