OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission

The Office of Legislative Counsel

and

The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

Volume 27A

2025 Edition

Title 36. Local Government
(Chapters 60 —92)

Including Acts of the 2025 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

LexisNexis®
Miamisburg, Ohio
2025

ISBN 979-8-3417-0490-9
510572

(Pub. 41805)

THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 4th day of June, in the year of our Lord Two Thousand and Twenty-Five and of the Independence of the United States of America the Two Hundred and Forty-Ninth.

Brad Raffensperger

Brad Raffensperger, Secretary of State

(Pub. 41805)

Preface

This volume, along with the 2025 edition of Volume 27, cumulate and replace the 2019 edition of Volume 27 of the Official Code of Georgia Annotated, as supplemented by the 2024 Cumulative Supplement. The 2019 Volume 27 and its 2024 Supplement may be recycled or, if so desired, may be retained for historical purposes.

This volume contains all laws specifically codified in Title 36 (Chapters 60 through 92) by the General Assembly through the 2025 Regular Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through May 12, 2025. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; John Marshall Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated and the Official Compilation of the Rules and Regulations of the State of Georgia.

This volume retains amendment notes and effective date notes for Acts passed during the 2023, 2024, and 2025 Regular and Extraordinary Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2023 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Jurisdiction and authority of counties as to public roads generally, § 32-4-40 et seq.

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Creation, powers, and duties of area planning and development commissions, § 50-8-30 et seq.

Law reviews.

For article, "The Use of the Police Power by Local Governments and Some Problems of Intergovernmental Relations," see 8 J. Pub. L. 109 (1959).

For article, "Discretion in Georgia Local Government Law," see 8 Ga. L. Rev. 614 (1974).

For article analyzing the changing relationship between state and local governments in Georgia in light of "Amendment 19," see 9 Ga. L. Rev. 757 (1975).

For article, "Selected Oddities in Georgia Municipal Law," see 9 Ga. L. Rev. 783 (1975).

For article discussing developments in Georgia's local government law in 1976 and 1977, see 29 Mercer L. Rev. 189 (1977).

For article surveying Georgia cases in the area of local government law from June 1977 through May 1978, see 30 Mercer L. Rev. 133 (1978).

For annual survey on local government law, see 36 Mercer L. Rev. 255 (1984).

For article surveying local government law in 1984-1985, see 37 Mercer L. Rev. 313 (1985).

For annual survey of local government law, see 39 Mercer L. Rev. 275 (1987).

For annual survey of local government law, see 40 Mercer L. Rev. 303 (1988).

For annual survey of local government law, see 42 Mercer L. Rev. 359 (1990).

For annual survey of local government law, see 43 Mercer L. Rev. 317 (1991).

For annual survey article on local government law, see 45 Mercer L. Rev. 325 (1993).

For annual survey article on local government law, see 46 Mercer L. Rev. 363 (1994).

For student article, "Georgia Local Government Law: Court Resolution of County Government Disagreements," see 46 Mercer L. Rev. 599 (1994).

For annual survey article on local government law, see 49 Mercer L. Rev. 215 (1997).

For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

For annual survey article discussing local government law, see 51 Mercer L. Rev. 397 (1999).

For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

For article on cases in which the supreme court reversed the court of appeals on the subject of local government law, see 56 Mercer L. Rev. 1 (2004).

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Cross references.

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Creation, powers, and authority of municipal, county, and other housing authorities, § 8-3-1 et seq.

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County and municipal ordinances relating to inspection of meat, poultry, or dairy products, § 26-2-212.

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Regulation of business of dealers in precious metals and gems, § 43-37-1 et seq.

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Local political subdivisions purchases, § 50-5-100 et seq.

Law reviews.

For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

For article, "HB 286: Restricting Local and Municipal Governments' Ability to Reduce Police Department Funding," see 38 Ga. St. U.L. Rev. 201 (2021).

36-60-1. Licensing of self-service motor fuel dispensing pumps; penalty for operation without license or attendant.

(a) The governing authority of each county and municipal corpora-

tion is authorized to license the operation of self-service motor fuel dispensing pumps and to charge a fee for each license. If the governing authority determines that the operation of self-service motor fuel dispensing pumps will not be injurious to the health or welfare of the residents of the political jurisdiction affected, it shall grant a license to any applicant not otherwise disqualified by law who makes application on a form prescribed by the governing authority. The license shall be effective from January 1 to December 31 of each year.

