

Senate Bill 490

By: Senators Unterman of the 45th, Mullis of the 53rd, Reed of the 35th and Bulloch of the 11th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 70 of Title 36 of the Official Code of Georgia Annotated, relating to
2 coordinated and comprehensive planning and service delivery by counties and municipalities,
3 so as to provide definitions; to provide for legislative intent; to provide for periodic reviews
4 and amendments to service delivery strategies; to provide for the documentation of such
5 reviews; to provide for verification of such strategies by the Department of Community
6 Affairs; to provide for midpoint reviews under certain circumstances; to provide the
7 mechanism for initiating reviews; to provide for the required components and criteria of such
8 strategies; to provide for the approval of such strategies by the department; to provide dispute
9 resolution procedures; to provide for the allocation of the costs of such procedures; to
10 provide for the rescinding of a strategy by the department under certain circumstances; to
11 provide for sanctions for failure to adopt a proper strategy; to provide for exceptions; to
12 provide for reviews of the strategy upon certain occurrences and the manner of initiating such
13 reviews; to provide for related matters; to provide an effective date; to repeal conflicting
14 laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 style="text-align:center">**SECTION 1.**

17 Chapter 70 of Title 36 of the Official Code of Georgia Annotated, relating to coordinated and
18 comprehensive planning and service delivery by counties and municipalities, is amended by
19 striking Code Section 36-70-2, relating to definitions, and inserting in lieu thereof a new
20 Code Section 36-70-2 to read as follows:

21 "36-70-2.

22 As used in this chapter, the term:

23 (1) 'Affected municipality' means the municipality that serves as the county site within
24 each county and all other municipalities which contain at least 500 persons within each
25 county.

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

5 ~~(2)~~(3) 'Coordinated and comprehensive planning' means planning by counties and
 6 municipalities undertaken in accordance with the minimum standards and procedures for
 7 preparation of plans, for implementation of plans, and for participation in the coordinated
 8 and comprehensive planning process, as established by the department.

9 ~~(3)~~(4) 'County' means any county of this state.

10 ~~(4)~~(5) 'Department' means the Department of Community Affairs of the State of Georgia
 11 created pursuant to Article 1 of Chapter 8 of Title 50.

12 ~~(5)~~(6) 'Governing authority' or 'governing body' means the board of commissioners of
 13 a county, sole commissioner of a county, council, commissioners, or other governing
 14 authority for a county or municipality.

15 ~~(5.1)~~(7) 'Inactive municipality' means any municipality which has not for a period of
 16 three consecutive calendar years carried out any of the following activities:

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

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

20 (C) The holding of a municipal election.

21 (8) 'Jurisdictional boundaries' means, for the purpose of Article 2 of this chapter, the area
 22 within the incorporated boundaries of a municipality for cities and towns and the area
 23 within the unincorporated portion of the county for counties.

24 ~~(5.2)~~(9) 'Local government' means any county as defined in paragraph ~~(3)~~(4) of this Code
 25 section or any municipality as defined in paragraph ~~(7)~~(12) of this Code section. The term
 26 does not include any school district of this state.

27 ~~(5.3)~~(10) 'Mechanisms' includes, but is not limited to, intergovernmental agreements,
 28 ordinances, resolutions, and local Acts of the General Assembly in effect on July 1, 1997,
 29 or executed thereafter.

30 ~~(6)~~(11) 'Minimum standards and procedures' means the minimum standards and
 31 procedures for preparation of comprehensive plans, for implementation of comprehensive
 32 plans, and for participation in the coordinated and comprehensive planning process, as
 33 established by the department, in accordance with Article 1 of Chapter 8 of Title 50.
 34 Minimum standards and procedures shall include any standards and procedures for such
 35 purposes prescribed by a regional development center for counties and municipalities
 36 within its region and approved in advance by the department.

1 36-70-22.

