

Senate Bill 35

By: Senators Johnson of the 1st and Lee of the 29th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,
2 so as to repeal the provisions of law requiring the adoption of a local government service
3 delivery strategy agreement by municipalities and counties; to reenact provisions of law
4 relating to coordinated and comprehensive planning as such provisions existed prior to May
5 1, 1997; to provide for related matters; to provide an effective date; to repeal conflicting
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
10 by striking Chapter 70, relating to coordinated and comprehensive planning by counties and
11 municipalities, and inserting in its place a new Chapter 70 to read as follows:

12 "CHAPTER 70
13 ~~ARTICLE 1~~

14 36-70-1.

15 The local governments of the State of Georgia are of vital importance to the state and its
16 citizens. The state has an essential public interest in promoting, developing, sustaining, and
17 assisting local governments. In addition, the natural resources, environment, and vital areas
18 of the state are of vital importance to the state and its citizens. The state has an essential
19 public interest in protecting and preserving the natural resources, the environment, and the
20 vital areas of the state. The purpose of this ~~article~~ chapter is to provide for local
21 governments to serve these essential public interests of the state by authorizing and
22 promoting the establishment, implementation, and performance of coordinated and
23 comprehensive planning by municipal governments and county governments, and this
24 ~~article~~ chapter shall be construed liberally to achieve that end. This ~~article~~ chapter is

1 enacted pursuant to the authority granted the General Assembly in the Constitution of the
 2 State of Georgia, including, but not limited to, the authority provided in Article III, Section
 3 VI, Paragraphs I and II(a)(1) and Article IX, Section II, Paragraphs III and IV.

4 36-70-2.

5 As used in this chapter, the term:

6 (1) 'Comprehensive plan' means any plan by a county or municipality covering such
 7 county or municipality proposed or prepared pursuant to the minimum standards and
 8 procedures for preparation of comprehensive plans and for implementation of
 9 comprehensive plans established by the department.

10 (2) 'Coordinated and comprehensive planning' means planning by counties and
 11 municipalities undertaken in accordance with the minimum standards and procedures for
 12 preparation of plans, for implementation of plans, and for participation in the coordinated
 13 and comprehensive planning process, as established by the department.

14 (3) 'County' means any county of this state.

15 (4) 'Department' means the Department of Community Affairs of the State of Georgia
 16 created pursuant to Article 1 of Chapter 8 of Title 50.

17 (5) 'Governing authority' or 'governing body' means the board of commissioners of a
 18 county, sole commissioner of a county, council, commissioners, or other governing
 19 authority for a county or municipality.

20 (5.1) 'Inactive municipality' means any municipality which has not for a period of three
 21 consecutive calendar years carried out any of the following activities:

22 (A) The levying or collecting of any taxes or fees;

23 (B) The provision of any of the following governmental services: water; sewage;
 24 garbage collection; police protection; fire protection; or library; or

25 (C) The holding of a municipal election.

26 ~~(5.2) 'Local government' means any county as defined in paragraph (3) of this Code~~
 27 ~~section or any municipality as defined in paragraph (7) of this Code section. The term~~
 28 ~~does not include any school district of this state.~~

29 ~~(5.3) 'Mechanisms' includes, but is not limited to, intergovernmental agreements,~~
 30 ~~ordinances, resolutions, and local Acts of the General Assembly in effect on July 1, 1997,~~
 31 ~~or executed thereafter.~~

32 (6) 'Minimum standards and procedures' means the minimum standards and procedures
 33 for preparation of comprehensive plans, for implementation of comprehensive plans, and
 34 for participation in the coordinated and comprehensive planning process, as established
 35 by the department, in accordance with Article 1 of Chapter 8 of Title 50. Minimum
 36 standards and procedures shall include any standards and procedures for such purposes

1 prescribed by a regional development center for counties and municipalities within its
2 region and approved in advance by the department.

3 (7) 'Municipality' means any municipal corporation of the state and any consolidated
4 city-county government of the state.

5 (8) 'Region' means the territorial area within the boundaries of operation for any regional
6 development center, as such boundaries shall be established from time to time by the
7 board of the department.

8 (9) 'Regional development center' means a regional development center established
9 under Article 2 of Chapter 8 of Title 50.

10 36-70-3.

