

Model County Commission Act

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COMPILER'S NOTES & ACKNOWLEDGEMENTS

This document represents an attempt to collate into a single reference source a variety of provisions that a county might have need of in revising its organic local Act which sets forth the county government structure.

Georgia has 159 counties. There is simply no way to construct a one-size-fits-all approach that will satisfy the boundless variety of social, political, and economic situations which exist across the state. Rather, the approach adopted here is to amass the typically needed and fundamental provisions along with appropriate bells and whistles. Regardless of whether a county has determined that a complete revision and modernization is needed, or, that simply updating selected provisions is the right approach, the model seeks to provide a point of departure for either route.

These models take the form of two similar but separate documents. This model is directed to the board of commissioners' format. It contains the requisite variations for a weak chairperson, strong chairperson, and county manager/administrator¹. It is a substantially longer document because of all the options it contains related to election cycles of staggered or concurrent terms of office and for single or multimember commissioner districts. The other model is directed to the sole commissioner format. It contains the requisite variations for a county manager/administrator.

Portions of this document have been adapted from material appearing in *The Georgia Model Municipal Charter*, 4th Edition, and grateful appreciation is expressed to the Georgia Municipal Association, and, in particular, Susan Moore, former GMA general counsel, for their consent and assistance. In addition, other unique provisions are drawn from model documents in the bill drafting database of the Office of Legislative Counsel, and grateful appreciation is expressed to Wayne Allen, former Legislative Counsel of the Georgia General Assembly and Rick Ruskell, current Legislative Counsel of the Georgia General Assembly for their consent and assistance.

During the many years I worked in the Office of Legislative Counsel, many of the staff attorneys, including in particular, Doug Carlyle, David Bundrick, Jeff Lanier, Wayne Allen, and myself,

¹ As of this writing, of the 120 counties with professional management, slightly more than one half of those use the term 'county administrator'. This document will use the term county manager/administrator to serve as a reminder that thoughtful consideration should be given to the desired structure of government and the actual differences between the powers of a county manager and a county administrator. In general, the primary difference is that 'managers' typically have authority to hire or fire department heads (an executive power), while 'administrators' do not. However, the actual practice varies considerably among the counties. Specific differences are addressed in options under Articles IV and V. Even the O.C.G.A. itself is inconsistent and unclear regarding the distinctions between the two terms. Both terms are referenced in various places throughout the Code in a seemingly interchangeable manner. However, O.C.G.A. § 36-5-22 which grants counties the direct, self-help power to create the office of county manager, only allows the county manager so created to exercise administrative powers. The reasoning, presumably, is because the granting of executive powers constitutes a change in the form of government and thus is excluded from county home rule action under Article IX, Sec. II, Para. (c)(2). As used in that Code section, reference to the county administrator would have been more technically correct.

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spent a lot of time helping to craft and further revise the provisions in the database as well as the creation and subsequent fine-tuning of model reapportionment and other provisions. I would also like to thank Deputy Legislative Counsel Stuart Morelli for his review of the current draft.

It is imperative to keep in mind that this model county commission Act is not intended as a complete replacement for a county's current local Act. It is a place to start a review by looking at updated versions of basic provisions that are common to county commission local Acts. When using the model, it would be prudent to review it in conjunction with a section by section examination of the existing provisions of your county's local Act.

Please remain mindful that this document is solely and exclusively for informational purposes. The review remarks cannot and do not reflect a detailed or thorough understanding of the governmental operations and needs of each locality. Consequently, nothing stated herein constitutes or should be viewed as constituting a legal opinion.

I would be remiss without a belated thank you to all of the county attorneys who reviewed and helped craft the initial drafts with a special thank you to Joey Homans for his in depth analysis. I would also like to express my deepest appreciation to Dave Wills, executive director of ACCG, for his untold hours of review and assistance in bring this project to fruition. Finally, I would like to thank ACCG's former general counsel, Jim Grubiak, for helping to get this project launched and his encouragement and invaluable assistance.

I should make a quick mention of style differences with respect to Code section references. It is the practice of drafters in the Office of Legislative Counsel to use the following reference style in a local Act when referring to a particular Code section: "Code Section 1-1-1 of the O.C.G.A." Consequently, this style is used in the actual text of the model document. It is the practice of ACCG Legal to use the following reference style when referring to a particular Code section: "O.C.G.A. § 1-1-1." Consequently, this style is used in the text in footnotes.

It is my sincere hope that this tome will be an informative and useful research tool for all who have occasion to travel through its pages.

Joe Scheuer
Assistant General Counsel
April, 2020

A BILL TO BE ENTITLED
AN ACT

To provide for a new board of commissioners of _____ County; to provide for definitions and construction; to provide for a governing authority of such county and the composition, powers, duties, authority, districts, election, terms, vacancies, compensation, expenses, qualifications, prohibitions, and other matters relative to members of such governing authority; to provide for continuation of certain obligations and liabilities; to provide for inquiries and investigations; to provide for oaths, organization, meetings, quorum, voting, rules, and procedures; to provide for ordinances and codes; to provide for a **(county manager/administrator,)** chairperson **(, and vice chairperson)** and certain duties, powers, and other matters relative thereto; to provide for administrative affairs and responsibilities; to provide for boards and commissions; to provide for a county attorney, a county clerk, and other personnel and matters relating thereto; to provide for rules and regulations; to provide for taxation, licenses, and fees; to provide for service charges and assessments; to provide for bonded and other indebtedness; to provide for auditing, accounting, budgeting, and appropriations; to provide for county contracts and purchasing; to provide for the conveyance of property and interests therein; to provide for expenditure of county funds; to provide for bonds for officials; to provide for prior ordinances and rules, pending matters, and existing personnel; to provide for penalties; to provide for other matters relative to the foregoing; to repeal a specific Act; to provide for an effective date **(effective dates)**; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

ARTICLE I
SECTION 1.1
DEFINITIONS

(a) As used in this Act, the term:

(1) “Board” or “board of commissioners” means the Board of Commissioners of _____ County.

(2) “County” means _____ County.

(b) Any term not defined in this Act which is defined in Code Section 1-3-3 of the O.C.G.A. shall have the same meaning as provided for in said Code section.

SECTION 1.2
RULES OF CONSTRUCTION

(a) The descriptive headings and catch lines immediately preceding or within the text of individual sections of this Act, except the section numbers included in the headings or catch lines immediately preceding the text of the sections, do not constitute part of the law and shall in no manner limit or expand the construction of any section. Such headings or catch lines are given for the purpose of convenient reference.

(b) As used in this Act, defined words shall have the meanings specified, unless the context in which the word or term is used clearly requires that a different meaning be used.

(c) The rules of interpretation and construction specified in Code Section 1-3-1 of the O.C.G.A. shall apply to this Act.

SECTION 1.3.
COUNTY GOVERNING AUTHORITY CONTINUED

The Board of Commissioners of _____ County which existed on December 31, ____, is continued in existence but on and after January 1, ____, shall be constituted as provided in this Act. The Board of Commissioners of _____ County so continued and constituted shall continue to have the powers, duties, rights, obligations, and liabilities of that board as existed immediately prior to January 1, ____.

SECTION 1.4.

COUNTY POWERS

{ OPTION 1 (a) The county shall have all powers possible for a county to have under the present or future Constitution and laws of this state as fully and completely as though they were enumerated specifically in this Act. The county shall have all the powers of self-government not otherwise prohibited by this Act or by general law.}

{ OPTION 2 (a) The county shall have all powers possible for a county to have under the present or future Constitution and laws of this state as fully and completely as though they were enumerated specifically in this Act. The county shall have all the powers of self-government not otherwise prohibited by this Act or by general law. The board shall have the power and authority to fix and establish, by appropriate resolution entered on its minutes, policies, rules, and regulations governing all matters reserved to its exclusive jurisdiction. Such policies, rules, and regulations, when so adopted with proper entry thereof made on the minutes of the board, shall be conclusive and binding. Except as otherwise provided in this Act, the following powers² are vested in the board and reserved to its exclusive jurisdiction:

- (1) To levy taxes;**
- (2) To make appropriations;**

² This list is not exhaustive and is merely representative of the types of powers that could be listed.

- (3) To fix rates and charges for services provided by the county;**
- (4) To authorize the incurring of indebtedness;**
- (5) To order work done where the cost is to be assessed against benefited property and**
fix the basis for such assessment;
- (6) To authorize and provide for the execution of contracts;**
- (7) To establish, alter, open, close, build, repair, or abolish public roads, bridges, and ferries, according to law; provided, however, that the chairperson shall have the authority to accept subdivision plats when the requirements established by the board for subdivisions have been met;**
- (8) To establish, abolish, or change election precincts and militia districts according to law;**
- (9) To accept, for the county, the provisions of any optional statute where the statute permits its acceptance by the governing authority of the county;**
- (10) To exercise all powers, duty, and authority imposed upon or vested in the board of commissioners in respect to zoning and planning;**
- (11) To create and change the boundaries of special taxing districts authorized by law;**
- (12) To fix the bonds of county officers where same are not fixed by statute;**
- (13) To enact any ordinances or other legislation which the county may be given authority to enact.**
- (14) To determine the priority of capital improvements; and**
- (15) To call for elections for the voting of bonds.}**

(b) The powers of the county shall be construed liberally in favor of the county. The specific mention or failure to mention particular powers shall not be construed as limiting in any way the powers of the county.

