

House Bill 244

By: Representatives Oliver of the 82nd, Mosby of the 83rd, Kendrick of the 93rd, Henson of the 86th, and Carter of the 92nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 36 of the Official Code of Georgia Annotated, relating to
2 general provisions regarding local government, so as to provide for the retirement of certain
3 pension obligations; to provide for definitions; to provide for the creation of special districts
4 under certain circumstances for a limited period of time; to provide for procedures,
5 conditions, and limitations; to provide for certain taxation in connection with the retirement
6 of such obligations; to provide for related matters; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 1 of Title 36 of the Official Code of Georgia Annotated, relating to general
11 provisions regarding local government, is amended by adding a new Code section to read as
12 follows:

13 "36-1-28.

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

15 (1) 'Actuary' means the actuary retained to perform the independent actuarial study
16 specified in this Code section.

17 (2) 'Local government services' means one or more services enumerated under
18 Article IX, Section II, Paragraph III(a) of the Constitution of Georgia.

19 (3) 'Municipality' means a municipal corporation whose boundaries are conterminous or
20 generally conterminous with the boundaries of a special district created pursuant to this
21 Code section and identified in paragraph (1) or (2) of subsection (c) of this Code section.

22 (4) 'Pension board' means the board, authority, committee, or other body which oversees
23 the investments of a county's pension funds.

24 (5) 'Pension obligation' means the amount of unfunded pension liability as of the date on
25 which a municipality was incorporated arising from a county's defined benefit pension

26 plan attributed to a portion of a formerly unincorporated area of a county that is included
 27 in the corporate limits of a municipality which:

28 (A) Has been established and verified by an independent actuarial study conducted
 29 pursuant to subsection (d) of this Code section; and

30 (B) Is directly attributable to the provision of local government services in the formerly
 31 unincorporated area of the county, which local government services ceased to be
 32 provided in such area following the incorporation of the municipality.

33 Such pension obligation shall be determined by calculating the percentage of the total
 34 decline in the unincorporated property tax digest of the county as a result of the
 35 incorporation of the municipality as of the date of such incorporation. Such percentage
 36 shall then be multiplied by (i) the county defined benefit pension plan's total unfunded
 37 pension liability existing on the effective date of such incorporation and (ii) a factor equal
 38 to the percentage of decline in the contribution to the pension funds by the area
 39 encompassed by the special district due to the cessation of the provision of all or some
 40 of the local government services within such special district as a result of the
 41 incorporation of such area. The actuary, the governing authority of the municipality, and
 42 the county may agree to use a different formula for calculating the pension obligation, so
 43 long as the formula is specified in a written resolution approved by the actuary and
 44 adopted by the governing authorities of the municipality and the county.

45 (b) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the
 46 Constitution of Georgia, there is created in each county of this state a special district with
 47 boundaries that shall correspond with and be conterminous with the geographical area
 48 described by the governing authority of a county in which a pension obligation has been
 49 established and verified under paragraph (5) of subsection (a) of this Code section.

50 (c) When a pension obligation has been established and verified under paragraph (5) of
 51 subsection (a) of this Code section, the governing authority of the county shall be
 52 authorized to adopt an ordinance or resolution ratifying such pension obligation and
 53 describing the geographical area to which such pension obligation is directly attributable.
 54 Such area or areas in the county shall correspond to and be conterminous with either:

55 (1) The incorporated area of a municipality created on or after January 1, 2008, and prior
 56 to July 1, 2016; or

57 (2) The incorporated area of a municipality created on or after July 1, 2016.

58 (d)(1) Following the adoption of the ordinance or resolution under subsection (c) of this
 59 Code section, the actuary shall review all historical valuations, financial reports, mortality
 60 tables, and other information necessary to determine the current pension obligation as
 61 defined in paragraph (5) of subsection (a) of this Code section. The governing authority
 62 of the county shall provide the actuary and the municipality prompt and complete access

63 to all documents necessary for determining pension obligations relative to a special
64 district. The actuary shall calculate the pension obligation of the taxpayers of the special
65 district based on the date of incorporation along with an amortization schedule of annual
66 payments to eliminate such obligation. The municipality and county shall jointly decide
67 the length of the amortization period, not to exceed 30 years, but in the event that the
68 municipality and county cannot agree, then the amortization period shall be 30 years and
69 the rate of return shall not differ from the current rate assumed by the pension board in
70 its most recent valuation for that year.