11 The governing bodies of municipalities and counties are authorized:

12 (1) To develop, or to cause to be developed pursuant to a contract or other arrangement
13 approved by the governing body, a comprehensive plan;

14 (2) To develop, establish, and implement land use regulations which are consistent with
15 the comprehensive plan of the municipality or county, as the case may be;

16 (3) To develop, establish, and implement a plan for capital improvements which
17 conforms to minimum standards and procedures and to make any capital improvements
18 plan a part of the comprehensive plan of the municipality or county, as the case may be;

19 (4) To employ personnel, or to enter into contracts with a regional development center
20 or other public or private entity, to assist the municipality or county in developing,
21 establishing, and implementing its comprehensive plan;

22 (5) To contract with one or more counties or municipalities, or both, for assistance in
23 developing, establishing, and implementing a comprehensive plan, regardless of whether
24 the contract is to obtain such assistance or to provide such assistance; and

25 (6) To take all action necessary or desirable to further the policy of the state for
26 coordinated and comprehensive planning, without regard for whether any such action is
27 specifically mentioned in this ~~article~~ chapter or is otherwise specifically granted by law.

28 36-70-4.

29 (a) Each municipality and county shall automatically be a member of the regional
30 development center for the region which includes such municipality or county, as the case
31 may be.

32 (b) Each municipality and county shall pay, when and as they become due, the annual dues
33 required for membership in its regional development center.

1 (c) Each municipality and county shall participate in compiling a Georgia data base and
 2 network, coordinated by the department, to serve as a comprehensive source of information
 3 available, in an accessible form, to local governments and state agencies.

4 36-70-5.

5 (a) Except as provided in subsection (b) of this Code section, nothing in this ~~article~~ chapter
 6 shall limit or compromise the right of the governing body of any county or municipality
 7 to exercise the power of zoning.

8 (b) Any municipality which is as of April 17, 1992, an inactive municipality shall not on
 9 or after April 17, 1992, exercise any powers under this ~~article~~ chapter or exercise any
 10 zoning powers, until and unless the municipality is restored to active status by the
 11 enactment of an appropriate new or amended charter by local Act of the General Assembly.
 12 Any municipality which becomes an inactive municipality after April 17, 1992, shall not
 13 after becoming inactive exercise powers under this ~~article~~ chapter or exercise any zoning
 14 powers, until and unless the municipality is restored to active status by the enactment of
 15 an appropriate new or amended charter by local Act of the General Assembly.

16 (c) Any county which has located within its boundaries all or any part of any inactive
 17 municipality shall have full authority to exercise through its governing body all planning
 18 and zoning powers within the area of such inactive municipality within the county, in the
 19 same manner as if such area were an unincorporated area.

20 **ARTICLE 2**

21 ~~36-70-20.~~

22 ~~The intent of this article is to provide a flexible framework within which local governments~~
 23 ~~in each county can develop a service delivery system that is both efficient and responsive~~
 24 ~~to citizens in their county. The General Assembly recognizes that the unique characteristics~~
 25 ~~of each county throughout the state preclude a mandated legislative outcome for the~~
 26 ~~delivery of services in every county. The process provided by this article is intended to~~
 27 ~~minimize inefficiencies resulting from duplication of services and competition between~~
 28 ~~local governments and to provide a mechanism to resolve disputes over local government~~
 29 ~~service delivery, funding equity, and land use. The local government service delivery~~
 30 ~~process should result in the minimization of noncompatible municipal and county land use~~
 31 ~~plans and in a simple, concise agreement describing which local governments will provide~~
 32 ~~which service in specified areas within a county and how provision of such services will~~
 33 ~~be funded.~~

1 ~~36-70-21.~~

2 ~~Each county and municipality shall execute an agreement for the implementation of a local~~
3 ~~government service delivery strategy as set forth in this article by July 1, 1999.~~

4 ~~36-70-22.~~

5 ~~Each county shall initiate the process for developing a local government service delivery~~
6 ~~strategy after July 1, 1997, but no later than January 1, 1998. Initiation of the strategy shall~~
7 ~~be accomplished by the provision of a written notice from the county to the governing~~
8 ~~bodies of all municipalities located wholly or partially within the county or providing~~
9 ~~services within the county and to other counties providing services within the county. Such~~
10 ~~notice shall state the date, time, and place for a joint meeting at which designated~~
11 ~~representatives of all local governing bodies shall assemble for the purpose of commencing~~
12 ~~deliberations on the service delivery strategy. The notice shall be sent not more than 45 and~~
13 ~~not less than 15 days prior to the meeting date. In the event the county governing authority~~
14 ~~fails to initiate the process by January 1, 1998, any municipality within the county may do~~
15 ~~so by sending a written notice, containing the required information, to the county and all~~
16 ~~other municipalities.~~