(c) Without limiting the generality of subsection (a) or (b) of this section, the county is authorized to exercise and enjoy all other powers, functions, rights, privileges, and immunities necessary or desirable to promote or protect the safety, health, peace, security, good order, comfort, convenience, or general welfare of the county and its inhabitants; and to exercise all implied powers necessary or desirable to carry into execution all powers granted in this Act as fully and completely as if such powers were fully stated in this Act.

(d) The enumeration or listing of any particular powers in other provisions of this Act shall not be deemed or otherwise held to be exclusive of, or a limitation upon, the broad powers under this section but shall be deemed and held to be in addition to such broad powers unless expressly prohibited to counties under the Constitution and laws of this state.

SECTION 1.5.

EXECUTION OF POWERS.

All powers, functions, rights, privileges, and immunities of the county and the officers, agencies, or employees of the county shall be executed as provided by this Act. If this Act makes no provision, then such powers, functions, rights, privileges, and immunities shall be executed in the manner specified by law or by ordinance.

ARTICLE II

SECTION 2.1.

ELECTION OF MEMBERS.

(a) {OPTION 1. FOR USE WHEN NO TERMS ARE SHORTENED OR LENGTHENED.} Those members of the Board of Commissioners of _____ County who are serving as such on December 31, ____, and any

person selected to fill a vacancy in any such office shall continue to serve as such members until the regular expiration of their respective terms of office and upon the election and qualification of their respective successors. On and after January 1, ____, the Board of Commissioners of _____ County shall consist of ____ members all of whom shall be elected from commissioner districts (or posts) described in subsection (b) of this section (except for the member who is chairperson and who is elected at large as provided in _____.)³

(a) {OPTION 2. FOR USE WHEN TERMS ARE LENGTHENED OR SHORTENED. [NOTE: *This option will require a referendum under Code Section 1-3-11 of the O.C.G.A. which should address specifically the lengthening or shortening of terms. An appropriate addition should be made to the bill's caption and a referendum section should be added to the bill. See the unnumbered section at the end of this document.*]⁴ (1) Except as otherwise provided in paragraph (2)

of this subsection, those members of the Board of Commissioners of _____ County who are serving as such on December 31, ____, and any person selected to fill a vacancy in any such office shall continue to serve as such members until the regular expiration of their respective terms of office and upon the election and qualification of their respective successors.

(2) Those members of the Board of Commissioners of _____ County who are serving as such on December 31, ____, representing Commissioner Districts ____ and ____, and any person selected to fill a vacancy in any such office shall not continue to serve as such members until the regular expiration of their respective

3 Note that if terms of office are being lengthened or shortened, then a referendum will be required in accordance with O.C.G.A. § 1-3-11. In this event, appropriate additions will need to be made to the caption and a referendum section will need to be included at the end of the bill. Legislative Counsel's office maintains canned language for this purpose.

4 Note that it might be possible to achieve the same outcome WITHOUT lengthening or shortening existing terms. That could occur by adjusting future terms, rather than existing ones. In such cases the shortened or lengthened terms would exist for one election cycle only and would then conform to the standard term of the other seats on the board. These types of one time changes frequently occur in the context of converting from concurrent terms to staggered terms or vice versa.

terms of office and shall serve only until _____, and upon the election and qualification of their respective successors.

(3) On and after January 1, ____, the Board of Commissioners of _____ County shall consist of ____ members all of whom shall be elected from commissioner districts described in subsection (b) of this section (except for the member who is chairperson and who is elected at large as provided in _____.)

(b) {OPTION 1. USE FOR SINGLE-MEMBER DISTRICTS ONLY. (1) For purposes of electing members of the board of commissioners (, other than the chairperson), _____ County is divided into ____ commissioner districts. One member of the board shall be elected from each such district. The ____ commissioner districts shall be and correspond to those ____ numbered districts described in and attached to and made a part of this Act and further identified as User: _____ Plan: _____ Plan Type: _____ }⁵

(b) {OPTION 2. USE FOR SINGLE AND MULTIMEMBER DISTRICTS. (1) For purposes of electing members of the board of commissioners (, other than the chairperson), _____ County is divided into ____ commissioner districts.

(2) Except for the districts specified in paragraph (3) of this subsection, one member of the board shall be elected from each such district.

(3) Commissioner district _____ shall consist of one election district with _____ numbered posts. (REPEAT AS NECESSARY.) Each person seeking election from such district shall designate the post for which such person seeks election. Such posts shall be designated by numbers, beginning with post number 1 and ending with the number equaling the total number of commissioners in such district.

⁵ The information for these fields will be provided by the Legislative & Congressional Reapportionment Office. Contact information may be found at this URL -- <http://www.legis.ga.gov/Joint/reapportionment/en-US/default.aspx>

(4) The ____ commissioner districts shall be and correspond to those ____ numbered districts described in and attached to and made a part of this Act and further identified as User: _____ Plan: _____ Plan Type: _____.

(c) When used in such attachment, the terms 'Tract' and 'BG' (Block Group) shall mean and describe the same geographical boundaries as provided in the report of the Bureau of the Census for the United States decennial census of ____⁶ for the State of Georgia. The separate numeric designations in a Tract description which are underneath a 'BG' heading shall mean and describe individual Blocks within a Block Group as provided in the report of the Bureau of the Census for the United States decennial census of ____⁷ for the State of Georgia. Any part of _____ County which is not included in any such district described in that attachment shall be included within that district contiguous to such part which contains the least population according to the United States decennial census of ____⁸ for the State of Georgia. Any part of _____ County which is described in that attachment as being in a particular district shall nevertheless not be included within such district if such part is not contiguous to such district. Such noncontiguous part shall instead be included within that district contiguous to such part which contains the least population according to the United States decennial census of ____⁹ for the State of Georgia. Except as otherwise provided in the description of any commissioner district, whenever the description of such district refers to a named city, it shall mean the geographical boundaries of that city as shown on the census map for the United States decennial census of ____¹⁰ for the State of Georgia.

6 Reference to the 2010 census is correct as of the date of this draft. The references should be updated by future users to reflect the most current decennial census. See O.C.G.A. § 1-3-1(d)(2) for statutory rules governing the effective date of the 2020 census.

7 See FN 6.

8 See FN 6.

9 See FN 6.

10 See FN 6.

SECTION 2.2.**ELIGIBILITY.**

(a) No person shall be a member of the board if that person is ineligible for such office pursuant to Code Section 45-2-1 of the O.C.G.A. or any other general law.

(b) In order to be elected or appointed as a member of the board from a commissioner district, a person shall be 18 years of age or older, must have **(that person's legal residence in that district at the time of qualifying for election or at the time of appointment) (resided in that commission district for at least 12 months prior to election or appointment thereto)**¹¹ and, if elected, must receive the number of votes

cast as required by general law for that office in that district only and not at large. Only electors who are residents of that commissioner district may vote for a member of the board for that district. At the time of qualifying for election as a member of the board from a commissioner district, each candidate for such office shall specify the commissioner district **(and post)** for which that person is a candidate. A person elected or appointed as a member of the board from a commissioner district must continue to reside in that district during that person's term of office or that office shall become vacant.

((c) (USE IF CHAIRPERSON IS ELECTED COUNTYWIDE.) The member of the board who is chairperson of the board shall be 25 years of age or older, may reside anywhere within _____ County and, if elected, must receive the number of votes cast for that office as required by general law in the entire county. The chairperson must continue to reside within the county during that person's term of office or that office shall become vacant.)

SECTION 2.3.

¹¹ Residency requirements are generally controlled by O.C.G.A. § 45-2-1(1) which provides that a residency requirement for a candidate for any county office shall be 12 months residency within the county. It provides further that the General Assembly may provide by local law for a period of district residency for candidates for the county governing authority who are elected from districts not to exceed 12 months' residency within the district from which the candidate seeks election. Additionally, it also grandfathers and validates any previous local law enacted by the General Assembly which provides for a period of district residency which does not exceed 12 months.

ELECTION CYCLE.