2 ~~(a)(1) Each county shall initiate the process for developing a local government service~~
 3 ~~delivery strategy after July 1, 1997, but no later than January 1, 1998 and all~~
 4 ~~municipalities located within such county shall review and amend, if necessary, their~~
 5 ~~existing service delivery strategy concurrently with the ten-year schedule for updating the~~
 6 ~~county's and municipalities' comprehensive plans as required by the department. The~~
 7 ~~county government is responsible for initiating the process for reviewing the existing~~
 8 ~~service strategy delivery at least six months prior to the county's and municipalities'~~
 9 ~~scheduled comprehensive plan update deadline as required by the department. In the~~
 10 ~~event the county governing authority fails to initiate the amendment process at least six~~
 11 ~~months prior to the county's and municipalities' scheduled deadline, any municipality~~
 12 ~~located wholly or partially within the county may do so by sending a written notice to the~~
 13 ~~county and all other municipalities containing the information required by paragraph (3)~~
 14 ~~of this subsection.~~

15 ~~(2) To document that the required ten-year strategy review required by paragraph (1) of~~
 16 ~~this subsection has been completed, the county and affected municipalities shall, in~~
 17 ~~accordance with the provisions of Code Section 36-70-25, either approve the existing~~
 18 ~~strategy without any amendments or approve amendments to the existing strategy. Any~~
 19 ~~amendments to the strategy arising from the required ten-year review cycle that are~~
 20 ~~approved by the local governments in accordance with the provisions of Code Section~~
 21 ~~36-70-25 shall be forwarded to the department for verification.~~

22 ~~(3) Initiation of the strategy review shall be accomplished by the provision of a written~~
 23 ~~notice from the county initiating local government to the governing bodies of all~~
 24 ~~municipalities local governments located wholly or partially within the county or~~
 25 ~~providing services within the county and to other counties and municipalities providing~~
 26 ~~services within the county. Such notice shall state the date, time, and place for a joint~~
 27 ~~meeting at which designated representatives of all local governing bodies shall assemble~~
 28 ~~for the purpose of commencing deliberations on the service delivery strategy. The notice~~
 29 ~~shall be sent not more than 45 and not less than 15 days prior to the meeting date. In the~~
 30 ~~event the county governing authority fails to initiate the process by January 1, 1998, any~~
 31 ~~municipality within the county may do so by sending a written notice, containing the~~
 32 ~~required information, to the county and all other municipalities.~~

33 ~~(b) The county government or any municipality located wholly or partially within the~~
 34 ~~county is authorized, but not required, to initiate the process of reviewing the existing local~~
 35 ~~government service delivery strategy at the five-year date midway through the required~~
 36 ~~ten-year schedule to reviewing the strategy as required in subsection (a) of this Code~~
 37 ~~section if the county or any municipality determines that the strategy needs to be amended.~~

1 Such review process shall be initiated at least six months prior to the date midway through
 2 the ten-year schedule. The department shall publish a schedule for each county that
 3 specifies the date that is midway through the ten-year schedule. The procedure for
 4 initiating this strategy amendment process shall follow the provisions of paragraph (3) of
 5 subsection (a) of this Code section. Any amendments to the strategy arising from the
 6 five-year midpoint review that are approved by the local governments in accordance with
 7 the provisions of Code Section 36-70-25 shall be forwarded to the department for
 8 verification.

9 36-70-23.

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

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

15 (2) An assignment of which local government or authority, pursuant to the requirements
 16 of this article, will provide each service, the geographic areas of the county in which such
 17 services are to be provided, and a description of any services to be provided by any local
 18 government to any geographic area outside its ~~geographical~~ jurisdictional boundaries.

19 In the event two or more local governments within the county are assigned responsibility
 20 for providing identical services within the same geographic area, the strategy shall
 21 include an explanation of such arrangement;

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

24 (4) An identification of the mechanisms to be utilized to facilitate the implementation of
 25 the services and funding responsibilities identified pursuant to paragraphs (2) and (3) of
 26 this Code section.

27 36-70-24.