17 ~~36-70-23.~~

18 ~~Each local government service delivery strategy shall include the following components:~~

19 ~~(1) An identification of all local government services presently provided or primarily~~
20 ~~funded by each general purpose local government and each authority within the county,~~
21 ~~or providing services within the county, and a description of the geographic area in which~~
22 ~~the identified services are provided by each jurisdiction;~~

23 ~~(2) An assignment of which local government or authority, pursuant to the requirements~~
24 ~~of this article, will provide each service, the geographic areas of the county in which such~~
25 ~~services are to be provided, and a description of any services to be provided by any local~~
26 ~~government to any geographic area outside its geographical boundaries. In the event two~~
27 ~~or more local governments within the county are assigned responsibility for providing~~
28 ~~identical services within the same geographic area, the strategy shall include an~~
29 ~~explanation of such arrangement;~~

30 ~~(3) A description of the source of the funding for each service identified pursuant to~~
31 ~~paragraph (2) of this Code section; and~~

32 ~~(4) An identification of the mechanisms to be utilized to facilitate the implementation of~~
33 ~~the services and funding responsibilities identified pursuant to paragraphs (2) and (3) of~~
34 ~~this Code section.~~

1 ~~36-70-24.~~

2 In the development of a service delivery strategy, the following criteria shall be met:

3 ~~(1) The strategy shall promote the delivery of local government services in the most~~
4 ~~efficient, effective, and responsive manner. The strategy shall identify steps which will~~
5 ~~be taken to remediate or avoid overlapping and unnecessary competition and duplication~~
6 ~~of service delivery and shall identify the time frame in which such steps shall be taken.~~
7 ~~When a municipality provides a service at a higher level than the base level of service~~
8 ~~provided throughout the geographic area of the county by the county, such service shall~~
9 ~~not be considered a duplication of the county service;~~

10 ~~(2)(A) The strategy shall provide that water or sewer fees charged to customers located~~
11 ~~outside the geographic boundaries of a service provider shall not be arbitrarily higher~~
12 ~~than the fees charged to customers receiving such service which are located within the~~
13 ~~geographic boundaries of the service provider.~~

14 ~~(B) If a governing authority disputes the reasonableness of water and sewer rate~~
15 ~~differentials imposed within its jurisdiction by another governing authority, that~~
16 ~~disputing governing authority may hold a public hearing for the purpose of reviewing~~
17 ~~the rate differential. Following the preparation of a rate study by a qualified engineer,~~
18 ~~the governing authority may challenge the arbitrary rate differentials on behalf of its~~
19 ~~residents in a court of competent jurisdiction. Prior to such challenge, the dispute shall~~
20 ~~be submitted to some form of alternative dispute resolution;~~

21 ~~(3)(A) The strategy shall ensure that the cost of any service which a county provides~~
22 ~~primarily for the benefit of the unincorporated area of the county shall be borne by the~~
23 ~~unincorporated area residents, individuals, and property owners who receive the~~
24 ~~service. Further, when the county and one or more municipalities jointly fund a~~
25 ~~county-wide service, the county share of such funding shall be borne by the~~
26 ~~unincorporated residents, individuals, and property owners that receive the service.~~

27 ~~(B) Such funding shall be derived from special service districts created by the county~~
28 ~~in which property taxes, insurance premium taxes, assessments, or user fees are levied~~
29 ~~or imposed or through such other mechanism agreed upon by the affected parties which~~
30 ~~complies with the intent of subparagraph (A) of this paragraph; and~~

31 ~~(4)(A) Local governments within the same county shall, if necessary, amend their land~~
32 ~~use plans so that such plans are compatible and nonconflicting, or, as an alternative,~~
33 ~~they shall adopt a single land use plan for the unincorporated and incorporated areas of~~
34 ~~the county.~~

35 ~~(B) The provision of extraterritorial water and sewer services by any jurisdiction shall~~
36 ~~be consistent with all applicable land use plans and ordinances.~~

~~(C) A process shall be established by each county and every municipality located within each county, regardless of population, to resolve land use classification disputes when a county objects to the proposed land use of an area to be annexed into a municipality within the county.~~

