

The House Committee on Governmental Affairs offers the following substitute to HB 2:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to  
2 annexation of territory, so as to provide that the provisions of Code Section 36-36-11,  
3 relating to the effect of an objection to land use following a rezoning and the minimum  
4 procedures for addressing related issues, shall not be used on or after July 1, 2007; to provide  
5 a procedure for resolving disputes between governing authorities relative to annexation; to  
6 provide for applicability; to provide for a notice of annexation; to provide for a prohibition  
7 on a change in zoning or land use; to provide for objection; to provide for grounds and  
8 procedures; to provide for an arbitration panel; to provide for membership, duties, and  
9 compensation; to provide for appeal; to provide for annexation following such procedures;  
10 to provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to annexation of  
14 territory, is amended by revising subsection (a) of Code Section 36-36-11, relating to the  
15 effect of an objection to land use following a rezoning and the minimum procedures for  
16 addressing related issues, as follows:

17 "(a) The intent of this Code section is to provide a mechanism to resolve disputes over land  
18 use arising out of the rezoning of property to a more intense land use in conjunction with  
19 or subsequent to annexation in order to facilitate coordinated planning between counties  
20 and municipalities particularly with respect to areas contiguous to municipal boundaries;  
21 provided, however, that on and after July 1, 2007, such dispute resolutions shall be  
22 governed by the provisions of Article 7 of this chapter and the provisions of this Code  
23 section shall be limited to proceedings initiated prior to such date."

24 style="text-align:center">**SECTION 2.**

25 Said chapter is further amended by adding a new article to read as follows:

H. B. 2 (SUB)

## "ARTICLE 7

36-36-110.

The procedures of this article shall apply to all annexations pursuant to this chapter but shall not apply to annexations by local Acts of the General Assembly.

36-36-111.

Upon receipt of a petition of annexation, a municipal corporation shall notify the governing authority of the county in which the territory to be annexed is located, and, if the municipality has an independent school system, shall notify the county school system, in both instances by certified mail or by statutory overnight delivery. Such notice shall include a copy of the annexation petition which shall include the proposed zoning and land use for such area. The municipal corporation shall take no final action on such annexation except as otherwise provided in this article.

36-36-112.

If no objection is received as provided in Code Section 36-36-113, the annexation may proceed as otherwise provided by law; provided, however, that as a condition of the annexation the municipal corporation shall not change the zoning or land use plan relating to the annexed property to a more intense density than that stated in the notice provided for in Code Section 36-36-111 for one year after the effective date of the annexation unless such change is made in the service delivery agreement or comprehensive plan and is adopted by the affected city and county and all required parties.

36-36-113.

(a) The county governing authority may by majority vote object to the annexation because of a material increase in burden upon the county directly related to any one or more of the following:

(1) The proposed change in zoning or land use;

(2) Proposed increase in density; and

(3) Infrastructure demands related to the proposed change in zoning or land use.

(b) Delivery of services may not be a basis for a valid objection but may be used in support of a valid objection if directly related to one or more of the subjects enumerated in paragraphs (1), (2), and (3) of subsection (a) of this Code section.

(c) The objection provided for in subsection (a) of this Code section shall document the nature of the objection specifically providing evidence of any financial impact forming the basis of the objection and shall be delivered to the municipal governing authority by

1 certified mail or statutory overnight delivery to be received not later than the end of the  
 2 thirtieth calendar day following receipt of the notice provided for in Code Section  
 3 36-36-111.

4 (d) In order for an objection pursuant to this Code section to be valid, the proposed change  
 5 in zoning or land use must:

6 (1) Differ in a material way from a county zoning ordinance or land use plan in effect  
 7 covering the property to be annexed at the time the county receives the notice of  
 8 annexation, or from the county's density standards for that property if the property is to  
 9 be zoned for residential purposes;

10 (2) Result in:

11 (A) A substantial change in the intensity of the allowable use of the property or a  
 12 change to a significantly different allowable use; or

13 (B) A use which significantly increases the net cost of infrastructure or significantly  
 14 diminishes the value or useful life of a capital outlay project, as such term is defined in  
 15 Code Section 48-8-110, which is furnished by the county to the area to be annexed; and

16 (3) Differ substantially from the existing uses suggested for the property by the county's  
 17 comprehensive land use plan or permitted for the property pursuant to the county's  
 18 zoning ordinance or its land use ordinances.

19 36-36-114.

20 (a) Not later than the fifteenth calendar day following the date the municipal corporation  
 21 received the first objection provided for in Code Section 36-36-113, an arbitration panel  
 22 shall be appointed as provided in this Code section.