(b) It shall be unlawful for any person, firm, or corporation to operate a self-service motor fuel dispensing pump unless an attendant is present at the pump's location and such person, firm, or corporation has obtained a valid license from the governing authority of the political jurisdiction affected. Any person, firm, or corporation violating this Code section shall be guilty of a misdemeanor.

(c) This Code section shall not apply to motor fuel dispensing units which are not open to the public.

History.

Ga. L. 1971, p. 683, §§ 1-3.

Cross references.

Dispensing of gasoline at self-service pumps to holders of special disability permits, § 10-1-164.1.

Motor fuel taxes generally, § 48-9-1 et seq.

Law reviews.

For article as to the power of Georgia local governments to regulate the trades and occupations of its citizens, see 9 Ga. L. Rev. 115 (1974).

JUDICIAL DECISIONS

Statute is not unconstitutional. — Statute's enactment was a proper exercise of the police power, and the statute's delegation on a local option basis of police power to the local governing authorities was a proper, and not unconstitutional, delegation. Stop-N-Go Markets of Ga., Inc. v. City of Clarkston, 238 Ga. 307, 232 S.E.2d 906, 1977 Ga. LEXIS 1008 (1977).

RESEARCH REFERENCES

Am. Jur. 2d.

38 Am. Jur. 2d, Garages, Service Stations, and Parking Facilities, §§ 12, 13, 89, 93.

C.J.S.

53 C.J.S., Licenses, § 157. 101A C.J.S., Zoning and Land Planning, §§ 63, 125 et seq.

ALR.

Public regulation or authorization of gasoline filling stations, 18 A.L.R. 101; 29 A.L.R. 450; 34 A.L.R. 507; 42 A.L.R. 978; 49 A.L.R. 767; 55 A.L.R. 256; 79 A.L.R. 918; 96 A.L.R. 1337.

Rights and remedies of parties in respect to lease of filling station, 83 A.L.R. 1416; 126 A.L.R. 1375.

Automobile gas filling or supply station as a nuisance, 124 A.L.R. 383.

Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 A.L.R. 1339.

Validity and construction of statute or ordinance regulating or prohibiting self-service gasoline filling stations, 46 A.L.R.3d 1393.

36-60-2. Contracts to provide industrial waste-water treatment services.

In order to comply with applicable state and federal water pollution control standards and to be eligible for grants-in-aid or other allotments, notwithstanding any provision of law to the contrary, each municipal corporation and each county of this state is authorized, in the discretion of its governing authority, to enter into valid and binding contracts with each other and with private persons, firms, associations, or corporations, for any period of time not to exceed 50 years, to provide industrial waste-water treatment services to such private persons, firms, associations, or corporations, provided that such contracts shall provide that the charge for the services shall never be less than the actual cost to the municipal corporation or county for providing the services.

History.
Ga. L. 1974, p. 617, § 1; Ga. L. 2020, p. 493, § 36/SB 429.

Cross references.
Georgia Water Quality Control Act, § 12-5-20 et seq.

Georgia Comprehensive Solid Waste Management Act, § 12-8-20 et seq.

Contracts relating to provision of solid waste handling services, § 12-8-77.

OPINIONS OF THE ATTORNEY GENERAL

Exception to rule against binding successors in office. — O.C.G.A. § 36-60-2, permitting municipalities to enter into multi-year contracts to provide industrial waste water treatment services, provides an explicit statutory exception to O.C.G.A. § 36-30-3 and allows contracts between municipalities and certain private entities for periods up to 50 years. The contract must enable the municipality to comply with the state and federal pollution standards and to receive public allotments. In addition, the contract must comply with the statutory requirement that the private corporation be charged a rate never less than the actual cost to the municipality. A contract meeting the above requirements would not violate the statutory prohibition against binding successors in office. 1992 Op. Att'y Gen. No. 92-4.

RESEARCH REFERENCES

Am. Jur. 2d.
61B Am. Jur. 2d, Pollution Control, §§ 148 et seq., 183 et seq.

C.J.S.
64 C.J.S., Municipal Corporations, § 1140 et seq.

ALR.
Validity and construction of anti-water pollution statutes or ordinances, 32 A.L.R.3d 215.

36-60-3. Restriction of adult bookstores and movie houses to certain areas.