(a) {OPTION 1. USE FOR CONCURRENT TERMS¹². The first members of the reconstituted Board of Commissioners of _____ County shall be elected at the general election on the Tuesday next following the first Monday in November, _____. The members of the board elected thereto in ____ shall take office the first day of January immediately following that election and shall serve for initial terms of office which expire December 31, ____, and upon the election and qualification of their respective successors. Those and all future successors to members of the board whose terms of office are to expire shall be elected at the time of the state-wide general election immediately preceding the expiration of such terms, shall take office the first day of January immediately following that election, and shall serve for terms of office of _____ years each. Members of the board shall serve for the terms of office specified therefor in this subsection and until their respective successors are elected and qualified.}

{OPTION 2. USE FOR STAGGERED TERMS¹³. (NOTE: this example uses 5 districts merely for the purposes of example. This option can be used for any number of districts. Also, even and odd numbered districts can be staggered in any combination deemed necessary.) The members of the reconstituted Board of Commissioners of _____ County shall be elected as provided in this subsection. The first members from Commissioner Districts 2 and 4 shall be elected at the general election on the Tuesday next following the first Monday in November, _____. (The chairperson and those) (Those) members of the board elected thereto from Commissioner Districts 2 and 4 in ____ shall take office the first day of January immediately following that election and shall serve for initial terms of office which expire December 31, ____, and upon the election and

12 Concurrent terms are terms which all expire at the same time. Remain mindful that this structure can prove disruptive in the event that in a single election cycle all members of the board are replaced by new members.

13 Staggered terms refers to a structure where only some (rather than all) of the board members face election at an election cycle.

253 **qualification of their respective successors. The first members from Commissioner**
 254 **Districts 1, 3, and 5 shall be elected at the general election on the Tuesday next**
 255 **following the first Monday in November, _____. (The chairperson and those) (Those)**
 256 **members of the board elected thereto from Commissioner Districts 1, 3, and 5 in**
 257 **_____ shall take office the first day of January immediately following that election**
 258 **and shall serve for initial terms of office which expire December 31, _____, and upon**
 259 **the election and qualification of their respective successors. Those and all future**
 260 **successors to members of the board whose terms of office are to expire shall be**
 261 **elected at the time of the state-wide general election immediately preceding the**
 262 **expiration of such terms, shall take office the first day of January immediately**
 263 **following that election, and shall serve for terms of office of _____ years each.**
 264 **Members of the board shall serve for the terms of office specified therefor in this**
 265 **subsection and until their respective successors are elected and qualified.}**

266 **(b) (OPTION 1. AVAILABLE TO ANY COUNTY OR CONSOLIDATED**
 267 **GOVERNMENT.) All members of the board who are elected thereto shall be**
 268 **nominated and elected in accordance with Chapter 2 of Title 21 of the O.C.G.A., the**
 269 **'Georgia Election Code').**

270 **(OPTION 2. AVAILABLE ONLY TO CONSOLIDATED GOVERNMENTS.) All**
 271 **members of the board who are elected thereto shall be nominated and elected in**
 272 **nonpartisan elections as provided in Code Section 21-2-139 of the O.C.G.A).**

273 **(c) (OPTION 1. USE WHERE DISTRICT NUMBERS REMAIN THE SAME**
 274 **AND ONLY THE DISTRICT BOUNDARIES HAVE CHANGED.) Commissioner**
 275 **Districts 1, 2, 3, 4, and 5, as they exist on _____, shall continue to be designated**
 276 **as Commissioner Districts 1, 2, 3, 4, and 5, respectively, but as newly described**
 277 **under this Act, and on and after _____, such members of the board serving**
 278 **from those former commissioner districts shall be deemed to be serving from and**
 279 **representing their respective districts as newly described under this Act.**

280 **(OPTION 2. USE WHERE DISTRICT NUMBERS HAVE CHANGED. REPEAT**
 281 **AS NECESSARY.) Commissioner District 1 as it exists on _____, shall be**

designated as Commissioner District 2, but as newly described under this Act, and on and after _____, such member of the board serving from former Commissioner District 1 shall be deemed to be serving from and representing Commissioner District 2 as newly described under this Act.

ARTICLE III

SECTION 3.1.

SUSPENSIONS AND VACANCIES

(a) *Suspension From Office.* Upon the suspension from office of the chairperson or a commissioner in any manner authorized by the general laws of the State of Georgia, the board of commissioners, or those remaining, shall appoint a successor for the duration of the suspension. If the suspension becomes permanent, then the office shall become vacant and shall be filled for the remainder of the unexpired term, if any, as provided for in this section.

(b) *Vacancy Created.* The office of chairperson or commissioner shall become vacant upon the occurrence of any event specified by the Constitution, Title 45 of the O.C.G.A., or other applicable general laws. Such events shall include, but not be limited to:

- (1) The lack at any time during the member's term of office of any qualification prescribed by this Act or any other provision of general law or the Constitution to hold that office;
- (2) The member is convicted of a felony or other crime involving moral turpitude, regardless of sentence imposed; or
- (3) **{OPTION} The member fails to attend {_____} regular meetings of the board of commissioners without being excused by the board.¹⁴**

¹⁴ O.C.G.A. § 45-5-1 does not specify what precisely constitutes abandonment of office. However, Op. Att'y Gen. 91-18 does provide guidance that missing three meetings is sufficient to establish a pattern under which the inference of relinquishment of office may be reasonably inferred. It is important to note however, that this opinion was rendered regarding an appointed rather than elected office. If a drafter opts to use a threshold number of meetings that are not consecutive, be aware that such a number will need to be sufficient so that a pattern is

(c) *Filling Vacancies.*

{OPTION 1 Any vacancy in office upon the board which occurs for any reason shall be filled pursuant to Code Section 36-5-21 of the O.C.G.A.}

{OPTION 2 (1) Any vacancy in office upon the board which occurs for any reason other than expiration of term shall be filled as follows:

(A) If the vacancy occurs during the final 12 months of a term of office, within 30 days after such occurrence, the remaining members of the board shall appoint a person to fill such vacancy; or

(B) If the vacancy occurs at any time prior to the time specified in subparagraph (A) of this paragraph, within 30 days after such occurrence, the remaining members of the board shall appoint a person to fill such vacancy until a successor is elected at a special election and qualified, which special election shall be held on the same date as the state-wide general election which is first held following the date of the vacancy.

(2) Pursuant to Code Section 45-5-3.1 of the O.C.G.A., the absence of a quorum caused by any such vacancy shall not impair the authority of a majority of the remaining members of the board to make an appointment under paragraph (1) of this subsection.

(3) Any person appointed or elected to fill a vacancy in office pursuant to this section shall meet the same eligibility requirements specified for persons who are regularly elected to such office.

(4) Any person appointed or elected to fill a vacancy under this section shall serve out the remainder of the unexpired term and until a successor is elected and qualified.}

established under which the inference of relinquishment of office may be reasonably inferred. This type of provision should be used only with great care.

SECTION 3.2.**OFFICIAL OATHS**

Before entering upon the discharge of their duties, the chairperson and each commissioner shall subscribe each required oath in accordance with the applicable provisions of Chapter 3 of Title 45 of the O.C.G.A., before the judge of the probate court of _____ County for the true and faithful performance of their duties and such oath shall be filed in the office of the clerk of the superior court of _____ county. In the absence of the judge of the probate court, the oath may be taken before a judge or clerk of the superior court of _____ County and shall be filed in the office of the clerk of the superior court. In the absence of the judge of the probate court and the judge and clerk of the superior court, such oath may be taken as provided in Code Section 45-3-3 of the O.C.G.A. and filed as provided in Code Section 45-3-5 of the O.C.G.A.

SECTION 3.3.**OFFICIAL BONDS**

The chairperson and each member of the board of commissioners shall give a satisfactory surety bond to the judge of the probate court, conditioned upon the faithful performance of the duties of their office and to secure against corruption, malfeasance, misappropriations, or unlawful expenditures. The bond for the chairperson shall be in the amount of \$_____ and the bonds of each of the other commissioners shall be in the amount of \$_____. The costs of said bonds shall be paid out of the general fund of the county. The bond shall be delivered to the board within five days of the member assuming his or her duties and, upon receipt, shall be filed by the county clerk with the probate court of _____ County. In lieu of individual bonds, the county may purchase a blanket bond or bonds pursuant to and in accordance with the provisions of Code Section 45-4-11 of the O.C.G.A.

SECTION 3.4.**COMPENSATION.**

{OPTION 1.

(a) The chairperson and each member of the board of commissioners shall continue to receive the compensation in effect immediately prior to the effective date of this Act.

(b) The county governing authority is authorized to fix the salary, compensation, expenses, and expenses in the nature of compensation of the chairperson and each member of the board of commissioners in the manner provided for in Code Section 36-5-24 of the O.C.G.A.¹⁵}

{OPTION 2.

(a) Each commissioner, other than the chairperson, shall serve in such capacity on a part-time basis and shall be paid a salary of \$_____ per year. Such salary shall be paid in equal monthly installments from the funds of _____ County.

(b) The chairperson shall serve in such capacity on a full-time basis and shall be paid a salary of \$_____ per year. Such salary shall be paid in equal monthly installments from the funds of _____ County.

(c) The chairperson and the district commissioners may be reimbursed for reasonable expenses incurred in carrying out their duties. Expenses may be reimbursed only after the submission of receipts or records of said expenses to the county clerk and approval by majority vote of the board of commissioners at a regularly scheduled meeting.

