

Senate Bill 521

By: Senators Mullis of the 53rd, Robertson of the 29th, Anderson of the 24th, Beach of the 21st and Albers of the 56th

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 related matters; to repeal conflicting laws; and for other  
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

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

13 "36-31-1.1.

14 As used in this chapter, the term:

15 (1) 'Deannexed area' means any area removed from the boundaries of one municipality  
16 for the purposes of a charter referendum for a new qualified municipality.

17 (2) 'Prior municipality' means the municipality from which the deannexed area is taken."

18

## SECTION 2.

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

22 "36-31-8.

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

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

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

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

40 (c) When a chartering local Act so provides for a transition period, on and after the first  
41 day the initial governing authority takes office, the governing authority may from time to  
42 time adopt appropriate measures to initiate collection within the territory of the new city

43 during the transition period of all taxes, fees, assessments, fines and bond forfeitures, and  
44 other moneys. Where a particular tax, fee, assessment, fine, forfeiture, or other amount  
45 collected by the city during the transition period is specifically related to the provision of  
46 a particular government service or function by the county or prior municipality, the service  
47 or function shall continue to be provided by the county or prior municipality during the  
48 transition period contingent upon payment by the city of the actual cost of providing such  
49 service or function unless otherwise provided in a written agreement between the new city  
50 and the county.

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

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

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

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

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

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

68 (f) When a chartering local Act so provides for a transition period, upon the termination  
69 of the transition period subsections (b) through (e) of this Code section shall cease to apply

70 and the new city shall be a fully functioning municipal corporation and subject to all  
71 general laws of this state.

72 (g) As of the date a chartering local Act is approved by the Governor or becomes law  
73 without such approval, the Governor is authorized to appoint five persons to serve as  
74 interim representatives of the newly incorporated municipality until the election of the  
75 municipality's first governing authority. The interim representatives shall cease to serve  
76 as of the time the members of the first governing authority take office. The function of the  
77 interim representatives shall be to facilitate the provision of municipal services and  
78 facilities, the collection of taxes and fees, and the negotiation of intergovernmental  
79 agreements in preparation of the establishment of the new municipality. The interim  
80 representatives shall not have the ability to enter into any binding agreements, to expend  
81 public funds, or to incur any liability on behalf of the new municipality. Any person who  
82 is serving as or has served as an interim representative shall be ineligible to qualify for  
83 election as a member of the initial governing authority of the new municipality."

84

### SECTION 3.

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

87 "36-31-11.1.

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

89 (.1) 'Assets' means all real property, personal property, moneys, instruments, and  
90 reserves of any nature held by a municipality as a trustee or agent for the public trust.

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

93 (2) 'Fire station' means any property or facility that is located wholly within the territory  
94 of a qualified municipality, owned by the county or prior municipality or subject to a  
95 lease-purchase or installment sale arrangement by the county or prior municipality, and

96 used by the county or prior municipality as of the date immediately prior to the date the  
97 local Act incorporating a qualified municipality became law to provide fire protection  
98 services authorized by Article IX, Section II, Paragraph III(a)(1) of the Constitution.  
99 Such term shall include any buildings, fixtures, or other improvements on such property  
100 or in such facilities.

101 (3) 'Park' means any property or facility that is located wholly within the territory of a  
102 municipality, including but not limited to athletic fields, athletic courts, recreation  
103 centers, playgrounds, swimming pools, arts centers, historical properties, and adjacent  
104 greenspace, owned by the county or prior municipality, or subject to a lease-purchase or  
105 installment sale arrangement by the county or prior municipality and used by the county  
106 or prior municipality as of the date immediately prior to the date the local Act  
107 incorporating a qualified municipality became law to provide any services authorized by  
108 Article IX, Section II, Paragraph III(a)(5) of the Constitution or to provide any services  
109 authorized by Article IX, Section II, Paragraph III(a)(10) of the Constitution. Such term  
110 shall include any buildings, fixtures, or other improvements on such property or in such  
111 facilities.

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

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

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

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

130 (d) A qualified municipality located within a county or prior municipality that charges  
131 fees on a periodic basis for the provision of water or sewer services, or both, may elect  
132 to continue receiving such services for the same fees charged residents in the prior  
133 municipality or the unincorporated area of the county. Such election may be set forth in  
134 the local Act creating such qualified municipality or be made by resolution of the  
135 governing authority of the qualified municipality provided the governing authority of the  
136 qualified municipality delivers a copy of such resolution to the governing authority of the  
137 prior municipality or county within 30 days after the date the resolution is adopted.

