

The Senate Committee on State and Local Governmental Operations - General offered the following substitute to SB 113:

**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 services and
3 facilities from an existing municipality to a newly incorporated municipality; to provide
4 definitions; to provide for the preservation of existing facilities and assets of an existing
5 facility prior to transfer to a newly incorporated municipality; to provide for newly
6 incorporated municipalities purchasing portions of an existing municipality's water or
7 sewerage systems; to provide for bonded and other obligations; to provide for the creation
8 of special tax districts; to prohibit certain actions of existing municipalities relating to newly
9 incorporated municipalities; to provide for automatic deannexation in certain circumstances;
10 to provide for related matters; to repeal conflicting laws; and for other purposes.

11 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

12 **SECTION 1.**
13 Chapter 31 of Title 36 of the Official Code of Georgia Annotated, relating to incorporation
14 of municipal corporations, is amended by adding a new Code section to read as follows:

15 "36-31-1.1.

16 As used in this chapter, the term:

17 (1) 'Bond obligation date' means the date that an Act providing for a charter for a newly
18 qualified municipality that includes a deannexed area is signed by the Governor or
19 becomes law without such approval.

20 (2) 'Deannexed area' means any area removed from the boundaries of one municipality
21 for the purposes of a charter for a newly qualified municipality.

22 (3) 'General obligation bond obligations' means any obligations a prior municipality has
23 under general obligation bonds that are in effect on the bond obligation date.

24 (4) 'Intergovernmental contract obligations' means any obligations a prior municipality
25 has under intergovernmental contracts executed in connection with the issuance of
26 revenue bonds that are in effect on the bond obligation date.

27 (5) 'Lease-purchase agreement obligations' means any obligations a prior municipality
28 has under lease-purchase agreements that are in effect on the bond obligation date.

29 (6) 'Prior municipality' means the municipality from which the deannexed area is taken."

30

SECTION 2.

31 Said chapter is further amended by revising Code Section 36-31-8, relating to transition
32 periods for governmental functions and appointment by the Governor of interim
33 representatives, as follows:

34 "36-31-8.

35 (a) When a new municipal corporation is created by local Act, the local Act may provide
36 for a transition period not to exceed 24 months for the orderly transition of governmental
37 functions from the county or prior municipality to the new municipal corporation. The
38 local Act may specify the time or times during the transition period (or the method or
39 methods for determining the time or times during the transition period) at which:

40 (1) Various governmental functions, services, and responsibilities will be assumed by the
41 new municipal corporation within its territory; and

42 (2) The municipal court of the new municipality shall begin to exercise its jurisdiction
43 over various subject matters.

44 (b) When a chartering local Act so provides for a transition period, the county in which the
45 new municipality is located or the prior municipality shall continue to provide within the
46 territory of the new city all government services and functions which it provided as of the
47 date of enactment of the chartering local Act. The county or prior municipality shall
48 continue to provide such services and functions until the end of the transition period;
49 provided, however, that the new city may assume the provision of any service or function
50 at such earlier time as may be specified in the chartering local Act or at such earlier time
51 as may be agreed upon by the county or prior municipality and the new city.

52 (c) When a chartering local Act so provides for a transition period, on and after the first
53 day the initial governing authority takes office, the governing authority may from time to
54 time adopt appropriate measures to initiate collection within the territory of the new city
55 during the transition period of all taxes, fees, assessments, fines and bond forfeitures, and
56 other moneys. Where a particular tax, fee, assessment, fine, forfeiture, or other amount
57 collected by the city during the transition period is specifically related to the provision of
58 a particular government service or function by the county or prior municipality, the service
59 or function shall continue to be provided by the county or prior municipality during the
60 transition period contingent upon payment by the city of the actual cost of providing such
61 service or function unless otherwise provided in a written agreement between the new city
62 and the county or prior municipality.

63 (d) When a chartering local Act so provides for a transition period, the county in which the
64 new city is located shall not from the time of enactment of the charter until the end of the
65 transition period remove from the county road system any road within the territory of the
66 new city except with the agreement of the new city.