23 (b) The arbitration panel shall be composed of five members to be selected as provided in  
 24 this subsection. The Department of Community Affairs shall develop three pools of  
 25 arbitrators, one pool which consists of persons who are currently or within the previous six  
 26 years have been municipal elected officials, one pool which consists of persons who are  
 27 currently or within the previous six years have been county elected officials, and one pool  
 28 which consists of persons with a master's degree or higher in public administration or  
 29 planning and who are currently employed by an institution of higher learning in this state,  
 30 other than the Carl Vinson Institute of Government. The pool shall be sufficiently large  
 31 to ensure as nearly as practicable that no person shall be required to serve on more than two  
 32 panels in any one calendar year and serve on no more than one panel in any given county  
 33 in any one calendar year. The department is authorized to coordinate with the Georgia  
 34 Municipal Association, the Association County Commissioners of Georgia, the Council of  
 35 Local Governments, and similar organizations in developing and maintaining such pools.

1 (c) Upon receiving notice of a disputed annexation, the department shall choose at random  
2 four names from the pool of municipal officials, four names from the pool of county  
3 officials, and three names from the pool of academics; provided, however, that none of  
4 such selections shall include a person who is a resident of the county which has interposed  
5 the objection or any municipal corporation located wholly or partially in such county. The  
6 municipal corporation shall be permitted to strike or excuse two of the names chosen from  
7 the county officials pool; the county shall be permitted to strike or excuse two of the names  
8 chosen from the municipal officials pool; and the county and municipal corporation shall  
9 each be permitted to strike or excuse one of the names chosen from the academic pool.

10 (d) Prior to being eligible to serve on any of the three pools, persons interested in serving  
11 on such panels shall receive joint training in alternative dispute resolution together with  
12 zoning and land use training, which may be designed and overseen by the Carl Vinson  
13 Institute of Government in conjunction with the Association County Commissioners of  
14 Georgia and the Georgia Municipal Association, provided such training is available.

15 (e) At the time any person is selected to serve on a panel for any particular annexation  
16 dispute, he or she shall sign the following oath: 'I do solemnly swear or affirm that I will  
17 faithfully perform my duties as an arbitrator in a fair and impartial manner without favor  
18 or affection to any party, and that I have not and will not have any ex parte communication  
19 regarding the facts and circumstances of the matters to be determined, other than  
20 communications with my fellow arbitrators, and will only consider, in making my  
21 determination, those matters which may lawfully come before me.'

22 36-36-115.

23 (a)(1) The arbitration panel appointed pursuant to Code Section 36-36-114 shall meet as  
24 soon after appointment as practicable and shall receive evidence and argument from the  
25 municipal corporation, the county, and the applicant or property owner and shall by  
26 majority vote render a decision which shall be binding on all parties to the dispute as  
27 provided for in this article not later than the sixtieth day following such appointment.  
28 The meetings of the panel in which evidence is submitted or arguments of the parties are  
29 made shall be open to the public pursuant to Chapter 14 of Title 50. The panel shall first  
30 determine the validity of the grounds for objection as specified in the objection. If an  
31 objection involves the financial impact on the county as a result of a change in zoning or  
32 land use or the provision of maintenance of infrastructure, the panel shall quantify such  
33 impact in terms of cost. As to any objection which the panel has determined to be valid,  
34 the panel, in its findings, may establish reasonable zoning, land use, or density conditions  
35 applicable to the annexation and propose any reasonable mitigating measures as to an  
36 objection pertaining to infrastructure demands.