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

(1) "Adult bookstore" means any commercial establishment in

which is offered for sale any book or publication, film, or other medium which depicts sexually explicit nudity or sexual conduct.

(2) "Adult movie house" means any movie theater which on a regular, continuing basis shows films rated "X" by the Motion Picture Coding Association of America or any movie theater which presents for public viewing on a regular, continuing basis so-called "adult films" depicting sexual conduct.

(3) "Explicit media outlet" means any commercial establishment which has an inventory of goods that is composed of at least 50 percent of books, pamphlets, magazines, or other printed publications, films, or other media which depict sexually explicit nudity or sexual conduct.

(4) "Sexual conduct" means acts of masturbation, homosexuality, sodomy, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is female, breast which, to the average person, applying contemporary community standards, taken as a whole, lacks serious literary, artistic, political, or scientific value and predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity or sex.

(5) "Sexually explicit nudity" means a state of undress so as to expose the human male or female genitals or pubic area with less than a full opaque covering or the depiction of covered or uncovered male genitals in a discernibly turgid state which, to the average person, applying contemporary community standards, taken as a whole, lacks serious literary, artistic, political, or scientific value and predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity or sex.

(b) The governing authority of each county and municipal corporation is authorized to enact, for their respective jurisdictions, ordinances which shall have the effect of restricting the operation of adult bookstores, explicit media outlets, and adult movie houses to areas zoned for commercial or industrial purposes; provided, however, that no explicit media outlet or adult movie house shall be located within 1,000 feet of any school building, school grounds, college campus, public place of worship, or area zoned primarily for residential purposes. As used in this subsection, the term "school building" shall apply only to public or private school buildings. The distance requirement provided in this subsection for explicit media outlets and adult movie houses shall not apply to said locations which hold lawful permits or business licenses on July 1, 1997. In determining the distance requirements provided for in this Code section, the measurement shall be from the closest property line on which the adult bookstore, explicit media outlet, or

adult movie house is located to the closest property line on which the school, college, religious institution, public place of worship, or area zoned primarily for residential purposes is located. Nothing in this Code section shall be construed so as to prohibit the adoption by the governing authority of any county or municipality of restrictions relating to the location of adult bookstores, explicit media outlets, and adult movie houses which are more stringent than the requirements of this Code section.

(c) Any person, firm, or corporation violating any ordinance enacted pursuant to subsection (b) of this Code section shall be guilty of a misdemeanor. Each day of operation in violation shall be deemed a separate offense.

History.

Ga. L. 1971, p. 888, §§ 1, 3, 4; Ga. L. 1982, p. 3, § 36; Ga. L. 1997, p. 855, § 1.

Cross references.

Distribution of obscene materials, distribution of materials depicting nudity or sexual conduct, § 16-12-80 et seq.

Employment, use, persuasion, inducement, enticement, or coercion of minor to engage in sexual conduct for a visual medium or performance, § 16-12-100.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1997, in the fourth sentence of subsection (b), a comma was inserted following "worship" and "residential" was substituted for "residental".

Law reviews.

For note, "Defending Against a Charge of Obscenity in the Internet Age: How Google Searches Can Illuminate Miller's 'Contemporary Community Standards,'" see 26 Ga. St. U.L. Rev. 1029 (2010).

For article, "Evil Angel Eulogy: Reflections on the Passing of the Obscenity Defense in Copyright," see 20 J. Intell. Prop. L. 209 (2013).

RESEARCH REFERENCES

C.J.S.

101A C.J.S., Zoning and Land Planning, §§ 125, 127, 449.

ALR.

Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 A.L.R. 1339.

Validity of statutes or ordinances requiring sex-oriented businesses to obtain operating licenses, 8 A.L.R.4th 130.

36-60-4. Removal of junked motor vehicles; adoption of ordinances; authority to contract for removal.

(a) Each county and municipal corporation shall have the authority to provide by ordinance for the removal and disposal of any discarded, dismantled, wrecked, scrapped, ruined, or junked motor vehicles or parts thereof, when requested by the owner or when such motor vehicles are in such a condition that they constitute a health hazard or unsightly nuisance, notwithstanding the fact that such motor vehicles may be located upon private property.

(b) Each county and municipal corporation, in addition to the specific powers conferred upon it by this Code section, is vested with such

additional powers as shall be necessary to carry out the purposes of this Code section and shall have the authority to adopt all reasonable ordinances in order to carry out and effectuate the purposes of this Code section. Additionally, each county and municipality shall have the power and authority to contract with private individuals and firms for the removal of discarded, dismantled, wrecked, scrapped, ruined, or junked motor vehicles or parts thereof.