(d) At their own expense, the district commissioners may participate in county provided health, dental, and other health related programs and in county

¹⁵ O.C.G.A. § 36-5-24 sets out a specific procedure whereby the county governing authority can itself fix its salary, compensation, expenses, or expenses in the nature of compensation. If any of those four items was set by a local Act in effect on January 1, 2001, or as subsequently amended, the amount is preserved in full force and effect unless it is increased pursuant to the general law procedure. The General Assembly retains authority to set compensation in a local Act.

387 **sponsored retirement programs. No county funds shall be spent on these programs**
388 **for the benefit of the district commissioners.}**

389

390 **SECTION 3.5.**

391 **FIDUCIARY CAPACITY; VOTING WHEN PERSONALLY INTERESTED.**

392

393 (a) The chairperson and each commissioner are trustees and servants of the residents of
394 the county and shall act in a fiduciary capacity for the benefit of such residents.

(b) Neither the chairperson nor any commissioner shall vote upon any ordinance, resolution, contract, or other matter in which that person is financially interested.

SECTION 3.6.

INQUIRIES & INVESTIGATIONS.

Following the adoption of an authorizing resolution, the board of commissioners may make inquiries and investigations into the affairs of the county and conduct of any department, office, or agency thereof and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Any such subpoena may be enforced through the superior court of the county.

SECTION 3.7.

VESTING & EXERCISE OF POWERS.

(a) Except as otherwise provided by law or this Act, the board of commissioners shall be vested with all the powers of government of this county.

(b) In addition to all other powers conferred upon it by law, the board of commissioners shall have the authority to adopt and provide for the execution of such ordinances, resolutions, rules, and regulations, not inconsistent with this Act and the Constitution and laws of the State of Georgia, which it shall deem necessary, expedient, or helpful for the peace, good order, protection of life and property, health, welfare, sanitation, comfort, convenience, prosperity, or well-being of the inhabitants of _____ County and may enforce such ordinances by imposing penalties for violation thereof.

SECTION 3.8.¹⁶

ORGANIZATIONAL MEETING.

The board of commissioners shall hold an organizational meeting at the county seat¹⁷ on _____ . The meeting shall be called to order by the chairperson, vice chairperson, or most senior member of the board of commissioners currently in office and the official oath of office shall be administered to the incumbent members who have been reelected and any newly elected members if such members have not already taken the oath of office.

SECTION 3.9.¹⁸

MEETINGS

(a) The board of commissioners shall hold *(two regular voting meetings) (at least one regular voting meeting)* each month at the county seat¹⁹, at such times and places as shall be prescribed by ordinance. Regular voting meetings shall be meetings at which voting by commissioners is conducted on official business. The board of commissioners may hold such additional meetings as shall be necessary when called by the chairperson or any two commissioners.

(b) Work sessions, special meetings, rescheduled regular meetings, emergency meetings with less than 24 hours' notice, and meetings during a declared state of emergency shall be as provided for by ordinance.²⁰

16 ACCG has published guidebooks on parliamentary procedure and meetings organization. *Parliamentary Procedure for Counties: A Guide and Model Ordinance* and *Meetings Organization and Public Access for Counties: A Model Ordinance*. The guidebooks are available on the ACCG website. The bulk of these matters should be provided for by ordinance rather than set out in the local Act.

17 The 'county seat' is the same thing as the 'county site' and is the place where official business of the county must take place. See *Handbook for Georgia County Commissioners*, 5th edition, p. 542. The procedure for change or removal of the county site is set forth in O.C.G.A. Chapter 36-4.

18 See FN 16.

19 See FN 17.

20 See *Meetings Organization and Public Access for Counties*, 6th Edition, pp. 7-8 for examples of such provisions.

SECTION 3.10.²¹

RULES OF PROCEDURE; MINUTES; APPOINTMENTS.

(a) The board of commissioners shall adopt its rules of procedure and order of business consistent with the provisions of this Act.

(b) The board may by ordinance or resolution adopt procedures related to public hearings, or public participation in meetings of the board, or both.

(c) The board shall provide for keeping of minutes of its proceedings, which shall be a public record.

(d) All committees and committee chairpersons of the board of commissioners shall be appointed by the board of commissioners and shall serve at the pleasure of the board of commissioners.

(e) The board of commissioners shall have the power to appoint new members to any committee at any time in the same manner as initial appointments are made under subsection (d) of this section.

SECTION 3.11.²²

QUORUM; VOTING; ABSTENTION.

(a) A quorum shall consist of **(a majority of the commissioners then serving) (_____ commissioners).**²³

(b) A quorum shall be authorized to transact business of the board of commissioners.

(c) Except as otherwise provided in this Act, the affirmative vote of **(a majority of the commissioners then serving)(_____ commissioners)** shall be required for the adoption of any ordinance, resolution, or motion.

²¹ See FN 16.

²² See FN 16.

²³ Note that if a quorum is not specified, then a majority vote of the commissioners is nonetheless required. *Step v. Lance*, 131 Ga. App. 193 (1974).

(d) Voting on the adoption of ordinances shall be by voice vote and the vote shall be recorded in the minutes, but the chairperson or any commissioner shall have the right to request a roll-call vote and such vote shall be recorded in the minutes.

(e) Neither the chairperson nor any commissioner shall abstain from voting on any matter properly brought before the board for official action except where the chairperson or commissioner has a conflict of interest which is disclosed in writing prior to or at the meeting and made a part of the minutes. The chairperson or any commissioner present and eligible to vote on a matter and refusing to do so for any reason other than a properly disclosed and recorded conflict of interest shall be deemed to have acquiesced or concurred with the members of the majority who did vote on the question involved.

SECTION 3.12.

ORDINANCE FORM & PROCEDURES.

(a) Every proposed ordinance shall be in writing and in the form required for final adoption. No ordinance shall contain a subject which is not expressed in its title. The enacting clause shall be "It is hereby ordained by the governing authority of _____ County..." and every ordinance shall so begin.

(b) An ordinance may be introduced by any member of the board of commissioners and be read at a regular or special meeting of the board. Ordinances shall be considered and adopted or rejected by the board in accordance with the rules which it shall establish²⁴; provided, however, an ordinance shall not be adopted the same day it is introduced, except for emergency ordinances provided for in Section 3.14 of this Act. Upon introduction of any ordinance, the county clerk shall as soon as possible distribute a copy to every member of the board and shall file a reasonable number of copies in the office of the county clerk and at such other public places as the board may designate.

²⁴ Although not required to be in the implementing local Act, consideration should be given to a minimum interval of time between introduction and adoption of an ordinance. It is common to see in county codes an interval of at least 30 days or language which reads to the effect of "to be read at two consecutive meetings." But if one county meets twice each month and another just once, that language means different intervals between the two counties.

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SECTION 3.13.

498

ACTION REQUIRING ORDINANCE.

499

500 (a) Legislative Acts of the board of commissioners which have the force and effect of law
501 shall be enacted by ordinance or by resolution adopted with the same formalities as an
502 ordinance.

503 (b) Administrative actions of the board of commissioners may be accomplished by a simple
504 resolution which is not adopted with the same formalities as an ordinance.

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SECTION 3.14.²⁵

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EMERGENCIES.

508

509 (a) To meet a public emergency affecting life, health, property, or public peace, the board
510 of commissioners may convene on call of either the chairperson or _____ commissioners
511 and may promptly adopt an emergency ordinance.

512 (b) An emergency ordinance may not levy taxes; grant, renew, or extend a franchise;
513 regulate the rate charged by any public utility for its services; or authorize the borrowing
514 of money except for loans to be repaid within 30 days.

25 ACCG has published a guidebook on emergency management. *Model Emergency Management: Ordinances and Agreements*. The guidebook is available on the ACCG website. The bulk of this matter should be provided for by ordinance rather than set out in the local Act.

(c) An emergency ordinance shall be introduced in the form prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and a description of the emergency in clear and specific terms. An emergency ordinance may be adopted, with or without amendment, or rejected at the meeting at which it is introduced, but the affirmative vote of at least _____ commissioners shall be required for adoption. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance shall automatically stand repealed 30 days following the date upon which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

SECTION 3.15.

CODES OF TECHNICAL REGULATIONS.

(a) The board of commissioners may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such adopting ordinance shall be as prescribed for ordinances generally except that:

(1) the requirements of subsection (b) of Section 3.12 of this Act for distribution and filing of copies of the ordinance shall be construed to include copies of any code of technical regulations, as well as the adopting ordinance; and

(2) a copy of each adopted code of technical regulations, as well as the adopting ordinance, shall be authenticated and recorded by the county clerk pursuant to Section 3.16 of this Act.

(b) Copies of any adopted code of technical regulations shall be made available by the county clerk for inspection by the public.

SECTION 3.16.**ORDINANCES.**

(a) The county clerk shall authenticate by the county clerk's signature and record in full in a properly indexed book kept for that purpose all ordinances adopted by the board of commissioners.