67 (e) When a chartering local Act so provides for a transition period, the new municipality
68 shall not be subject to the laws specified in this subsection during the transition period;
69 provided, however, that the new city and other political subdivisions may during the
70 transition period commence planning, negotiations, and other actions necessary or
71 appropriate for compliance after the transition period. During the transition period, the new
72 municipality shall not be subject to:

73 (1) Chapter 70 of this title, relating to planning and service delivery strategies;

74 (2) Provisions of Code Section 12-8-31.1, relating to solid waste planning;

75 (3) Provisions of Code Section 48-13-56, relating to reporting of excise taxes collected
76 and expended pursuant to Article 3 of Chapter 13 of Title 48; and

77 (4) Provisions of Code Section 36-81-8, relating to reporting of local government
78 finances, reporting of revenues derived from a tax levied pursuant to Article 3 of
79 Chapter 13 of Title 48, and reporting of local government services and operations.

80 (f) When a chartering local Act so provides for a transition period, upon the termination
81 of the transition period subsections (b) through (e) of this Code section shall cease to apply
82 and the new city shall be a fully functioning municipal corporation and subject to all
83 general laws of this state.

84 (g) As of the date a chartering local Act is approved by the Governor or becomes law
85 without such approval, the Governor is authorized to appoint five persons to serve as
86 interim representatives of the newly incorporated municipality until the election of the
87 municipality's first governing authority. The interim representatives shall cease to serve
88 as of the time the members of the first governing authority take office. The function of the
89 interim representatives shall be to facilitate the provision of municipal services and
90 facilities, the collection of taxes and fees, and the negotiation of intergovernmental
91 agreements in preparation of the establishment of the new municipality. The interim
92 representatives shall not have the ability to enter into any binding agreements, to expend
93 public funds, or to incur any liability on behalf of the new municipality. Any person who

94 is serving as or has served as an interim representative shall be ineligible to qualify for
95 election as a member of the initial governing authority of the new municipality."

96 **SECTION 3.**

97 Said chapter is further amended by revising Code Section 36-31-11.1, relating to
98 municipality control over parks and fire stations and obligation of county, as follows:

99 "36-31-11.1.

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

101 (1) 'Assets' means all real property, personal property, moneys, instruments, and
102 reserves of any nature held by a municipality as a trustee or agent for the public trust,
103 provided that any real property currently designated and operated as an international
104 airport shall not be considered assets.

105 (1) 'County' means a county in which a tax is being levied and collected for purposes of
106 a metropolitan area system of public transportation.

107 (2) 'Fire station' means any property or facility that is located wholly within the territory
108 of a qualified municipality, owned by the county or prior municipality or subject to a
109 lease-purchase or installment sale arrangement by the county or prior municipality, and
110 used by the county or prior municipality as of the date immediately prior to the date the
111 local Act incorporating a qualified municipality became law to provide fire protection
112 services authorized by Article IX, Section II, Paragraph III(a)(1) of the Constitution.
113 Such term shall include any buildings, fixtures, or other improvements on such property
114 or in such facilities.

115 (3) 'Park' means any property or facility that is located wholly within the territory of a
116 municipality, including but not limited to athletic fields, athletic courts, recreation
117 centers, playgrounds, swimming pools, arts centers, historical properties, and adjacent
118 greenspace, owned by the county or prior municipality, or subject to a lease-purchase or
119 installment sale arrangement by the county or prior municipality and used by the county

120 or prior municipality as of the date immediately prior to the date the local Act
121 incorporating a qualified municipality became law to provide any services authorized by
122 Article IX, Section II, Paragraph III(a)(5) of the Constitution or to provide any services
123 authorized by Article IX, Section II, Paragraph III(a)(10) of the Constitution. Such term
124 shall include any buildings, fixtures, or other improvements on such property or in such
125 facilities.