(c) Nothing contained within this Code section shall be deemed to apply to any motor vehicle which is located within the premises of any junkyard complying with the laws of this state relating to the licensing and regulating of motor vehicle junkyards.

History.
Ga. L. 1971, p. 670, §§ 1-3.
Cross references.
Control of junkyards, § 32-6-240 et seq.
Disposition of abandoned and derelict motor vehicles, § 40-11-1 et seq.
Removal and storage by landowners of improperly parked vehicles, § 44-1-13.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 387 et seq.
C.J.S.
101A C.J.S., Zoning and Land Planning, § 139.

36-60-5. Installation of road grates to accommodate bicycles.

After July 1, 1978, each county and municipal corporation shall install all newly located grates upon any public roadway so as to accommodate bicycles traveling on the public road parallel to the lane of travel of vehicles proceeding over such roadways, except that this Code section shall not apply to limited access highways or other streets or roads on which bicycle travel is prohibited.

History.
Ga. L. 1978, p. 257, § 1.

JUDICIAL DECISIONS

Existing sewer grates which have been adjusted due to street resurfacing are not considered newly located grates for the purpose of installing bicycle safe grates. DeWaters v. City of Atlanta, 169 Ga. App. 41, 311 S.E.2d 232, 1983 Ga. App. LEXIS 2972 (1983).

RESEARCH REFERENCES

Am. Jur. 2d.
40 Am. Jur. 2d, Highways, Streets, and Bridges, § 365.

36-60-6. Utilization of federal work authorization program; issuance of license; evidence of state licensure; annual reporting; standardized form affidavit; violation; investigations.

(a) Every private employer with more than ten employees shall register with and utilize the federal work authorization program, as defined by Code Section 13-10-90. The requirements of this subsection shall be effective on January 1, 2012, as to employers with 500 or more employees, on July 1, 2012, as to employers with 100 or more employees but fewer than 500 employees, and on July 1, 2013, as to employers with more than ten employees but fewer than 100 employees.

(b) As used in this Code section, the term "employee" shall have the same meaning as set forth in subparagraph (A) of paragraph (1.1) of Code Section 48-13-5, provided that such person is also employed to work not less than 35 hours per week.

(c) Before any county or municipal corporation issues a business license, occupational tax certificate, or other document required to operate a business to any person engaged in a profession or business required to be licensed by the state under Title 43, the person shall provide evidence of such licensure to the appropriate agency of the county or municipal corporation that issues business licenses. No business license, occupational tax certificate, or other document required to operate a business shall be issued to any person subject to licensure under Title 43 without evidence of such licensure being presented.

(d)(1) Before any county or municipal corporation issues a business license, occupational tax certificate, or other document required to operate a business to any person, the person shall provide evidence that he or she is authorized to use the federal work authorization program or evidence that the provisions of this Code section do not apply. Evidence of such use shall be in the form of an affidavit as provided by the Attorney General in subsection (f) of this Code section attesting that he or she utilizes the federal work authorization program in accordance with federal regulations or that he or she employs fewer than 11 employees or otherwise does not fall within the requirements of this Code section. Whether an employer is exempt from using the federal work authorization program as required by this Code section shall be determined by the number of employees employed by such employer on January 1 of the year during which the affidavit is submitted. The affidavit shall include the employer's federally assigned employment eligibility verification system user number and the date of authority for use. The requirements of this subsection shall be effective on January 1, 2012, as to

employers with 500 or more employees, on July 1, 2012, as to employers with 100 or more employees but fewer than 500 employees, and on July 1, 2013, as to employers with more than ten employees but fewer than 100 employees.

(2) Upon satisfying the requirements of paragraph (1) of this subsection, for all subsequent renewals of a business license, occupation tax certificate, or other document, the person shall submit to the county or municipality his or her federal work authorization user number or assert that he or she is exempt from this requirement, provided that the federal work authorization user number provided for the renewal is the same federal work authorization user number as provided in the affidavit under paragraph (1) of this subsection. If the federal work authorization user number is different than the federal work authorization user number provided in the affidavit under paragraph (1) of this subsection, then the person shall be subject to the requirements of subsection (g) of this Code section.