(b) The board of commissioners shall provide for the preparation of a general codification of all the ordinances of the county having the force and effect of law. The general codification shall be adopted by the board of commissioners by ordinance and shall be published promptly, together with all amendments thereto and such codes of technical regulations and other rules and regulations as the board of commissioners may specify. Pursuant to Code Section 36-80-19 of the O.C.G.A., this compilation shall be known and cited officially as "The Code of _____ County, Georgia." Copies of the code shall, in the discretion of the board of commissioners, be furnished to all officers, departments, and agencies of the county. **{OPTIONAL The code shall be made available for purchase by the public as provided in Code Section 36-80-19 of the O.C.G.A.²⁶}**

(c) The board of commissioners shall cause each ordinance and each amendment to this Act to be printed promptly following its adoption, and such printed ordinances and amendments shall be made available for purchase by the public at reasonable prices to be fixed by the board of commissioners. Following publication of the first code under this Act and at all times thereafter, such ordinances and amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for incorporation in such code. The board of commissioners shall make such further arrangements as deemed desirable with reproduction and distribution of any current

26 O.C.G.A. § 36-80-19 requires that the code be sold for a reasonable price as fixed by the board of commissioners (even though it is required to be made available on the Internet; see FN 27). The language purports to require the county to 'fix' a price with regard to purchase of the code through an external source such as the Municipal Code Corporation. Consequently, the board of commissioners should ensure that price via its contract with the external source.

changes in or additions to codes of technical regulations and other rules and regulations included in the code.²⁷

ARTICLE IV.²⁸

Article 4 consists of options for four types of forms of government. Each option is self-contained and complete. Thus, the only bolded text will consist of optional provisions within each form of government.

OPTION A

COMMISSION-COUNTY MANAGER FORM OF GOVERNMENT

SECTION 4.1.

COUNTY MANAGER; APPOINTMENT, QUALIFICATIONS, & COMPENSATION.

The board of commissioners shall appoint a county manager for an indefinite term or for such period as the board of commissioners shall provide²⁹ and shall fix the county manager's compensation. The county manager shall be appointed solely on the basis of that person's executive and administrative qualifications.

²⁷ Note that under O.C.G.A. § 36-80-19(d), the code must be posted on the Internet or, in counties with an established law library, made available in the county law library.

²⁸ In at least one county, a county manager/administrator position has been created by local constitutional amendment. See Ga. L. 1962, p. 1118 (continued in effect by Ga. L. 1987, p. 3804). It would be wise to have the county attorney review whether or not a similar local constitutional amendment exists prior to a county updating its local Act to verify the extent to which county manager/administrator provisions can be altered. ACCG maintains a guidebook that may be consulted for this purpose. *Local Amendments to the Constitution of Georgia: Conundrums Continued and Curiosities Curtailed*. The book is available on the ACCG website.

²⁹ In a survey of county managers and administrators, conducted by ACCG in January, 2016, with 110 respondents of the approximately 121 then serving, ACCG learned that 60 of the 110 had contracts. Of those who had contracts, 23 were open ended or indefinite appointments. 15 had one year contracts, presumably subject to annual reappointments. The balance were scattered across other periods, with the longest being 5 years.

SECTION 4.2.

REMOVAL OF COUNTY MANAGER.

The county manager is employed at will and may be removed from office at any time by the board of commissioners.

SECTION 4.3.

ACTING COUNTY MANAGER.

The board of commissioners may designate a qualified county administrative officer to exercise the powers and perform the duties of county manager during the county manager's temporary absence or physical or mental disability. During such absence or disability, the board of commissioners may revoke such designation at any time and appoint another officer of the county to serve until the county manager shall return or the county manager's disability shall cease.

SECTION 4.4.

POWERS & DUTIES OF COUNTY MANAGER.

The county manager shall be the chief executive and administrative officer of the county. The county manager shall be responsible to the board of commissioners for the administration of all county affairs placed in the county manager's charge by or under this Act. As the chief executive and administrative officer, the county manager shall:

- (1) Appoint and, when the county manager deems it necessary for the good of the county, suspend or remove all county employees and administrative officers the county manager appoints,³⁰ except as otherwise provided by law or personnel ordinances

³⁰ This power illustrates the key difference between managers and administrators, with the former typically possessing the stated powers, and the latter not. However, it should be noted that often county commissioners have mixed the terms and powers such that some administrators possess the described powers and occasionally a manager

adopted pursuant to this Act. The county manager may authorize any administrative officer who is subject to the county manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office, or agency;

(2) Direct and supervise the administration of all departments, offices, and agencies of the county, except as otherwise provided by this Act or by law;

(3) Participate in discussion of agenda items and attend all board of commissioners meetings, except for closed meetings held for the purposes of deliberating on the appointment, discipline, or removal of the county manager, but the county manager may not vote;

(4) See that all laws, provisions of this Act, and acts of the board of commissioners, subject to enforcement by the county manager or by officers subject to the county manager's direction and supervision, are faithfully executed;

(5) Prepare and submit the annual operating budget³¹ and capital budget to the board of commissioners;

(6) Submit to the board of commissioners and make available to the public a complete report on the finances and administrative activities of the county as of the end of each fiscal year;

(7) Make such other reports as the board of commissioners may require concerning the operations of county departments, offices, and agencies subject to the county manager's direction and supervision;

(8) Keep the board of commissioners fully advised as to the financial condition and future needs of the county, and make such recommendations to the board concerning the affairs of the county as the county administrator deems desirable; and

(9) Perform other such duties as are specified in this Act or as may be required by the board of commissioners.

does not.

31 In some counties, the chairperson is designated as the party responsible for drafting and submitting the annual budget.

SECTION 4.5.
CHAIRPERSON.

{OPTION 1. (a) By a majority vote of all its members, the board of commissioners shall elect a member to serve as chairperson. The chairperson shall serve for _____.³²}

{OPTION 2. (a) The chairperson shall be elected as provided in Article II of this Act.}

(b) The chairperson shall:

- (1) Preside at all meetings of the board of commissioners;
- (2) Be the head of the county for the purpose of service of process and for ceremonial purposes and be the official spokesperson for the county and the chief advocate of policy;
- (3) Have power to administer oaths and to take affidavits;
- (4) Vote on matters before the board of commissioners and be counted toward a quorum as any other commissioner;³³ and
- (5) Sign as a matter of course on behalf of the county all written and approved contracts, ordinances, and other instruments executed by the county which by law are required to be in writing.

³² The term of office needs to be specified. It could for one year, a term to run current with the member's term of office as a commissioner, or something in between.

³³ There is frequent confusion regarding the issue of whether or not the chairperson can vote so it is important to specify the matter one way or the other.

SECTION 4.6.**VICE CHAIRPERSON .**

(a) At the first regular meeting of each year, the board of commissioners shall, by majority vote, elect a commissioner to serve as vice chairperson. The vice chairperson shall serve for the calendar year in which he or she is elected. In the event of a vacancy in the office of vice chairperson, the board shall elect a new vice chairperson to serve for the remainder of the calendar year. The vice chairperson shall continue to vote and otherwise participate as a commissioner.

(b) During the absence or physical or mental disability of the chairperson for any cause, the vice chairperson shall be clothed with all the rights and privileges of the chairperson and shall perform the duties of the office of the chairperson so long as such absence or disability shall continue. Any such absence or disability shall be declared by majority vote of all commissioners.

OPTION B***COMMISSION-COUNTY ADMINISTRATOR³⁴ FORM OF GOVERNMENT*****SECTION 4.1.****COUNTY ADMINISTRATOR; APPOINTMENT, QUALIFICATIONS, &
COMPENSATION.**

The board of commissioners shall appoint a county administrator for an indefinite term or for such period as the board of commissioners shall provide³⁵ and shall fix the county administrator's compensation. The county administrator shall be appointed solely on the basis of that person's administrative qualifications.

³⁴ In at least one county, a county manager/administrator position has been created by local constitutional amendment. See Ga. L. 1962, p. 1118 (continued in effect by Ga. L. 1987, p. 3804). It would be wise to have the county attorney review whether or not a similar local constitutional amendment exists prior to a county updating its local Act to verify the extent to which county manager/administrator provisions can be altered. ACCG maintains a guidebook that may be consulted for this purpose. *Local Amendments to the Constitution of Georgia: Conundrums Continued and Curiosities Curtailed*. The book is available on the ACCG website.

³⁵ In a survey of county managers and administrators, conducted by ACCG in January, 2016, with 110 respondents of the approximately 121 then serving, ACCG learned that 60 of the 110 had contracts. Of those who had contracts,

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SECTION 4.2.

685

REMOVAL OF COUNTY ADMINISTRATOR.

686

687 The county administrator is employed at will and may be removed from office at any time
688 by the board of commissioners.

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SECTION 4.3.

692

ACTING COUNTY ADMINISTRATOR.

693

694 The board of commissioners may designate a qualified county administrative officer to
695 exercise the powers and perform the duties of county administrator during the county
696 administrator's temporary absence or physical or mental disability. During such absence
697 or disability, the board of commissioners may revoke such designation at any time and
698 appoint another officer of the county to serve until the county administrator shall return or
699 the county administrator's disability shall cease.

