

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

AS PASSED

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 revise provisions related
17 to when newly incorporated municipalities may be allocated taxes on life insurance and other

insurance companies; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"36-31-11.2.

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

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

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

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

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

(1)(A) When a qualified municipality is created within a county which has a special district consisting of both the unincorporated area and certain incorporated areas of the county for the provision of police or law enforcement services, the territory within the new qualified municipality shall remain in such special district until the qualified municipality notifies the county of its intention to leave such special district and assume full responsibility for the provision of police and law enforcement services. In no event shall a qualified municipality be required to provide more than one year's notice prior to exercising the option provided for in this paragraph to leave such special district if

the county police department is staffed at less than 95 percent of its authorized number of certified peace officers.

(B)(i) During the period that a qualified municipality remains within a police or law enforcement special district as provided for in subparagraph (A) of this paragraph, the county shall continue to provide police and law enforcement services within the boundaries of the qualified municipality in the same manner as other parts of the special district.

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

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

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

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

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

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

(2) A qualified municipality during the transition period shall assume ownership or control over any road rights of way located within the area incorporated and shall have the full power and authority to regulate the use of such rights of ways, including but not limited to the granting of franchises and collection of franchise fees related to the use of such rights of way. At the sole discretion of the qualified municipality, during any such transition period, the county shall continue to perform maintenance and care for such road rights of way in the same manner that the county maintains and cares for road rights of way owned and controlled by the county in the unincorporated parts of the county.

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

(4)(A) In the event that:

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

(ii) The county, immediately prior to the qualified municipality succeed to the provision of such service, levied or collected any tax, fee, or other charge within

territory that is then or subsequently within the boundaries of the qualified municipality; and

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

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

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

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

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

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

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

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

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

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

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

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

(c)(1) In the event that:

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

(B) A qualified municipality is subject to a legal action initiated by a third party seeking to enforce its rights as a result of the qualified municipality's failure to meet a duty or obligation provided by law, and the qualified municipality's failure to meet such duty or obligation was the direct result of actions taken by a county relating to the transition of services between the county and qualified municipality,
then the county shall be responsible for reimbursing the qualified municipality for all legal expenses incurred by such qualified municipality in prosecuting or defending such action as well as any damages paid by the qualified municipality to such injured third party. The sovereign immunity of the county is waived to the extent necessary to effectuate this paragraph.
(2) In the event that a county is found by a court of competent jurisdiction to have violated any duty or obligation arising from this chapter, the sovereign immunity of such county and the governmental immunity of all local officials of such local governing body is waived in all matters arising during a period of one year from the date of such judicial finding."

SECTION 2.

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

"(h) For purposes of this Code section, population shall be measured by the United States decennial census of 1990 or any future such census plus any corrections or revisions contained in official statements by the United States Bureau of the Census made prior to the first day of September immediately preceding the distribution of the proceeds of such taxes by the Commissioner and any additional official census data received by the Commissioner from the United States Bureau of the Census or its successor agency

pertaining to any newly incorporated municipality. Any such official census data relating to any newly incorporated municipality shall be backdated to the initial filing provided for in subsection (e) of this Code section; provided, however, in the event that such census data is insufficient, the Commissioner shall use the census tract data from the charter of the newly incorporated municipality in lieu of the official census data. Such corrections, revisions, or additional data shall be certified to the Commissioner by the Office of Planning and Budget on or before August 31 of each year.

(i) Notwithstanding any other provisions of this Code section to the contrary, in the event a new municipality is incorporated in a given year by the approval of a referendum of the electors of such municipality, and within 18 months of such referendum taking place such municipality has completed all steps necessary to impose a tax as provided for in this Code section, and the proceeds of such tax have not already been allocated by the Commissioner, such municipality shall be entitled to be considered a municipality pursuant to paragraph (2) of subsection (d) of this Code section and shall be allocated taxes collected pursuant to this Code section for the year such referendum took place."

SECTION 3.

Said chapter is further amended by revising subsection (c) and adding a new subsection to Code Section 33-8-8.2, relating to county and municipal corporation taxes on other than life insurance companies, as follows:

"(b.1) Notwithstanding any other provisions of this Code section to the contrary, in the event a new municipality is incorporated in a given year by the approval of a referendum of the electors of such municipality, and within 18 months of such referendum taking place such municipality has completed all steps necessary to impose a tax as provided for in this Code section, and the proceeds of such tax have not already been allocated by the Commissioner, such municipality shall be entitled to be considered a municipality pursuant

199 to this Code section to be allocated taxes collected pursuant to this Code section for the
200 year such referendum took place.

201 (c) For purposes of this Code section, population shall be measured by the United States
202 decennial census of 1990 or any future such census plus any corrections or revisions
203 contained in official statements by the United States Bureau of the Census made prior to
204 the first day of September immediately preceding the distribution of the proceeds of such
205 taxes by the Commissioner and any additional official census data received by the
206 Commissioner from the United States Bureau of the Census or its successor agency
207 pertaining to any newly incorporated municipality. Any such official census data relating
208 to any newly incorporated municipality shall be backdated to the initial filing provided for
209 in paragraph (1) of subsection (b) of this Code section; provided, however, in the event that
210 such census data is insufficient, the Commissioner shall use the census tract data from the
211 charter of the newly incorporated municipality in lieu of the official census data. Such
212 corrections, revisions, or additional data shall be certified to the Commissioner by the
213 Office of Planning and Budget on or before August 31 of each year."

214 **SECTION 4.**

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

217 **SECTION 5.**

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