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

29 (1) The strategy shall promote the delivery of local government services in the most
 30 efficient, effective, and responsive manner. ~~The strategy and shall identify steps which~~
 31 ~~will be taken to remediate or avoid overlapping and unnecessary~~ eliminate competition
 32 and duplication of service delivery ~~and shall identify the time frame in which such steps~~
 33 ~~shall be taken.~~ When a municipality provides a service at a higher level than the base
 34 level of service provided throughout the geographic area of the county by the county,
 35 such service shall not be considered a duplication of the county service;

1 (2)(A) The strategy, at the time of its local approval, shall ~~provide~~ ensure that water or
 2 sewer fees charged to customers located outside the ~~geographic~~ jurisdictional
 3 boundaries of a service provider ~~shall~~ are not be arbitrarily higher than the fees charged
 4 to customers receiving such service which are located within the ~~geographic~~
 5 jurisdictional boundaries of the service provider.

6 (B) ~~If a governing authority disputes, after the requirement of subparagraph (A) of this~~
 7 ~~paragraph has been met, a governing authority has cause to dispute~~ the reasonableness
 8 of water and sewer rate differentials imposed within its jurisdiction by another
 9 governing authority, that disputing governing authority may hold a public hearing for
 10 the purpose of reviewing the rate differential. Following the preparation of a rate study
 11 by a qualified engineer, the governing authority may challenge the ~~arbitrary~~ rate
 12 differentials on behalf of its residents in a court of competent jurisdiction. Prior to such
 13 challenge, the dispute shall be submitted to ~~some form of alternative~~ the dispute
 14 resolution process provided for in Code Section 36-70-25.1;

15 (3)(A) The strategy, at the time of its local approval, shall ensure that the cost of any
 16 service which a county provides primarily for the benefit of the unincorporated area of
 17 the county ~~shall be~~ is borne by the unincorporated area residents, individuals, and
 18 property owners who receive the service, except as otherwise provided through an
 19 agreed upon mechanism as identified in subparagraph (B) of this paragraph. Further,
 20 when the county and one or more municipalities jointly fund a county-wide service, the
 21 county share of such funding shall be borne by the unincorporated residents,
 22 individuals, and property owners that receive the service.

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

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

31 (B) The provision of extraterritorial water and sewer services by any ~~jurisdiction~~
 32 county, municipality, or authority shall be consistent with the land use element of all
 33 applicable ~~land use~~ comprehensive plans and land development ordinances.

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

1 36-70-25.

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

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

7 (1) By the county governing authority;

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

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

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

15 (c) For the purpose of determining population for this article, the population in the most
16 recent United States decennial census shall be utilized.

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

23 36-70-25.1.

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

27 ~~(b)(a) If a county and the affected municipalities in the county do not reach an agreement
28 on a service delivery strategy, either prior to or after the imposition of the sanctions
29 provided in Code Section 36-70-27, the provisions of this Code section shall be followed
30 as the process to resolve the dispute.~~

31 ~~(c) If a county and the affected municipalities in the county are unable to reach an
32 agreement on the strategy prior to the imposition of the sanctions provided in Code Section
33 36-70-27, a means for facilitating an agreement through some form of alternative dispute
34 resolution shall be employed. Where the alternative dispute resolution action is
35 unsuccessful, the neutral party or parties shall prepare a report which shall be provided to
36 each governing authority and made a public record. The cost of alternative dispute~~

1 resolution authorized by this subsection shall be shared by the parties to the dispute pro rata
 2 based on each party's population according to the most recent United States decennial
 3 census. The county's share shall be based upon the unincorporated population of the
 4 county.

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

8 (b)(1)(1)(A) The county or any affected municipality located within the county may file
 9 a petition in superior court of the county seeking mandatory mediation. If the county and
 10 the affected municipalities located wholly or partially within the county do not reach
 11 agreement on the required provisions of their strategy, the county or any affected
 12 municipality may file a petition in the superior court of the county seeking mandatory
 13 court supervised mediation using a uniform mediation petition prepared by the
 14 department. The petitioning government shall also provide a copy of the petition to the
 15 government or governments with whom the court supervised mediation is being sought,
 16 all other governments in the county that are parties to the strategy, and the department.

17 Such petition shall be assigned to a judge, pursuant to Code Section 15-1-9.1 or 15-6-13,
 18 who is not a judge in the circuit in which the county is located. The judge selected may
 19 also be a senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit.