~~36-70-25:~~

~~(a) Approval of the local government service delivery strategy shall be accomplished as provided for in this Code section.~~

~~(b) The county and each municipality within the county shall participate in the development of the strategy. Approval of the strategy shall be accomplished by adoption of a resolution:~~

~~(1) By the county governing authority;~~

~~(2) By the governing authority of municipalities located within the county which have a population of 9,000 or greater within the county;~~

~~(3) By the municipality which serves as the county site if not included in paragraph (2) of this subsection; and~~

~~(4) By no less than 50 percent of the remaining municipalities within the county which contain at least 500 persons within the county if not included in paragraph (2) or (3) of this subsection.~~

~~(c) For the purpose of determining population, the population in the most recent United States decennial census shall be utilized.~~

~~(d) The adoption of a service delivery strategy specified in Code Section 36-70-21 may be extended to a date certain no later than 120 days following the date otherwise specified in Code Section 36-70-21 upon written agreement of the local governments enumerated in subsection (b) of this Code section. In the event such an agreement is executed, the sanctions specified in Code Section 36-70-27 shall not apply until on and after such extended date.~~

~~36-70-25.1:~~

~~(a) As used in this Code section, the term 'affected municipality' means each municipality required to adopt a resolution approving the local government service delivery strategy pursuant to subsection (b) of Code Section 36-70-25.~~

~~(b) If a county and the affected municipalities in the county do not reach an agreement on a service delivery strategy, the provisions of this Code section shall be followed as the process to resolve the dispute.~~

~~(c) If a county and the affected municipalities in the county are unable to reach an agreement on the strategy prior to the imposition of the sanctions provided in Code Section~~

1 ~~36-70-27, a means for facilitating an agreement through some form of alternative dispute~~
2 ~~resolution shall be employed. Where the alternative dispute resolution action is~~
3 ~~unsuccessful, the neutral party or parties shall prepare a report which shall be provided to~~
4 ~~each governing authority and made a public record. The cost of alternative dispute~~
5 ~~resolution authorized by this subsection shall be shared by the parties to the dispute pro rata~~
6 ~~based on each party's population according to the most recent United States decennial~~
7 ~~census. The county's share shall be based upon the unincorporated population of the~~
8 ~~county.~~

9 ~~(d) In the event that the county and the affected municipalities in the county fail to reach~~
10 ~~an agreement after the impositions of sanctions provided in Code Section 36-70-27, then~~
11 ~~the following process is available to the parties:~~

12 ~~(1)(A) The county or any affected municipality located within the county may file a~~
13 ~~petition in superior court of the county seeking mandatory mediation. Such petition~~
14 ~~shall be assigned to a judge, pursuant to Code Section 15-1-9.1 or 15-6-13, who is not~~
15 ~~a judge in the circuit in which the county is located. The judge selected may also be a~~
16 ~~senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit.~~

17 ~~(B) The visiting or senior judge shall appoint a mediator within 30 days of receipt of~~
18 ~~the petition. Mediation shall commence within 30 days of the appointment of a~~
19 ~~mediator. The mandatory mediation process shall be completed within 60 days~~
20 ~~following the appointment of the mediator. A majority of the members of the governing~~
21 ~~body of the county and each affected municipality shall attend the initial mediation.~~
22 ~~Following the initial meeting, the mediation shall proceed in the manner established at~~
23 ~~the initial meeting. If there is no agreement on how the mediation should proceed, a~~
24 ~~majority of the members of the governing body of the county and each affected~~
25 ~~municipality shall be required to attend each mediation session unless another process~~
26 ~~is agreed upon. Unless otherwise provided in accordance with paragraph (2) of this~~
27 ~~subsection, the cost of alternative dispute resolution authorized by this subsection shall~~
28 ~~be shared by the parties to the dispute pro rata based on each party's population~~
29 ~~according to the most recent United States decennial census.~~

30 ~~(C) During the mediation process described in this subsection, the sanctions imposed~~
31 ~~pursuant to Code Section 36-70-27 may, by order of the court, be held in abeyance by~~
32 ~~the judge against any or all of the parties participating in such mediation process.~~

33 ~~(D) The judge may, by order of the court, substitute any mediation entered into~~
34 ~~pursuant to subsection (c) of this Code section for the mediation required pursuant to~~
35 ~~this subsection.~~