138 (e) The county or prior municipality shall not convey, otherwise encumber, move any  
139 fixtures or buildings, or enter into or renew any contractual obligations with respect to  
140 any park or fire station located in the qualified municipality. The governing authority of  
141 the county or prior municipality shall assign to the governing authority of the qualified  
142 municipality all of its right, title, and interest in any executory contract in effect on any  
143 park or fire station that the qualified municipality elects to purchase as provided in this  
144 Code section. Such assignment shall be effective on the date the qualified municipality  
145 assumes ownership of any such park or fire station or as otherwise may be agreed  
146 between the governing authority of the qualified municipality and the governing authority  
147 of the county or prior municipality.

148 (f) A qualified municipality may elect to purchase parks within the territory of the  
149 qualified municipality from the county in which the municipality is located or prior

150 municipality. Notwithstanding any other law to the contrary, whenever a qualified  
151 municipality elects to purchase any such parks, the governing authority of the qualified  
152 municipality shall provide written notice to the governing authority of the county or prior  
153 municipality specifying the parks to be purchased and the date or dates the qualified  
154 municipality will assume ownership of such parks; the purchase price for such parks shall  
155 be \$100.00 per acre. Such notice shall be provided for each such park no less than 30  
156 days prior to the date the qualified municipality intends to assume ownership.

157 (g) Upon the payment of the purchase price, all of the county's or prior municipality's  
158 right, title, and interest in the parks that the qualified municipality elects to purchase shall  
159 be transferred to the governing authority of the qualified municipality. Such transfer shall  
160 be effective on the date the qualified municipality intends to assume ownership of such  
161 parks and as stated in the notice given pursuant to subsection (f) of this Code section. The  
162 governing authority of the county or prior municipality shall transfer, execute, and deliver  
163 to the governing authority of the qualified municipality such instruments as may be  
164 necessary to record the transfer of such right, title, and interest. Notwithstanding any  
165 provision in any property deed or law to the contrary, a qualified municipality may  
166 purchase a park from the county or prior municipality without permission of the state and  
167 may use such park for all purposes for which the county or prior municipality was  
168 authorized under such deed or law.

169 (h) In the event a park is transferred by a county or prior municipality to a qualified  
170 municipality under this Code section, the qualified municipality shall be prohibited from  
171 imposing or collecting user fees from residents of the county or prior municipality in  
172 excess of the amount of such fees imposed or collected from residents of the qualified  
173 municipality.

174 (i) Where residents of a qualified municipality are required pursuant to Code  
175 Section 36-31-11 or otherwise to continue to pay taxes for the purpose of retiring any  
176 special district debt or other debt created by the issuance of bonds by the county on behalf

177 of the special district or bonds issued by the prior municipality for the purpose of  
178 improving parks and the qualified municipality elects to purchase any such park pursuant  
179 to this Code section, the county or prior municipality shall transfer to the qualified  
180 municipality as an agent of the special district the portion of the bond proceeds that the  
181 county or prior municipality planned to spend on such park at the time of the referendum  
182 on the bonds, based upon any statements of intention or representations concerning use of  
183 the bond proceeds by the governing authority of the county or prior municipality. Such  
184 amount shall be determined based on county or prior municipality resolutions and any  
185 attachments thereto, staff recommendations, or similar documents presented at the time of  
186 passage of a resolution, county or prior municipality records, and any public statements or  
187 representations made by county or prior municipality managers, representatives, officials,  
188 or their agents as to the amount that would be spent on such park in order to solicit voter  
189 support for the referendum; provided, however, that the amount to be transferred by the  
190 county or prior municipality to the qualified municipality shall be reduced by any amount  
191 spent by the county or prior municipality to improve such park prior to the date of the  
192 qualified municipality's notice of its election to purchase the park as provided in  
193 subsection (f) of this Code section. The transfer shall be due within 30 days after the  
194 qualified municipality assumes ownership of any such park. The qualified municipality  
195 shall be required to expend any such funds for and on behalf of the special district or prior  
196 municipality in a manner consistent with the purpose and intent of the issuance of the  
197 bonds.

198 (j) A qualified municipality may elect to purchase one or more fire stations from the  
199 county or prior municipality in which it is located. Notwithstanding any other law to the  
200 contrary, whenever a qualified municipality elects to purchase a fire station from the  
201 county or prior municipality, the governing authority of the qualified municipality shall  
202 provide written notice to the governing authority of the county or prior municipality  
203 specifying the fire station to be purchased and the date or dates the qualified municipality



204 will assume ownership of such fire station. Such notice shall be provided with respect to  
205 each such property no less than 30 days prior to the date the qualified municipality intends  
206 to assume ownership of the fire station.