20 (B)(2) The visiting or senior judge shall appoint a mediator within 30 days of receipt of
 21 the petition. Mediation shall commence within 30 days of the appointment of a mediator.
 22 The mandatory mediation process shall be completed within 60 days following the
 23 appointment of the mediator unless all of the governments that are parties to the
 24 mediation and the visiting or senior judge agree to a one-time extension not to exceed an
 25 additional 60 days. A majority of the members of ~~the governing body of the county and~~
 26 ~~each affected municipality~~ each governing authority that is a party to the mediation shall
 27 attend the initial mediation meeting session. Following the initial meeting, the mediation
 28 shall proceed in the manner established at the initial meeting. If there is no agreement
 29 on how the mediation should proceed at the initial meeting, a majority of the members
 30 of the governing body of ~~the county and each affected municipality~~ all the governments
 31 that are party to the mediation shall be required to attend each additional mediation
 32 session unless another process is agreed upon. ~~Unless otherwise provided in accordance~~
 33 ~~with paragraph (2) of this subsection, the~~ The cost of alternative dispute resolution
 34 authorized by this subsection shall be shared by the parties to the dispute pro rata based
 35 on each party's population according to the most recent United States decennial census
 36 with the county's population being based on the unincorporated area of the county.

1 ~~(C)~~(3) During the mediation process described in this subsection, the sanctions imposed
 2 pursuant to Code Section 36-70-27 may, by order of the court, be held in abeyance by the
 3 judge against any or all of the parties participating in such mediation process.

4 ~~(D)~~(4) ~~The judge may, by order of the court, substitute any mediation entered into~~
 5 ~~pursuant to subsection (c) of this Code section for the mediation required pursuant to this~~
 6 ~~subsection. If the local governments reach an agreement with regard to the dispute~~
 7 ~~during the court supervised mediation phase, the process shall be concluded and the~~
 8 ~~county and the affected municipalities shall amend their strategy to incorporate the agreed~~
 9 ~~upon provisions in their strategy.~~

10 ~~(2)~~(c) ~~If no service delivery strategy has been submitted for verification to the Department~~
 11 ~~of Community Affairs the local governing authorities do not reach agreement on all~~
 12 ~~provisions of their service delivery strategy at the conclusion of the court supervised~~
 13 ~~mediation identified in subsection (b) of this Code section, any aggrieved party may~~
 14 petition the superior court and seek resolution of the items remaining in dispute. The
 15 visiting or senior judge shall conduct an evidentiary hearing or hearings as such judge
 16 deems necessary and render a binding decision on all governments that are parties to the
 17 dispute with regard to ~~the~~ any remaining disputed items. In rendering the decision, the
 18 judge shall consider the ~~required elements~~ applicable components and criteria of a service
 19 delivery strategy as specified in Code Sections 36-70-23 and 36-70-24 with a goal of
 20 achieving the intent of this article as specified in Code Section 36-70-20. It shall be in the
 21 discretion of the judge to hold the sanctions specified in Code Section 36-70-27 against one
 22 or more of the parties in abeyance pending the disposition of the action. The court is
 23 authorized to utilize its contempt powers to obtain compliance by the governments with its
 24 decision relating to resolution of the disputed items ~~under review~~. The judge shall be
 25 authorized to impose mediation costs and court costs on all parties to the dispute. The cost
 26 of alternative dispute resolution authorized by this subsection shall be shared by the parties
 27 to the dispute pro rata based on each party's population according to the most recent United
 28 States decennial census. The county's share shall be based upon the unincorporated
 29 population of the county. The judge is also authorized to impose mediation and court costs
 30 against any party upon a finding of bad faith. The judge may also impose part or all of the
 31 mediation and court costs on any parties acting in bad faith.

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

36 ~~(f)~~(e) Any service delivery agreement or amendments agreed to or implemented as a result
 37 of the process set forth in this Code section shall be forwarded to the department for

1 verification and, once verified by the department, shall remain in effect until revised
 2 amended pursuant to Code Section 36-30-22 or 36-70-28.