(e) Counties and municipal corporations subject to the requirements of this Code section shall provide an annual report to the Department of Audits and Accounts pursuant to Code Section 50-36-4 as proof of compliance with this Code section. Subject to funding, the Department of Audits and Accounts shall annually conduct an audit of no fewer than 20 percent of such reporting agencies.

(f) In order to assist private businesses and counties and municipal corporations in complying with the provisions of this Code section, the Attorney General shall provide a standardized form affidavit which shall be used as acceptable evidence demonstrating use of the federal employment eligibility verification system or that the provisions of subsection (b) of this Code section do not apply to the applicant. The form affidavit shall be posted by the Attorney General on the Department of Law's official website no later than January 1, 2012.

(g) Once an applicant for a business license, occupational tax certificate, or other document required to operate a business has submitted an affidavit with a federally assigned employment eligibility verification system user number, he or she shall not be authorized to submit a renewal application using a new or different federally assigned employment eligibility verification system user number, unless accompanied by a sworn document explaining the reason such applicant obtained a new or different federally assigned employment eligibility verification system user number.

(h) Any person presenting false or misleading evidence of state licensure shall be guilty of a misdemeanor. Any government official or employee knowingly acting in violation of this Code section shall be guilty of a misdemeanor; provided, however, that any person who

knowingly submits a false or misleading affidavit pursuant to this Code section shall be guilty of submitting a false document in violation of Code Section 16-10-20. It shall be a defense to a violation of this Code section that such person acted in good faith and made a reasonable attempt to comply with the requirements of this Code section.

(i) Documents required by this Code section may be submitted electronically, provided the submission complies with Chapter 12 of Title 10.

(j) The Attorney General shall be authorized to conduct an investigation and bring any criminal or civil action he or she deems necessary to ensure compliance with the provisions of this Code section. The Attorney General shall provide an employer who is found to have committed a good faith violation of this Code section 30 days to demonstrate to the Attorney General that such employer has come into compliance with this Code section. During the course of any investigation of violations of this Code section, the Attorney General shall also investigate potential violations of Code Section 16-9-121.1 by employees that may have led to violations of this Code section.

History.

Code 1981, § 36-60-6, enacted by Ga. L. 1992, p. 1553, § 1; Ga. L. 2011, p. 794, § 12/HB 87; Ga. L. 2013, p. 111, § 4/SB 160; Ga. L. 2025, p. 1029, § 36(17)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "As used in" for "For purposes of" in subsection (b).

Editor's notes.

Former Code Section 36-60-6, pertaining to permits for disturbing burial places in land development, was based on Ga. L. 1973, p. 318, §§ 1, 2; Ga. L. 1987, p. 387, § 1, and was repealed and made reserved by Ga. L. 1991, p. 924, § 1, effective April 11, 1991.

Ga. L. 2011, p. 794, § 1/HB 87, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Illegal Immigration Reform and Enforcement Act of 2011.'"

Ga. L. 2011, p. 794, § 21/HB 87, not codified by the General Assembly, provides for severability, and provides, in part, that: "(b) The terms of this Act regarding immigration shall be construed to have the meanings consistent with such terms under federal immigration law.

"(c) The provisions of this Act shall be implemented in a manner consistent with federal laws governing immigration and civil rights."

Ga. L. 2011, p. 794, § 22/HB 87, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to offenses and violations occurring on or after July 1, 2011.

Ga. L. 2013, p. 111, § 2/SB 160, not codified by the General Assembly, provides: "It is the intent of the General Assembly that all public employers and contractors at every tier and level use the federal work authorization program on all projects, jobs, and work resulting from any bid or contract and that every public employer and contractor working for a public employer take all possible steps to ensure that a legal and eligible workforce is utilized in accordance with federal immigration and employment."

Law reviews.

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 35 (2011).

For article on the 2013 amendment of

this Code section, see 30 Ga. St. U.L. Rev. 173 (2013).

36-60-7. Use of excess proceeds of bonds issued to match state and federal allocations for hospital.