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

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

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

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

144 (d) A qualified municipality located within a county or prior municipality that charges fees
145 on a periodic basis for the provision of water or sewer services, or both, may elect to
146 continue receiving such services for the same fees charged residents in the prior

147 municipality or the unincorporated area of the county. Such election may be set forth in
148 the local Act creating such qualified municipality or be made by resolution of the
149 governing authority of the qualified municipality provided the governing authority of the
150 qualified municipality delivers a copy of such resolution to the governing authority of the
151 prior municipality or county within 30 days after the date the resolution is adopted.

152 (e) The county or prior municipality shall not convey, otherwise encumber, move any
153 fixtures or buildings, or enter into or renew any contractual obligations with respect to any
154 park or fire station located in the qualified municipality. The governing authority of the
155 county or prior municipality shall assign to the governing authority of the qualified
156 municipality all of its right, title, and interest in any executory contract in effect on any
157 park or fire station that the qualified municipality elects to purchase as provided in this
158 Code section. Such assignment shall be effective on the date the qualified municipality
159 assumes ownership of any such park or fire station or as otherwise may be agreed between
160 the governing authority of the qualified municipality and the governing authority of the
161 county or prior municipality.

162 (f) A qualified municipality may elect to purchase parks within the territory of the
163 qualified municipality from the county in which the municipality is located or prior
164 municipality. Notwithstanding any other law to the contrary, whenever a qualified
165 municipality elects to purchase any such parks, the governing authority of the qualified
166 municipality shall provide written notice to the governing authority of the county or prior
167 municipality specifying the parks to be purchased and the date or dates the qualified
168 municipality will assume ownership of such parks; the purchase price for such parks shall
169 be \$100.00 per acre. Such notice shall be provided for each such park no less than 30 days
170 prior to the date the qualified municipality intends to assume ownership.

171 (g) Upon the payment of the purchase price, all of the county's or prior municipality's
172 right, title, and interest in the parks that the qualified municipality elects to purchase shall
173 be transferred to the governing authority of the qualified municipality. Such transfer shall

174 be effective on the date the qualified municipality intends to assume ownership of such
175 parks and as stated in the notice given pursuant to subsection (f) of this Code section. The
176 governing authority of the county or prior municipality shall transfer, execute, and deliver
177 to the governing authority of the qualified municipality such instruments as may be
178 necessary to record the transfer of such right, title, and interest. Notwithstanding any
179 provision in any property deed or law to the contrary, a qualified municipality may
180 purchase a park from the county or prior municipality without permission of the state and
181 may use such park for all purposes for which the county or prior municipality was
182 authorized under such deed or law.

183 (h) In the event a park is transferred by a county or prior municipality to a qualified
184 municipality under this Code section, the qualified municipality shall be prohibited from
185 imposing or collecting user fees from residents of the county or prior municipality in
186 excess of the amount of such fees imposed or collected from residents of the qualified
187 municipality.

188 (i) Where residents of a qualified municipality are required pursuant to Code
189 Section 36-31-11 or otherwise to continue to pay taxes for the purpose of retiring any
190 special district debt or other debt created by the issuance of bonds by the county on behalf
191 of the special district or bonds issued by the prior municipality for the purpose of
192 improving parks and the qualified municipality elects to purchase any such park pursuant
193 to this Code section, the county or prior municipality shall transfer to the qualified
194 municipality as an agent of the special district the portion of the bond proceeds that the
195 county or prior municipality planned to spend on such park at the time of the referendum
196 on the bonds, based upon any statements of intention or representations concerning use of
197 the bond proceeds by the governing authority of the county or prior municipality. Such
198 amount shall be determined based on county or prior municipality resolutions and any
199 attachments thereto, staff recommendations, or similar documents presented at the time of
200 passage of a resolution, county or prior municipality records, and any public statements or

201 representations made by county or prior municipality ~~managers~~, representatives, officials,
202 or their agents as to the amount that would be spent on such park in order to solicit voter
203 support for the referendum; provided, however, that the amount to be transferred by the
204 county or prior municipality to the qualified municipality shall be reduced by any amount
205 spent by the county or prior municipality to improve such park prior to the date of the
206 qualified municipality's notice of its election to purchase the park as provided in
207 subsection (f) of this Code section. The transfer shall be due within 30 days after the
208 qualified municipality assumes ownership of any such park. The qualified municipality
209 shall be required to expend any such funds for and on behalf of the special district or prior
210 municipality in a manner consistent with the purpose and intent of the issuance of the
211 bonds.