71 (2) The pension board shall create a trust account, separate from all other pension
72 accounts, equal to the pension obligation in the name of the special district which account
73 shall remain forever separate and distinct from any other liability or pension account
74 maintained by the pension board.

75 (3) The governing authority of the county shall annually levy an ad valorem tax that will
76 generate tax proceeds equivalent to the annual payment calculated by the actuary in
77 paragraph (1) of this subsection. All receipts from such levy, including any applicable
78 interest, shall be placed in a trust account fund to be used exclusively for reduction of the
79 pension obligation associated with such special district. The governing authority of the
80 county shall at the close of each fiscal year transfer all funds in the special district trust
81 account fund to the appropriate county pension fund exclusively to reduce the pension
82 obligation calculated by the actuary pursuant to paragraph (1) of this subsection. The
83 actuary may annually adjust this liability based off market gains or losses of all ad
84 valorem taxes and interest.

85 (4) In no event shall the ad valorem tax levied pursuant to this Code section be levied for
86 more than 30 years. If at any time the actuary calculates that proceeds from ad valorem
87 taxes levied in the special district plus interest and investment returns have been
88 sufficient to eliminate the pension obligation calculated by the actuary pursuant to
89 paragraph (1) of this subsection, the actuary shall notify the governing authority of the
90 county and the municipality that the pension obligation has been satisfied. Upon
91 receiving such notice, the governing authority of the county shall terminate the levy of
92 ad valorem taxes in the special district. If the pension obligation is satisfied after the ad
93 valorem tax authorized by paragraph (3) of this subsection has been levied in the special
94 district, then any proceeds remaining in the trust account required by such paragraph
95 which exceed the obligation shall be transferred to the governing authority of the
96 municipality whose boundaries are conterminous with the special district. The special
97 tax district shall then cease to exist effective on December 31 of such year.

98 (5) Within 120 days following the end of each fiscal year in which a tax is levied within
99 a special district pursuant to this Code section, the governing authority of the county shall

100 prepare and deliver to the governing authority of the municipality in which such special
 101 district is located a report detailing the following information:

102 (A) A sum of all property tax revenue generated by the special district pursuant to this
 103 Code section from the year in which the special district was created through the end of
 104 the most recent fiscal year;

105 (B) The dollar amount generated from the special district pursuant to this Code section
 106 in the most recent fiscal year;

107 (C) The remaining pension obligation attributed to the special district pursuant to this
 108 Code section; and

109 (D) The county pension fund's gains and losses on investments from the date on which
 110 the pension obligation was determined through the end of the most recent fiscal year
 111 and for the most recent 12 month period evaluated in the annual valuation.

112 (e) The assumption of the pension obligation by the taxpayers in the special district shall
 113 not create any additional obligation on the part of the taxpayers in the special district or any
 114 right which did not exist prior to the creation of the special district.

115 (f) The retirement of the pension obligation by the special district shall not create any
 116 obligation on the part of the municipality within which the special district is located.

117 (g) Proceeds generated pursuant to this Code section shall not be used to satisfy the state
 118 minimum funding requirement applicable to the county pension funds or used in the
 119 calculations for the state minimum funding requirement.

120 (h) In all proceedings under this Code section, the standard of proof shall be by clear and
 121 convincing evidence.

122 (i) The actuary selected to prepare the independent actuarial study provided for in this
 123 Code section shall be jointly selected by resolution of the governing authority of the county
 124 within which the special district is created pursuant to subsection (b) of this Code section
 125 and the governing authority of the municipality. The actuary shall not be a regular
 126 employee of a county or municipal governing authority. If the county governing authority
 127 and a municipal governing authority are unable to decide on an independent actuary within
 128 180 days of a special district being created pursuant to subsection (b) of this Code section,
 129 the state auditor shall select the independent actuary required by this Code section."

130 **SECTION 2.**

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