When any county or municipal corporation of this state has voted, issued, and sold, or hereafter votes, issues, and sells bonds with the proceeds of which to match state and federal allocations and contributions and to build and equip a hospital in such county or municipal corporation, and because of increased contributions thereto by the state or the federal government the cost thereof is less than the architects or engineers estimate, or for other reasons there is an excess over the cost to such county or municipal corporation in the proceeds of the sale of such bonds, such county or municipal corporation, acting by and through its governing authority, may apply such excess to the cost of supplies for and of opening and operating such hospital or to the cost of constructing and equipping a nurses' home to be used in connection therewith. Such excess of bond issues may be used and so applied whether the hospital is built and equipped through a contract made by the county or municipal corporation directly or is made through a hospital authority under Article 4 of Chapter 7 of Title 31, of which such county or municipal corporation is a participating unit.

History.
Ga. L. 1952, p. 151, §§ 1, 2.

Cross references.
Hospital authorities, § 31-7-70 et seq.

RESEARCH REFERENCES

ALR.
Power of municipal corporation to provide hospital, 25 A.L.R. 612.

36-60-8. Audit of county or municipal corporation or units thereof.

Whenever an audit of the financial affairs of a county or municipal corporation or of an officer, board, department, unit, or other political subdivision of a county or municipal corporation is made pursuant to a requirement or to an authorization otherwise provided by law, the audit report shall include the auditor's unqualified opinion upon the presentation of the financial position and the result of the operations of the governmental unit or office which is audited. If the auditor is unable to express an unqualified opinion, he or she shall so state and shall further detail the reasons for qualification or disclaimer of opinion. All such audits shall be conducted in conformity with generally accepted government auditing standards.

History.
Ga. L. 1967, p. 883, § 1; Ga. L. 1968, p. 464, § 1; Ga. L. 1994, p. 1083, § 1.

Cross references.
Minimum budget and auditing requirements for counties, municipalities, and other entities, § 36-81-1 et seq.
Public Accountancy Act of 2014, § 43-3-1 et seq.

Editor's notes.
Ga. L. 1994, p. 1083, § 6, not codified by the General Assembly, provides: "No state agency shall make or transmit any state grant funds to any local government which has failed to provide all the audits required by law within the preceding five years."

OPINIONS OF THE ATTORNEY GENERAL

Sufficiency of audit. — An audit of the financial affairs of a county or municipality, or an officer, board, department, unit, or other political subdivision of a county or municipality made pursuant to a requirement or authorization provided by law, is of legal efficacy for purposes of such requirement or authorization if that audit includes either the auditor's unqualified opinion upon the presentation of the financial position and the result of the operations of that county, or a detailed explanation for qualification or disclaimer of opinion. 1969 Op. Att'y Gen. No. 69-232.

RESEARCH REFERENCES

C.J.S.
64A C.J.S., Municipal Corporations, § 1997.

36-60-9. Investigation of business for issuance of county or municipal license.

(a) No person shall investigate a business for the purpose of providing information to a county or municipal corporation of this state, which information is used in determining whether or not such business shall receive a business or similar license issued pursuant to the valid exercise of the police power of the county or municipal corporation, when such person is employed by or contracting with the county or municipal corporation to make investigations of the type specified in this subsection and such person has been employed by or is then employed by the particular individual business which the person is investigating.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1977, p. 1197, §§ 1, 2.

36-60-10. Annual meeting and agreement between county and city representatives as to services in portion of city within county.

(a) Representatives of the governing authority of any county in this state which contains the smaller portion of the population of a city with a total population of 350,000 or more according to the United States decennial census of 1970 or any future such census shall meet annually, prior to January 1, with representatives of the governing authority of such city to develop an agreement between the governing authorities on the following matters:

(1) The services to be provided during the following calendar year by the county and by the city to the portion of the city that lies within the county; and

(2) The method of dispatching services during the following calendar year to the portion of the city that lies within the county. Agreement on this matter shall provide a uniform procedure for dispatching services and shall include an agreement as to all street addresses in such portion of the city.

(b) Any agreements developed pursuant to subsection (a) of this Code section shall be in writing.

(c) The first annual meeting required by this Code section shall be held prior to January 1, 1977.

History.
Ga. L. 1976, p. 3137, §§ 1-3; Code 1981, § 36-60-10, enacted by Ga. L. 1982, p. 2107, § 42; Ga. L. 1991, p. 989, § 4.

36-60-11. [Reserved] Attorney General to receive a copy of any submission to the United States Department of Justice pursuant to federal Voting Rights Act of 1965.

History.
Code 1981, § 36-60-11, enacted by Ga. L. 1984, p. 1432, § 1; repealed by Ga. L. 2015, p. 385, § 6-6/HB 252.