212 (j) A qualified municipality may elect to purchase one or more fire stations from the
213 county or prior municipality in which it is located. Notwithstanding any other law to the
214 contrary, whenever a qualified municipality elects to purchase a fire station from the
215 county or prior municipality, the governing authority of the qualified municipality shall
216 provide written notice to the governing authority of the county or prior municipality
217 specifying the fire station to be purchased and the date or dates the qualified municipality
218 will assume ownership of such fire station. Such notice shall be provided with respect to
219 each such property no less than 30 days prior to the date the qualified municipality intends
220 to assume ownership of the fire station.

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

224 (2) If the county or prior municipality uses a fire station to serve an area located outside
225 the qualified municipality, the purchase price for each such fire station shall be \$5,000.00
226 plus an additional amount determined as provided in this paragraph. Such additional
227 amount shall be the product of the fair market value of such fire station multiplied by the

228 percentage of the total service area of such fire station which is located outside of the
229 corporate limits of the qualified municipality. If the portion served outside the qualified
230 municipality exceeds 20 percent of the total service area, then from the date the qualified
231 municipality assumes ownership of such fire station, the qualified municipality shall be
232 obligated to offer to lease the fire station back to the county or qualified municipality for
233 a period not to exceed two years for an amount of \$10.00 for the lease period.

234 (1)(1) A prior municipality shall not convey, otherwise encumber, move any fixtures or
235 buildings, or enter into or renew any contractual obligations with respect to any physical
236 assets located in a qualified municipality. A prior municipality shall assign to the
237 governing authority of the qualified municipality all of its right, title, and interest in any
238 executory contract in effect that the qualified municipality elects to purchase as provided
239 in this Code section. Such assignment shall be effective on the date the qualified
240 municipality assumes ownership of any physical asset or as otherwise may be agreed
241 between the governing authority of the qualified municipality and the prior municipality.

242 (2) A qualified municipality may elect to purchase any physical assets within the
243 territory of the qualified municipality from the prior municipality in which the qualified
244 municipality is located. Notwithstanding any other law to the contrary, whenever a
245 qualified municipality elects to purchase any physical assets the governing authority of
246 the qualified municipality shall provide written notice to the governing authority of the
247 prior municipality specifying any physical assets to be purchased and the date or dates
248 the qualified municipality will assume ownership of any physical assets. The purchase
249 price for land shall be \$100.00 per acre. The purchase price for buildings shall
250 be \$1,000.00 per building including all fixtures. The purchase price for personalty shall
251 be the depreciated value as shown on the prior municipality's records for the year
252 immediately preceding issuance of the qualified municipality's charter. Notice shall be
253 provided for any physical asset no less than 30 days prior to the date the qualified
254 municipality intends to assume ownership.

255 (m)(1) A qualified municipality may elect to purchase the water system within the
256 territory of the qualified municipality from the prior municipality in which the qualified
257 municipality is located. Notwithstanding any other law to the contrary, whenever a
258 qualified municipality elects to purchase the water system, the governing authority of the
259 qualified municipality shall provide written notice to the governing authority of the prior
260 municipality specifying the water system to be purchased and the date or dates the
261 qualified municipality will assume ownership of such water system; the purchase price
262 for such water system shall be \$100,000.00. Such notice shall be provided for such water
263 system no less than 30 days prior to the date the qualified municipality intends to assume
264 ownership.

265 (2) A qualified municipality may elect to purchase the sewer system within the territory
266 of the qualified municipality from the prior municipality in which the qualified
267 municipality is located. Notwithstanding any other law to the contrary, whenever a
268 qualified municipality elects to purchase the sewer system, the governing authority of the
269 qualified municipality shall provide written notice to the governing authority of the prior
270 municipality specifying the sewer system to be purchased and the date or dates the
271 qualified municipality will assume ownership of such sewer system; the purchase price
272 for such sewer system shall be \$100,000.00. Such notice shall be provided for such
273 sewer system no less than 30 days prior to the date the qualified municipality intends to
274 assume ownership.