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

210 (2) If the county or prior municipality uses a fire station to serve an area located outside  
211 the qualified municipality, the purchase price for each such fire station shall be \$5,000.00  
212 plus an additional amount determined as provided in this paragraph. Such additional  
213 amount shall be the product of the fair market value of such fire station multiplied by the  
214 percentage of the total service area of such fire station which is located outside of the  
215 corporate limits of the qualified municipality. If the portion served outside the qualified  
216 municipality exceeds 20 percent of the total service area, then from the date the qualified  
217 municipality assumes ownership of such fire station, the qualified municipality shall be  
218 obligated to offer to lease the fire station back to the county or qualified municipality for  
219 a period not to exceed two years for an amount of \$10.00 for the lease period.

220 (l)(1) A prior municipality shall not convey, otherwise encumber, move any fixtures or  
221 buildings, or enter into or renew any contractual obligations with respect to any physical  
222 assets located in a qualified municipality. A prior municipality shall assign to the  
223 governing authority of the qualified municipality all of its right, title, and interest in any  
224 executory contract in effect that the qualified municipality elects to purchase as provided  
225 in this Code section. Such assignment shall be effective on the date the qualified  
226 municipality assumes ownership of any physical asset or as otherwise may be agreed  
227 between the governing authority of the qualified municipality and the prior municipality.

228 (2) A qualified municipality may elect to purchase any physical assets within the  
229 territory of the qualified municipality from the prior municipality in which the qualified  
230 municipality is located. Notwithstanding any other law to the contrary, whenever a

231 qualified municipality elects to purchase any physical assets the governing authority of  
232 the qualified municipality shall provide written notice to the governing authority of the  
233 prior municipality specifying any physical assets to be purchased and the date or dates  
234 the qualified municipality will assume ownership of any physical assets. The purchase  
235 price for land shall be \$100.00 per acre. The purchase price for buildings shall be  
236 \$1,000.00 per building including all fixtures. The purchase price for personalty shall be  
237 the depreciated value as shown on the prior municipality's records for the year  
238 immediately proceeding issuance of the qualified municipality's charter. Notice shall be  
239 provided for any physical asset no less than 30 days prior to the date the qualified  
240 municipality intends to assume ownership.

241 (m)(1) A qualified municipality may elect to purchase the water system within the  
242 territory of the qualified municipality from the prior municipality in which the qualified  
243 municipality is located. Notwithstanding any other law to the contrary, whenever a  
244 qualified municipality elects to purchase the water system, the governing authority of the  
245 qualified municipality shall provide written notice to the governing authority of the prior  
246 municipality specifying the water system to be purchased and the date or dates the  
247 qualified municipality will assume ownership of such water system; the purchase price  
248 for such water system shall be \$100,000.00. Such notice shall be provided for such water  
249 system no less than 30 days prior to the date the qualified municipality intends to assume  
250 ownership.

251 (2) A qualified municipality may elect to purchase the sewer system within the territory  
252 of the qualified municipality from the prior municipality in which the qualified  
253 municipality is located. Notwithstanding any other law to the contrary, whenever a  
254 qualified municipality elects to purchase the sewer system, the governing authority of the  
255 qualified municipality shall provide written notice to the governing authority of the prior  
256 municipality specifying the sewer system to be purchased and the date or dates the  
257 qualified municipality will assume ownership of such sewer system; the purchase price

258 for such sewer system shall be \$100,000.00. Such notice shall be provided for such  
259 sewer system no less than 30 days prior to the date the qualified municipality intends to  
260 assume ownership.

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

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

267 ~~(H)~~(p) If a county or prior municipality and a qualified municipality fail to reach an  
268 agreement on the amount to be paid or any related matter under this Code section, either  
269 the county or prior municipality or the qualified municipality may petition the superior  
270 court to seek resolution of the items in dispute. Such petition shall be assigned to a judge,  
271 pursuant to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the  
272 county is located. The judge selected may also be a senior judge pursuant to Code  
273 Section 15-1-9.2 who resides in another circuit. The visiting or senior judge shall conduct  
274 an evidentiary hearing or hearings as such judge deems necessary and render a decision  
275 with regard to the disputed items."

276 **SECTION 4.**

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