Editor's notes.
Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

Ga. L. 2015, p. 385, § 6-6/HB 252, reserved the designation of this Code section, effective July 1, 2015.

36-60-12. Electronic security systems; installation, service, operation, sale, or lease by counties or municipal corporations.

No county or municipal corporation shall install, service, maintain, operate, sell, or lease as lessor any burglar alarm system, fire alarm system, or other electronic security system on private property if a

private contractor licensed to do business within the county or municipality offers such systems or services to the public within such county or municipality. The provisions of this Code section shall not prohibit a county or municipal corporation from installing, servicing, maintaining, or operating a burglar alarm system, fire alarm system, or other electronic security system on any property owned or leased by such county or municipal corporation. This Code section shall not apply to any county or municipality offering electronic security systems on January 1, 1988. This Code section shall not prevent volunteer fire departments from selling or leasing battery operated fire detection equipment or fire extinguishers in their service areas. Any person violating this Code section or expending county or municipal funds in violation of this Code section shall be guilty of a misdemeanor.

History.

Code 1981, § 36-60-12, enacted by Ga. L. 1988, p. 1847, § 1; Ga. L. 1990, p. 8, § 36.

Code Commission notes.

Two 1988 Acts added a new Code Section 36-60-12. Pursuant to Code Section 28-9-5, the Code section enacted by Ga. L. 1988, p. 1847 has retained the Code Section 36-60-12 designation and the Code section enacted by Ga. L. 1988, p. 1954 has been redesignated as Code Section 36-60-13.

Editor's notes.

Ga. L. 1990, p. 8, § 55 repealed Ga. L. 1988, p. 1847, § 2, relating to the power of volunteer fire departments to sell or lease battery operated fire detection equipment or fire extinguishers in their service areas. For present provisions, see the fourth sentence of this Code section.

36-60-12.1. Fence detection systems; utilization.

(a) As used in this Code section, the term "fence detection system" means a new or existing alarm system or electronic security system that interfaces with a monitored alarm device in a manner that enables the alarm system or electronic security system to transmit a signal intended to summon law enforcement or the property owner in response to an intrusion or burglary and has ancillary components or equipment attached to such system that include:

(1) A fence that is:

(A) Located on nonresidentially zoned property;

(B)(i) No more than ten feet in height; or

(ii) Two feet higher than a nonelectric perimeter fence or wall, whichever is taller; and

(C) Surrounded by a nonelectric perimeter fence or wall that is at least five feet in height upon which are placed conspicuous warning signs that are in no more than 30 foot intervals that read: "WARNING— ELECTRIC FENCE";

(2) An energizer powered by a commercial storage battery not

exceeding 12 volts that produces a short electric pulsed charge upon contact with the fence and that does not exceed energizer characteristics set for electric fence energizers by the International Electrotechnical Commission Standard 60335-2-76:2018; and

(3) A battery charging device used exclusively to charge the battery.

(b) Each county, consolidated government, and municipal corporation shall:

(1) Treat fence detection systems in all zoning and permitting matters exclusively as alarm systems as such term is defined in Code Section 43-14-2; and

(2) Not, by ordinance or other regulation, prohibit the installation or use of fence detection systems that are consistent with requirements and standards described in subsection (a) of this Code section.

History.
Code 1981, § 36-60-12.1, enacted by Ga. L. 2021, p. 213, § 1/SB 182; Ga. L. 2025, p. 359, § 3-3/SB 125, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, deleted "paragraph (.1) of" following "defined in" in paragraph (b)(1).

36-60-13. Multiyear lease, purchase, or lease-purchase contracts.

(a) Each county or municipality in this state shall be authorized to enter into multiyear lease, purchase, or lease-purchase contracts of all kinds for the acquisition of goods, materials, real and personal property, services, and supplies, provided that any such contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the county or municipality at the close of the calendar or fiscal year in which it was executed and at the close of each succeeding calendar or fiscal year for which it may be renewed as provided in this Code section;

(2) The contract may provide for automatic renewal unless positive action is taken by the county or municipality to terminate such contract, and the nature of such action shall be determined by the county or municipality and specified in the contract;

(3) The contract shall state the total obligation of the county or municipality for the calendar or fiscal year of execution and shall further state the total obligation which will be incurred in each calendar or fiscal year renewal term, if renewed; and

(4) The contract shall provide that title to any supplies, materials, equipment, or other personal property shall remain in the vendor until fully paid for by the county or municipality.