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SECTION 4.4.

702

POWERS & DUTIES OF COUNTY ADMINISTRATOR.

703

704 The county administrator shall be the chief administrative officer of the county. The
705 county administrator shall be responsible to the board of commissioners for the
706 administration of all county affairs placed in the county administrator's charge by or under
707 this Act. As the chief administrative officer, the county administrator shall:

708 (1) Coordinate and supervise the administration of all departments, offices, and
709 agencies of the county, except as otherwise provided by this Act or by law;

23 were open ended or indefinite appointments. Fifteen had one year contracts, presumably subject to annual reappointments. The balance were scattered across other periods, with the longest being 5 years.

- (3) Attend all board of commissioners meetings, except for closed meetings held for the purposes of deliberating on the appointment, discipline, or removal of the county administrator, but the county administrator may not vote;
- (4) See that all laws, provisions of this Act, and acts of the board of commissioners, subject to enforcement by the board of commissioners, are faithfully executed;
- (5) Prepare and submit the annual operating budget³⁶ and capital budget to the board of commissioners;
- (6) Submit to the board of commissioners and make available to the public a complete report on the finances and administrative activities of the county as of the end of each fiscal year;
- (7) Make such other reports as the board of commissioners may require concerning the operations of county departments, offices, and agencies subject to the county manager's direction and supervision;
- (8) Keep the board of commissioners fully advised as to the financial condition and future needs of the county, and make such recommendations to the board concerning the affairs of the county as the county administrator deems desirable; and
- (9) Perform other such duties as are specified in this Act or as may be required by the board of commissioners.

SECTION 4.5.

CHAIRPERSON.

- {OPTION 1. (a) By a majority vote of all its members, the board of commissioners shall elect a member to serve as chairperson. The chairperson shall serve for _____.³⁷}**
- {OPTION 2. (a) The chairperson shall be elected as provided in Article II of this Act.}**

³⁶ In some counties, the chairperson is designated as the party responsible for drafting and submitting the annual budget.

³⁷ The term of office needs to be specified. It could for one year, a term to run current with the member's term of office as a commissioner, or something in between.

(b) The chairperson shall:

(1) Preside at all meetings of the board of commissioners;

(2) Be the head of the county for the purpose of service of process and for ceremonial purposes and be the official spokesperson for the county and the chief advocate of policy;

(3) Have power to administer oaths and to take affidavits;

(4) Vote on matters before the board of commissioners and be counted toward a quorum as any other commissioner³⁸; and

(5) Sign as a matter of course on behalf of the county all written and approved contracts, ordinances, and other instruments executed by the county which by law are required to be in writing.

SECTION 4.6.

VICE CHAIRPERSON.

(a) At the first regular meeting of each year, the board of commissioners shall, by majority vote, elect a commissioner to serve as vice chairperson. The vice chairperson shall serve for the calendar year in which he or she is elected. In the event of a vacancy in the office of vice chairperson, the board shall elect a new vice chairperson to serve for the remainder of the calendar year. The vice chairperson shall continue to vote and otherwise participate as a commissioner.

(b) During the absence or physical or mental disability of the chairperson for any cause, the vice chairperson shall be clothed with all the rights and privileges of the chairperson and shall perform the duties of the office of the chairperson so long as such absence or disability shall continue. Any such absence or disability shall be declared by majority vote of all commissioners.

³⁸ See FN 33.

OPTION C

WEAK CHAIRPERSON FORM OF GOVERNMENT

SECTION 4.1.

CHAIRPERSON.

{OPTION 1. (a) By a majority vote of all its members, the board of commissioners shall elect a member of the board to serve as chairperson. The chairperson shall serve for _____.³⁹}

{OPTION 2. (a) The chairperson shall be elected as provided in Article II of this Act.}

(b) The chairperson shall:

(1) Preside at all meetings of the board of commissioners;

(2) Be the head of the county for the purpose of service of process and for ceremonial purposes and be the official spokesperson for the county and the chief advocate of policy;

(3) Have the power to administer oaths and to take affidavits;

(4) Sign as a matter of course on behalf of the county all written and approved contracts, ordinances, and other instruments executed by the county which by law are required to be in writing;

(5) Vote on matters before the board of commissioners and be counted toward a quorum as any other commissioner;⁴⁰

(6) Prepare and submit to the board of commissioners a recommended annual operating budget and recommended capital budget; and

(7) Fulfill such other executive and administrative duties as the board of commissioners shall by ordinance establish.

³⁹ The term of office needs to be specified. It could for one year, a term to run current with the member's term of office as a commissioner, or something in between.

⁴⁰

SECTION 4.2.

VICE CHAIRPERSON.

At the first regular meeting of each year, the board of commissioners shall, by majority vote, elect a commissioner to serve as vice chairperson. The vice chairperson shall serve for the calendar year in which he or she is elected. In the event of a vacancy in the office of vice chairperson, the board shall elect a new vice chairperson to serve for the remainder of the calendar year. The vice chairperson shall assume the duties and powers of the chairperson during the chairperson's physical or mental disability or absence. Any such disability or absence shall be declared by a majority vote of the commissioners.

OPTION D

STRONG CHAIRPERSON FORM OF GOVERNMENT

SECTION 4.1.

CHAIRPERSON; CHIEF EXECUTIVE OFFICER; POWERS & DUTIES.

(a)(1) **{OPTION 1. By a majority vote of all its members, the board of commissioners shall elect a member to serve as chairperson. The chairperson shall serve for _____.⁴¹}**

{OPTION 2. The chairperson shall be elected as provided in Article II of this Act.}

(2) The chairperson shall be **{full-time}** **{part-time}** and shall be the chief executive of this county. The chairperson shall possess all of the executive and administrative power granted to the county under the Constitution and laws of the State of Georgia, and all the executive and administrative powers contained in this Act.

(b) As the chief executive of this county, the chairperson shall:

(1) See that all laws and ordinances of the county are faithfully executed;

⁴¹ Under this option, the term of office needs to be specified. It could for one year, a term to run current with the member's term of office as a commissioner, or something in between.

- (2) Appoint and remove all officers, department heads, and employees of the county except as otherwise provided in this Act;
- (3) Exercise supervision over all executive and administrative work of the county and provide for the coordination of administrative activities;
- (4) Vote on all matter before the board of commissioners and be counted toward a quorum as any other commissioner⁴²;
- (5) Prepare and submit to the board of commissioners a recommended operating budget and capital budget;
- (6) Submit to the board of commissioners at least once a year a statement covering the financial conditions of the county and from time to time such other information as the commissioners may request;
- (7) Recommend to the board of commissioners such measures relative to the affairs of the county, improvement of the government, and promotion of the welfare of its inhabitants as the chairperson may deem expedient;
- (8) Call special meetings of the board of commissioners as provided for in subsection (b) of Section 3.9 of this Act;
- (9) Provide for an annual audit of all accounts of the county;
- (10) Require any department or agency of the county to submit written reports whenever the chairperson deems it expedient;
- (10) Sign as a matter of course all written contracts, ordinances, and other instruments executed by the county which by law are required to be in writing; and
- (11) Perform such other duties as may be required by law, this Act, or ordinance.

⁴² See FN 33.

SECTION 4.2.**VICE CHAIRPERSON.**

At the first regular meeting of each year, the board of commissioners shall, by majority vote, elect a commissioner to serve as vice chairperson. The vice chairperson shall serve for the calendar year in which he or she is elected. In the event of a vacancy in the office of vice chairperson, the board shall elect a new vice chairperson to serve for the remainder of the calendar year. The vice chairperson shall preside at all meetings of the board of commissioners and shall assume the duties and powers of the chairperson upon the chairperson's physical or mental disability or absence. The board of commissioners by a majority vote shall elect a new presiding officer from among its members for any period in which the chairperson pro tempore is disabled, absent, or acting as chairperson. Any such absence or disability shall be declared by majority vote of all of the board of commissioners.

ARTICLE V**SECTION 5.1.****OFFICES, DEPARTMENTS, & AGENCIES.**

(a) Except as otherwise provided in this Act, the board of commissioners by ordinance shall prescribe the functions or duties and establish, abolish, alter, consolidate, or leave vacant all non-elective offices, positions of employment, departments, and agencies of the county as necessary for the proper administration of the affairs and government of this county.

(b) Except as otherwise provided by this Act or by law, the directors of departments and other appointed officers of the county shall be appointed solely on the basis of their respective administrative and professional qualifications.

(c) All appointed officers and directors of departments shall receive such compensation as prescribed by ordinance.

(d) There shall be a director of each department or agency who shall be its principal officer. Each director shall, subject to the direction and supervision of the **(chairperson) (county manager)**, be responsible for the administration and direction of the affairs and operations of that director's department or agency.