275 (n) All physical assets of a prior municipality located outside the corporate limits of either
276 municipality shall be divided on a pro rata basis. If division is not possible, the assets shall
277 be sold and the proceeds shall be divided on a pro rata basis between the prior and qualified
278 municipality.

279 (o) All moneys, reserves, or other investments of a prior municipality shall be divided on
280 a pro rata basis between the prior and qualified municipalities.

281 (p)(1) When a prior municipality has outstanding general obligation bond obligations,
282 the qualified municipality created from a deannexed area shall assume a pro rata share
283 of such outstanding obligations as they existed on such date.

284 (2) When the creation of a qualified municipality from a deannexed area would result in
285 a prior municipality losing revenues that historically had been used to pay obligations
286 arising from lease-purchase agreement obligations or intergovernmental contract
287 obligations the prior municipality was a party to on the bond obligation date, the qualified
288 municipality created from a deannexed area shall assume a pro rata share of such
289 outstanding obligations as they existed on such date. Such qualified municipality also
290 shall remain contingently obligated on its pro rata share of any unassumed lease-purchase
291 agreement obligations or intergovernmental contract obligations should the revenues used
292 to pay such obligations be insufficient to pay the same.

293 (3) Upon approval of the charter for a newly qualified municipality composed of any
294 deannexed area:

295 (A) A special tax district shall be established, the boundaries of such district to be
296 coterminous with the corporate limits of the prior municipality; and

297 (B) A special tax district shall be established, the boundaries of such district to be
298 coterminous with the corporate limits of the newly qualified municipality.

299 (4) A prior municipality shall levy and collect a tax in the district established pursuant
300 to subparagraph (A) of paragraph (3) of this subsection sufficient to pay its share of the
301 obligations as provided in paragraphs (1) and (2) of this subsection.

302 (5) A newly qualified municipality shall levy and collect a tax in the district established
303 pursuant to subparagraph (B) of paragraph (3) of this subsection sufficient to pay its share
304 of the obligations as provided in paragraphs (1) and (2) of this subsection.

305 (6) For the purpose of this subsection, a qualified municipality's pro rata share of any
306 bond obligations shall be equal to the value of the qualified municipality's ad valorem
307 property tax digest divided by the prior municipality's ad valorem property tax digest that

308 is based upon the tax digest approved by the Department of Revenue for the tax year of
309 the bond obligation date.

310 (q) After the bond obligation date, a prior municipality shall not:

311 (1) Incur any bond obligations or any obligations of any kind that would directly or
312 indirectly obligate the newly qualified municipality;

313 (2) Exercise any extraordinary optional redemption that would accelerate the maturity
314 of any bond obligations in effect on such date;

315 (3) Create a special district that has boundaries coterminous with the boundaries of the
316 newly qualified municipality; or

317 (4) Take any other action that would have an adverse effect on the newly qualified
318 municipality.

319 (r) Any territory contained within a new qualifying municipality that was within the
320 corporate limits of a prior municipality on the day immediately prior to date of
321 incorporation of the new qualifying municipality shall automatically be deannexed from
322 the corporate limits of such prior municipality contemporaneously with incorporation of
323 the new qualifying municipality.

324 ~~(t)~~(s) If a county or prior municipality and a qualified municipality fail to reach an
325 agreement on the amount to be paid or any related matter under this Code section, either
326 the county or prior municipality or the qualified municipality may petition the superior
327 court to seek resolution of the items in dispute. Such petition shall be assigned to a judge,
328 pursuant to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the
329 county or prior municipality is located. The judge selected may also be a senior judge
330 pursuant to Code Section 15-1-9.2 who resides in another circuit. The visiting or senior
331 judge shall conduct an evidentiary hearing or hearings as such judge deems necessary and
332 render a decision with regard to the disputed items."

333

SECTION 4.

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