- 1 (2) In arriving at its determination, the panel shall consider:
- 2 (A) The existing comprehensive land use plans of both the county and city;
- 3 (B) The existing land use patterns in the area of the subject property;
- 4 (C) The existing zoning patterns in the area of the subject property;
- 5 (D) Each jurisdiction's provision of infrastructure to the area of the subject property;
- 6 (E) Whether the county has approved similar changes in intensity or allowable uses on
- 7 similar developments in other unincorporated areas of the county;
- 8 (F) Whether the county has approved similar developments in other unincorporated
- 9 areas of the county which have a similar impact on infrastructure as complained of by
- 10 the county in its objection; and
- 11 (G) Whether the infrastructure or capital outlay project which is claimed adversely
- 12 impacted by the county in its objection was funded by a county-wide tax.
- 13 (3) The county shall provide supporting evidence that its objection is consistent with its
- 14 land use plan and the pattern of existing land uses and zonings in the area of the subject
- 15 property.
- 16 (4) The county shall bear at least 75 percent of the cost of the arbitration. The panel shall
- 17 apportion the remaining 25 percent of the cost of the arbitration equitably between the
- 18 city and the county as the facts of the appeal warrant; provided, however, that if the panel
- 19 determines that any party has advanced a position that is substantially frivolous, the costs
- 20 shall be borne by the party that has advanced such position.
- 21 (5) The panel shall deliver its findings and recommendations to the parties by certified
- 22 mail or statutory overnight delivery.
- 23 (b) If the decision of the panel contains zoning, land use, or density conditions, the
- 24 findings and recommendations of the panel shall be recorded in the deed records of the
- 25 county with a caption describing the name of the current owner of the property, recording
- 26 reference of the current owner's acquisition deed and a general description of the property,
- 27 and plainly showing the expiration date of any restrictions or conditions.
- 28 (c) The arbitration panel shall be dissolved on the tenth day after it renders its findings and
- 29 recommendations but may be reconvened as provided in Code Section 36-36-116.
- 30 (d) The members of the arbitration panel shall receive the same per diem, expenses, and
- 31 allowances for their service on the committee as is authorized by law for members of
- 32 interim legislative study committees.
- 33 (e) If the panel so agrees, any one or more additional annexation disputes which may arise
- 34 between the parties prior to the panel's initial meeting may be consolidated for the purpose
- 35 of judicial economy if there are similar issues of location or similar objections raised to
- 36 such other annexations or the property to be annexed in such other annexations is within
- 37 2,500 feet of the subject property.

1 36-36-116.

2 The municipal or county governing authority or an applicant for annexation may appeal the  
3 decision of the arbitration panel by filing an action in the superior court of the county  
4 within ten calendar days from receipt of the panel's findings and recommendations. The  
5 sole grounds for appeal shall be to correct errors of fact or of law, the bias or misconduct  
6 of an arbitrator, or the panel's abuse of discretion. The superior court shall schedule an  
7 expedited appeal and shall render a decision within 20 days from the date of filing. If the  
8 court finds that an error of fact or law has been made, that an arbitrator was biased or  
9 engaged in misconduct, or that the panel has abused its discretion, the court shall issue such  
10 orders governing the proposed annexation as the circumstances may require, including  
11 remand to the panel. Any unappealed order shall be binding upon the parties. The appeal  
12 shall be assigned to a judge who is not a judge in the circuit in which the county is located.

13 36-36-117.

14 If the annexation is completed after final resolution of any objection, whether by agreement  
15 of the parties, act of the panel, or court order as a result of an appeal, the municipal  
16 corporation shall not change the zoning, land use, or density of the annexed property for  
17 a period of one year unless such change is made in the service delivery agreement or  
18 comprehensive plan and adopted by the affected city and county and all required parties.  
19 Following the conclusion of the dispute resolution process outlined in this article, the  
20 municipal corporation and an applicant for annexation may either accept the  
21 recommendations of the arbitration panel and proceed with the remaining annexation  
22 process or abandon the annexation proceeding. A violation of the conditions set forth in  
23 this Code section may be enforced thereafter at law or in equity until such conditions have  
24 expired as provided in this Code section.

25 36-36-118.

26 If at any time during the proceedings the municipal corporation or applicant abandons the  
27 proposed annexation, the county shall not change the zoning, land use, or density affecting  
28 the property for a period of one year unless such change is made in the service delivery  
29 agreement or comprehensive plan and adopted by the affected city and county and all  
30 required parties. A violation of the conditions set forth in this Code section may be  
31 enforced thereafter at law or in equity until such period has expired. After final resolution  
32 of any objection, whether by agreement of the parties, act of the panel, or any appeal from  
33 the panel's decision, the terms of such decision shall remain valid for the one-year period  
34 and such annexation may proceed at any time during the one year without any further  
35 action or without any further right of objection by the county.

1 36-36-119.  
2 The county and municipal governing authorities shall negotiate in good faith throughout  
3 the annexation proceedings provided by this article and may at any time enter into a written  
4 agreement governing the annexation. If such agreement is reached after the arbitration  
5 panel has been appointed and before its dissolution, such agreement shall be adopted by  
6 the panel as its findings and recommendations. If such agreement is reached after an  
7 appeal is filed in the superior court and before the court issues an order, such agreement  
8 shall be made a part of the court's order. Any agreement reached as provided in this Code  
9 section shall be recorded as provided in Code Section 36-36-115."

10 **SECTION 3.**

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