(e) All appointed officers and directors under the supervision of the **(chairperson) (county manager)** shall be nominated by the **(chairperson) (county manager)** with confirmation of appointment by the board of commissioners. All appointed officers and directors shall be employees at will and subject to removal or suspension at any time by the **(chairperson) (county manager)** unless otherwise provided by law or ordinance.⁴³

SECTION 5.2.

BOARDS & COMMISSIONS.

(a) The board of commissioners shall create by ordinance such boards or commissions to fulfill any investigative, quasi-judicial, or quasi-legislative function the board deems necessary and shall by ordinance establish the composition, period of existence, duties, and powers thereof.

(b) All members of boards or commissions of the county shall be appointed by the **(board of commissioners) (county administrator) (chairperson)** for such terms of office and in such manner as shall be provided by ordinance, except where other appointing authority, terms of office, or manner of appointment is prescribed by this Act or by law.

(c) The board of commissioners by ordinance may provide for the compensation and reimbursement for actual and necessary expenses of the members of any board or commission.

(d) Except as otherwise provided by this Act or by law, no member of any board or commission shall hold any elective office in the county.

⁴³ If this power is to be exercised by the county manager, it might be wise to add a clarification that such power cannot be exercised over county commissioners.

(e) Any vacancy on a board or commission of the county shall be filled for the unexpired term in the manner prescribed in this Act for original appointment, except as otherwise provided by this Act or by law.

(f) No member of a board or commission shall assume office until that person has executed and filed with the county clerk an oath obligating that person to perform faithfully and impartially the duties of that person's office. Such oath shall be prescribed by ordinance and administered by the chairperson.

(g) All members of boards or commissions of the county serve at will and may be removed at any time by the **(board of commissioners) (county manager) (chairperson)** unless otherwise provided by law.

(h) Except as otherwise provided by this Act or by law, each board or commission of the county shall elect one of its members as chairperson and one member as vice chairperson⁴⁴ and may elect as its secretary one of its own members or may appoint as secretary an employee of the county. Each board or commission of the county government may establish such bylaws, rules, and regulations, not inconsistent with this Act, ordinances of the county, or law, as it deems appropriate and necessary for the fulfillment of its duties or the conduct of its affairs. Copies of such bylaws, rules, and regulations shall be filed with the county clerk.

SECTION 5.3.

COUNTY ATTORNEY.

(a) The **(board of commissioners) (county manager) (chairperson)** shall appoint a county attorney, together with such assistant county attorneys as may be authorized, and shall provide for the payment of such attorney or attorneys for services rendered to the county.

⁴⁴ Keep in mind that these chairpersons and vice chairpersons are not the same as the chairperson and vice chairperson of the board of commissioners.

(b) The county attorney shall be responsible for providing for the representation and defense of the county in all litigation in which the county is a party; shall attend the meetings of the board of commissioners as directed; shall advise the **(board of commissioners) (county manager) (chairperson)** and other officers and employees of the county concerning legal aspects of the county's affairs; and shall perform such other duties as may be required by virtue of such person's position as county attorney.

SECTION 5.4.

COUNTY CLERK.

(a) The **(board of commissioners) (county manager) (chairperson)** shall appoint a county clerk who shall not be the chairperson or a member of the board of commissioners and who shall report to and be responsible to the **(board of commissioners) (county manager) (chairperson)**. The county clerk shall be custodian of the official county seal and county records; maintain records required by this Act; and perform such other duties as may be required by the board of commissioners.

(b) The county clerk shall keep proper and accurate minutes of the board of commissioners. The minutes shall contain all the acts, orders, and proceedings of the board in chronological order. The minutes shall be open to the public for inspection at all times during regular office hours. Certified copies of any entries in the minutes shall be furnished by the clerk to any person requesting same upon payment of a reasonable fee, to be paid into the county treasury. The amount of such fee shall be set by the board in an amount sufficient to defray the costs of preparing the certified copies.

(c) The clerk, before entering on the discharge of the duties of the office, shall be required to give a satisfactory surety bond, which bond shall be in the sum of \$_____, payable to the board of commissioners. The costs of said bond shall be paid out of the general fund of the county. The bond shall be delivered to the board within five days of the clerk assuming his or her duties and, upon receipt, shall be filed by the county clerk with the probate court of _____ County. In lieu of individual bonds, the county may purchase a blanket bond or bonds pursuant to and in accordance with the provisions of Code

Section 45-4-11 of the O.C.G.A. The clerk shall take the same oath as required of the commissioners for the faithful performance of the clerk's duties. The clerk shall hold the office at the pleasure of the **(board of commissioners) (county manager) (chairperson)**.

SECTION 5.5.

EMPLOYEES; CLASSIFICATION; PAY PLAN.

(a) For purposes of this section, no elected or appointed county officials are considered county employees.

(b) The **(county manager) (chairperson)** shall be responsible for the preparation of a position classification and pay plan which shall be submitted to the board of commissioners for approval. Such plan may apply to all employees of the county and any of its agencies, departments, boards, or commissions. When a pay plan has been adopted, the **(county) (chairperson)** shall not increase or decrease the salary range applicable to any position except by amendment of such pay plan.

SECTION 5.6.

AT WILL STATUS.

All employees serve at will and may be removed from office at any time unless otherwise provided by ordinance.

ARTICLE VI.⁴⁵

SECTION 6.1.

TAXES, FEES, ASSESSMENTS, & CHARGES.

The board of commissioners is authorized to assess, levy, and collect such taxes, fees, assessments, and other charges allowed now or hereafter by law, or not otherwise prohibited by law and the specific mention of any right, power, or authority in this article shall not be construed as limiting in any way the general powers of this county to govern its local affairs.

SECTION 6.2.

DELINQUENT TAXES, FEES, ASSESSMENTS, CHARGES, OR REVENUE.

The board of commissioners by ordinance may provide generally for the collection of delinquent taxes, fees, assessments, charges, or other revenue due the county under this Act by whatever reasonable means as are not precluded by law. The provisions of such ordinance or ordinances shall include, but shall not be limited to, providing for the dates when the taxes, fees, assessments, charges, or other revenue are due; late penalties or interest; issuance and execution of fi. fas⁴⁶; creation and priority of liens; making delinquent taxes, fees, assessments, charges, or other revenues personal debts of the persons required to pay them; revoking county permits for failure to pay them; and providing for the assignment or transfer of tax executions.

{OPTIONAL SECTION 6.3.

BONDS.⁴⁷

(a) The board of commissioners shall have the power to issue:

⁴⁵ For detailed discussion of matters covered in Article VI, see *Handbook for Georgia County Commissioners*, 5th ed., Chapters 16-21.

⁴⁶ This is the abbreviation of the term writ of fieri facias. The abbreviated term is the commonly used and understood reference.

997 **(1) General obligation bonds for the purpose of raising revenue to carry out any**
998 **project, program, or venture authorized under this Act or the laws of the state; and**

999 **(2) Revenue bonds to be paid out of any revenue produced by the project, program,**
1000 **or venture for which they were issued.**

1001 **(b) Such power shall be exercised in accordance with the laws governing bond**
1002 **issuance by counties in effect at the time such issue is undertaken.}**

1003
1004 **SECTION 6.4.**

1005 **FISCAL YEAR.**

1006
1007 The board of commissioners shall set the fiscal year by ordinance pursuant to Code Section
1008 36-81-3 of the O.C.G.A. This fiscal year shall constitute the budget year and the year for
1009 financial accounting and reporting of each and every office, department, agency, and
1010 activity of the county government.

1011
1012 **SECTION 6.5.**

1013 **BUDGETS & AUDITS.**

1014
1015 (a) The board of commissioners shall comply with the budget and audit requirements and
1016 provisions of state law, including, but not limited to, Code Section 36-80-21 of the
1017 O.C.G.A. and Chapter 81 of Title 36 of the O.C.G.A.

47 A board of commissioners would have the power to incur bonded indebtedness regardless of whether specific authorization is included in the local Act. If this section is not used, then renumber Sections 6.4 through 6.13 as Sections 6.3 through 6.12.

(b) Such compliance shall include, but not be limited to, adherence to the procedures and requirements for the preparation and execution of an annual operating budget, a capital improvement plan, and a capital budget, including requirements as to the scope, content, and form of such budgets and plans. Such compliance shall also include submission of the final budget and audit to the Carl Vinson Institute of Government annually to be posted on its Web site.

SECTION 6.6.

OPERATING BUDGET.

On or before a date fixed by the board of commissioners but not later than ____ days prior to the beginning of each fiscal year, the **(county manager) (county administrator) (chairperson)** shall submit to the board of commissioners a proposed operating budget for the ensuing fiscal year. The budget shall be accompanied by a message from the **(county manager) (county administrator) (chairperson)** containing a statement of the general fiscal policies of the county, the important features of the budget, explanations of major changes recommended for the next fiscal year, a general summary of the budget, and other pertinent comments and information. The operating budget, the capital budget provided for in Section 6.10 of this Act, the budget message, and all supporting documents shall be filed in the office of the county clerk and shall be open to public inspection.