3 (f) In the event that a county and one or more municipalities, or a municipality and one or
 4 more municipalities in a county, engage one or more neutral third parties in mediation
 5 pursuant to this article, the mediator may caucus jointly or independently with the parties
 6 to the mediation to facilitate a resolution to the conflict and such caucuses shall not be
 7 subject to the requirements of Chapter 14 of Title 50.

8 (g) In order to resolve a dispute regarding an approved service delivery strategy, the
 9 dispute resolution procedures identified in subsections (a) through (f) of this Code section
 10 may also be accessed by any municipality, located wholly or partially within a county, that
 11 is not an affected municipality. The dispute resolution procedure may be initiated under
 12 this subsection at any time within 24 months following the date on which the county's
 13 service delivery strategy is verified by the department.

14 36-70-26.

15 (a) Each county shall file the agreement for the implementation of the strategy required
 16 by Code Section 36-70-21 with the department. The department shall, within 30 days of
 17 receipt, either verify that the strategy includes the components enumerated in Code Section
 18 36-70-23 and the minimum criteria enumerated in Code Section 36-70-24 or indicate that
 19 it does not contain all of the required components or criteria. The department, however,
 20 shall neither approve nor disapprove the specific elements or outcomes of the strategy.

21 (b) The department shall rescind the verification of a strategy:

22 (1) One hundred and twenty days after the department has notified the county and all
 23 municipalities that the strategy no longer contains the components and criteria
 24 enumerated in Code Sections 36-70-23 and 26-70-24; or

25 (2) Whenever a strategy has not been reviewed within the time frame required by
 26 subsection (a) of Code Section 36-70-22 or Code Section 36-70-28.

27 36-70-27.

28 (a) On and after July 1, 1999, no No state administered financial assistance or grant, loan,
 29 or permit shall be issued to any local government or authority which is not included in a
 30 all applicable department verified strategy strategies or for any project which is
 31 inconsistent with such strategy; provided, however, that a municipality or authority located
 32 or operating in more than one county shall be included in a department verified strategy for
 33 each county wherein the municipality or authority is located or operating. This subsection
 34 shall not apply to such state grants, loans, or permits that are directly provided from the
 35 state to community service boards.

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

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

7 (B) Any other municipality located in such county.

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

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

16 36-70-28.

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

20 (b) ~~Each county and affected municipality shall review, and revise if necessary, the~~
 21 ~~approved strategy~~ In addition to the periodic reviews required and authorized by Code
 22 Section 36-30-22, the verified strategy for each county and its municipalities shall be
 23 reviewed and amended, if necessary:

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

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

27 (3)(1) ~~Whenever necessary due to changes in revenue distribution arrangements;~~

28 (4)(2) ~~In the event of the creation, abolition, or consolidation of local governments and~~
 29 including a change in the number of municipalities in a county resulting from annexation
 30 or deannexation;

31 (5)(3) ~~When the existing service delivery strategy agreement or any portion thereof~~
 32 ~~expires; or~~

33 (6)(4) ~~Whenever the county and affected municipalities agree to revise~~ amend the
 34 strategy.

35 (e) (b) ~~In the event that a county or an affected municipality located within the county~~
 36 ~~refuses to review and revise~~ amend, if necessary, a strategy ~~in accordance with paragraphs~~

1 ~~(2) and (3) of subsection (b) of this Code section~~, then any of the parties may use the
2 alternative dispute resolution and appeal procedures set forth in subsection ~~(d)~~ (b) of Code
3 Section 36-70-25.1 by giving notice to the county or municipalities involved in the dispute
4 at least 60 days in advance of filing the petition with the superior court.
5 (c) Any amendment of a verified strategy agreed to pursuant to the provisions of
6 subsection (a) of this Code section shall be approved by the county and affected
7 municipalities in accordance with the provisions of Code Section 36-70-25 and submitted
8 to the department for verification within 120 days of the date of the occurrences identified
9 in subsection (a) of this Code section."

10 **SECTION 3.**

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

13 **SECTION 4.**

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