36 ~~(2) If no service delivery strategy has been submitted for verification to the Department~~
37 ~~of Community Affairs at the conclusion of the mediation, any aggrieved party may~~

~~petition the superior court and seek resolution of the items remaining in dispute. The visiting or senior judge shall conduct an evidentiary hearing or hearings as such judge deems necessary and render a decision with regard to the disputed items. In rendering the decision, the judge shall consider the required elements of a service delivery strategy with a goal of achieving the intent of this article as specified in Code Section 36-70-20. It shall be in the discretion of the judge to hold the sanctions specified in Code Section 36-70-27 against one or more of the parties in abeyance pending the disposition of the action. The court is authorized to utilize its contempt powers to obtain compliance with its decision relating to the disputed items under review. The judge shall be authorized to impose mediation costs and court costs against any party upon a finding of bad faith.~~

~~(e) The court shall notify, or cause to be notified, the Department of Community Affairs in the event that penalties are abated during the pendency of mediation or litigation held pursuant to subsection (d) of this Code section. A notice shall also be sent in the event penalties become applicable to the parties.~~

~~(f) Any service delivery agreement implemented as a result of the process set forth in this Code section shall remain in effect until revised pursuant to Code Section 36-70-28.~~

~~36-70-26.~~

~~Each county shall file the agreement for the implementation of strategy required by Code Section 36-70-21 with the department. The department shall, within 30 days of receipt, verify that the strategy includes the components enumerated in Code Section 36-70-23 and the minimum criteria enumerated in Code Section 36-70-24. The department, however, shall neither approve nor disapprove the specific elements or outcomes of the strategy.~~

~~36-70-27.~~

~~(a) On and after July 1, 1999, no state administered financial assistance or grant, loan, or permit shall be issued to any local government or authority which is not included in a department verified strategy or for any project which is inconsistent with such strategy; provided, however, that a municipality or authority located or operating in more than one county shall be included in a department verified strategy for each county wherein the municipality or authority is located or operating.~~

~~(b)(1) If a municipality containing fewer than 500 persons within the county fails to establish a process to resolve disputes as required by subparagraph (C) of paragraph (4) of Code Section 36-70-24, the sanctions specified in subsection (a) of this Code section shall not be imposed upon:~~

~~(A) The county within which any such municipality or portion of any such municipality is located; or~~

1 ~~(B) Any other municipality located in such county.~~

2 ~~(2) The provisions of this subsection shall apply only if a process to resolve disputes~~
 3 ~~required by subparagraph (C) of paragraph (4) of Code Section 36-70-24 has been~~
 4 ~~established between the county and each municipality containing 500 or more persons~~
 5 ~~within the county.~~

6 ~~(c) Any local government or authority which is subject to the sanctions specified in~~
 7 ~~subsection (a) of this Code section shall become eligible for state administered financial~~
 8 ~~assistance or grants, loans, or permits on the first day of the month following verification~~
 9 ~~by the department that the requirements of Code Section 36-70-26 have been met.~~

10 ~~36-70-28.~~

11 ~~(a) As used in the Code section, the term 'affected municipality' means each municipality~~
 12 ~~required to adopt a resolution approving the local government service delivery strategy~~
 13 ~~pursuant to subsection (b) of Code Section 36-70-25.~~

14 ~~(b) Each county and affected municipality shall review, and revise if necessary, the~~
 15 ~~approved strategy:~~

16 ~~(1) In conjunction with updates of the comprehensive plan as required by Article 1 of~~
 17 ~~this chapter;~~

18 ~~(2) Whenever necessary to change service delivery or revenue distribution arrangements;~~

19 ~~(3) Whenever necessary due to changes in revenue distribution arrangements;~~

20 ~~(4) In the event of the creation, abolition, or consolidation of local governments;~~

21 ~~(5) When the existing service delivery strategy agreement expires; or~~

22 ~~(6) Whenever the county and affected municipalities agree to revise the strategy.~~

23 ~~(c) In the event that a county or an affected municipality located within the county refuses~~
 24 ~~to review and revise, if necessary, a strategy in accordance with paragraphs (2) and (3) of~~
 25 ~~subsection (b) of this Code section, then any of the parties may use the alternative dispute~~
 26 ~~resolution and appeal procedures set forth in subsection (d) of Code Section 36-70-25.1."~~

27 **SECTION 2.**

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

30 **SECTION 3.**

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