SECTION 6.7.

ACTION ON OPERATING BUDGET.

(a) The members of the board of commissioners may amend the operating budget proposed by the **(county manager) (county administrator) (chairperson)**, except that the budget as finally amended and adopted must provide for all expenditures required by state law or by other provisions of this Act and for all debt service requirements for the ensuing fiscal year. The total appropriations from any fund shall not exceed the estimated fund balance, reserves, and revenues.

(b) The board of commissioners by ordinance shall adopt the final operating budget for the ensuing fiscal year not later than _____ of each year. If the board fails to adopt the budget by said date, the amounts appropriated for operation for the then current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items prorated accordingly, until such time as the board adopts a budget for the ensuing fiscal year. Adoption of the budget shall take the form of an appropriations ordinance setting out the estimated revenues in detail by sources and making appropriations according to fund and by organizational unit, purpose, or activity as set out in the budget preparation ordinance.

(c) The amount set out in the adopted operating budget for each organizational unit shall constitute the annual appropriation for such, and no expenditure shall be made or encumbrance created in excess of the otherwise unencumbered balance of the appropriations or allotment thereof to which it is chargeable. The board of commissioners shall be authorized to adopt a purchase order/budget monitoring process for all organization units, including constitutional county officers, receiving an appropriation under the annual operating budget.

SECTION 6.8.

Levy of taxes.

The board of commissioners shall levy by ordinance such taxes as are necessary. The taxes and tax rates set by such ordinance shall be such that reasonable estimates of revenues from such levy shall at least be sufficient, together with other anticipated revenues, fund balances, and applicable reserves, to equal the total amount appropriated for each of the several funds set forth in the annual operating budget for defraying the expenses of the general government of this county.

SECTION 6.9.

OPERATING BUDGET CHANGES.

The board of commissioners by ordinance may make changes in the appropriations contained in the current operating budget at any regular meeting or special or emergency meeting called for such purpose. The additional expense of any additional appropriations made by a budget amendment should be offset from an existing unexpended surplus or from additional revenue sources.

SECTION 6.10.

CAPITAL IMPROVEMENTS PLAN; CAPITAL BUDGET.

(a) If capital expenditures beyond those normally approved in the regular budget are to be made, then on or before the date fixed by the board of commissioners, but not later than ____ days prior to the beginning of each fiscal year, the **(chairperson) (county manager) (county administrator)** shall submit to the board a proposed capital improvements plan with a recommended capital budget containing the means of financing the improvements proposed for the ensuing fiscal year. The board of commissioners shall have power to accept, with or without amendments, or reject the proposed plan and budget. If a capital budget is used, the board of commissioners shall not authorize an expenditure for the construction of any building, structure, work, or improvement unless the appropriations for such project are included in the capital budget, except to meet a public emergency as provided in Section 3.14 of this Act.

(b) If a capital budget is used, the board of commissioners shall adopt by ordinance the final capital budget for the ensuing fiscal year not later than _____ of each year. No appropriation provided for in a prior capital budget shall lapse until the purpose for which the appropriation was made shall have been accomplished or abandoned; provided, however, the **(chairperson) (county manager) (county administrator)** may submit amendments to the capital budget at any time during the fiscal year, accompanied

by recommendations. Any such amendments to the capital budget shall become effective only upon adoption by ordinance.

SECTION 6.11.

AUDITS.

Pursuant to Code Section 36-81-7 of the O.C.G.A., there shall be an annual independent audit⁴⁸ of all financial affairs and transactions of all funds and activities of the county government.

SECTION 6.12.

CONTRACT REQUIREMENTS.

No contract with the county shall be binding on the county unless:

(1) It is in writing; and

(2) It is made or authorized by the **(county manager) (county administrator) (board of commissioners)** and approval of the contract by the board of commissioners is entered in the minutes pursuant to Section 3.10 of this Act.

SECTION 6.13.

CENTRALIZED PURCHASING SYSTEM.

The board of commissioners shall by ordinance prescribe procedures for a system of centralized purchasing for the county.

⁴⁸ Note that although O.C.G.A. § 36-81-7(a) allows for variation regarding the type and frequency of an audit or a report of agreed upon procedures based upon the population and level of expenditures of the county, there are currently no counties which meet the criteria for anything other than an annual audit.

ARTICLE VII.

SECTION 7.1.

OFFICERS & EMPLOYEES; BONDS.

The officers and employees of this county, both elected and appointed, shall execute such surety or fidelity bonds in such amounts and upon such terms and conditions as the board of commissioners shall from time to time require by ordinance or as may be provided by law. The costs of said bonds shall be paid out of the general fund of the county. The bond shall be delivered to the board within five days of the officer or employee assuming his or her duties and, upon receipt, shall be filed by the county clerk with the probate court of _____ County. In lieu of individual bonds, the county may purchase a blanket bond or bonds pursuant to and in accordance with the provisions of Code Section 45-4-11 of the O.C.G.A.

SECTION 7.2.

EXISTING ORDINANCES, RESOLUTIONS, RULES, & REGULATIONS.

All ordinances, resolutions, rules, and regulations now in force in the county not inconsistent with this Act are declared valid and of full effect and force until amended or repealed by the board of commissioners.

SECTION 7.3.

EXISTING PERSONNEL & OFFICERS.

Except as specifically provided otherwise by this Act, all personnel and officers of this county and their rights, privileges, and powers shall continue beyond the time this Act takes effect for a period of ____ days before or during which time the existing board of commissioners shall pass a transition ordinance detailing the changes in personnel and appointed officers required or desired and arranging such titles, rights, privileges, and powers as may be required or desired to allow a reasonable transition.

SECTION 7.4.

PENDING MATTERS.

Except as specifically provided otherwise by this Act, all rights, claims, actions, orders, contracts, and legal or administrative proceedings shall continue and any such ongoing work or cases shall be completed by such county agencies, personnel, or offices as may be provided by the board of commissioners.

ARTICLE VIII.

SECTION 8.1.

SPECIFIC REPEALER.

An Act creating the board of commissioners of _____ County, approved _____ (Ga. L. _____, p. _____), and all amendatory Acts thereto, are repealed in their entirety.

{If only a partial amendment rather than an outright repeal of prior law is contemplated, be certain that if a prior Act being amended contains an attachment

with the description of commissioner districts, that language similar to the following is used: Said Act is further amended by striking in its entirety the attachment thereto containing the descriptions of commissioner districts which is identified as User:_____ Plan: _____ Plan Type: _____.⁴⁹

(ALTERNATIVE 1)

SECTION 8.2.

EFFECTIVE DATE.

This Act shall become effective on _____.

(ALTERNATIVE 2)

SECTION 8.2.

EFFECTIVE DATES.

Those provisions of this Act necessary for the election of the **(chairperson and)** members of the board of commissioners at the general election in _____ shall become effective upon the approval of this Act by the Governor and upon its otherwise becoming law without such approval. The remaining provisions of this Act shall become effective **(January 1, ____).**

49 The current practice of the Office of Legislative Counsel and the Reapportionment Office is that the description of commissioner districts is set forth by means of an “attachment” to the county commissioner Act. This attachment is actually a separate document appearing at the end of the Act rather than being included into the body of Act. In the event an existing county commissioner Act is merely being amended rather than completely replaced, the county attorney should be certain to include language that strikes the current attachment in the current Act that sets forth the commissioner district descriptions. This avoids the possibility of the amended Act containing simultaneously a description of both the old and the new districts.

SECTION 8.3.

GENERAL REPEALER.

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

**{REQUIRED PROVISION WHERE TERMS ARE LENGTHENED OR
SHORTENED}⁵⁰**

SECTION __.

The election superintendent of _____ County shall call and conduct an election as provided in this section for the purpose of submitting this Act to the electors of _____ County for approval or rejection. The election superintendent shall conduct that election on _____ {date/the earliest date therefor permissible under Code Section 21-2-540 of the O.C.G.A.} _____ and shall issue the call and conduct that election as provided by general law. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of _____ County. The ballot shall have written or printed thereon the words:

"() YES Shall the Act be approved which reconstitutes the board of commissioners of _____ County as a _____ member board and which (lengthens) () NO (shortens) the terms of office of members representing Commissioner Districts _____?"

All persons desiring to vote for approval of the Act shall vote "Yes," and all persons desiring to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on such question are for approval of the Act, then {the Act/Section __ of this Act/Sections __ through __ of this Act} shall become of full force and effect {immediately/on _____, _____}. If {the Act is/Section __ of this Act is/Sections __ through __ of this Act are} not so approved or if the election is not conducted as provided in this section, {Section __ of this Act/Sections __ through __ of this Act} shall not become

⁵⁰ If this section is utilized, add an appropriate clause in the bill caption on page 1.

1221 effective and this Act shall be automatically repealed on the first day of January
1222 immediately following that election date. The expense of such election shall be borne by
1223 _____ County. It shall be the election superintendent's duty to certify the result
1224 thereof to the Secretary of State.