(b) In addition to the provisions enumerated in subsection (a) of this Code section, any contract authorized by this Code section may include:

(1) A provision which requires that the contract will terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the county or municipality under the contract; or

(2) Any other provision reasonably necessary to protect the interests of the county or municipality.

(c) Any contract developed under this Code section containing the provisions enumerated in subsection (a) of this Code section shall be deemed to obligate the county or municipality only for those sums payable during the calendar or fiscal year of execution or, in the event of a renewal by the county or municipality, for those sums payable in the individual calendar or fiscal year renewal term.

(d) No contract developed and executed pursuant to this Code section shall be deemed to create a debt of the county or municipality for the payment of any sum beyond the calendar or fiscal year of execution or, in the event of a renewal, beyond the calendar or fiscal year of such renewal.

(e) No contract developed and executed pursuant to this Code section may be delivered if the principal portion of such contract, when added to the amount of debt incurred by any county or municipality pursuant to Article IX, Section V, Paragraph I of the Constitution of Georgia, exceeds 10 percent of the assessed value of all taxable property within such county or municipality.

(f) No contract developed and executed pursuant to this Code section may be delivered if the real or personal property being so financed has been the subject of a referendum which failed to receive the approval of the voters of the county or municipality within the immediately preceding four calendar years, unless such real or personal property is required to be financed pursuant to a federal or state court order, or imminent threat thereof, as certified by the governing authority of the county or municipality.

(g) No contract developed and executed pursuant to this Code section with respect to the acquisition of real property may be delivered unless a public hearing has been held by the county or municipality after two weeks' notice published in a newspaper of general circulation within the county or municipality.

(h)(1) On or after July 1, 2000, no contract developed and executed or renewed, refinanced, or restructured pursuant to this Code section with respect to real property may be delivered if the lesser of either of the following is exceeded:

(A) The average annual payments on the aggregate of all such outstanding contracts exceed 7.5 percent of the governmental fund revenues of the county or municipality for the calendar year preceding the delivery of such contract plus any available special county 1 percent sales and use tax proceeds collected pursuant to Code Section 48-8-111; or

(B) The outstanding principal balance on the aggregate of all such outstanding contracts exceeds $25 million; provided, however, that with respect to any county or municipality in which, prior to July 1, 2000, the outstanding principal balance on the aggregate of outstanding contracts exceeds $25 million, such outstanding contracts may be renewed, refinanced, or restructured, but no new contracts shall be developed and executed until the outstanding principal balance on such outstanding contracts has been reduced so that the $25 million limitation of this subparagraph, or the limitation in subparagraph (A) of this paragraph, whichever is lower, is not exceeded.

(2) Paragraph (1) of this subsection shall not apply to contracts developed and executed or renewed, refinanced, or restructured pursuant to this Code section which are for projects or facilities:

(A) For the housing of court services, where any other state law or laws authorize the project or facility to be financed and paid for from the collection of fines rather than from tax revenues; or

(B) Which have been previously approved in the most recent referendum calling for the levy of a special county 1 percent sales and use tax pursuant to Part 1 of Article 3 of Chapter 8 of Title 48.

(i) Any such contract may provide for the payment by the county or municipality of interest or the allocation of a portion of the contract payment to interest, provided that the contract is in compliance with this Code section.

(j) Nothing in this Code section shall restrict counties or municipalities from executing reasonable contracts arising out of their proprietary functions.

History.

Code 1981, § 36-60-13, enacted by Ga. L. 1988, p. 1954, § 1; Ga. L. 1996, p. 441, § 1; Ga. L. 2000, p. 1443, § 1; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2013, p. 272, § 1/HB 473.

Code Commission notes.

Two 1988 Acts added a new Code Section 36-60-12. Pursuant to Code Section 28-9-5, the Code section enacted by Ga. L. 1988, p. 1847 has retained the Code Section 36-60-12 designation and the Code section enacted by Ga. L. 1988, p. 1954 has been redesignated as Code Section 36-60-13.

Pursuant to Code Section 28-9-5, in 1988, "Code section" was substituted for "Code Section" in the first occurrence of the words in the introductory language of subsection (b).

Editor's notes.

Ga. L. 1990, p. 8, § 55, repealed Ga. L.

1988, p. 1954, § 2, providing for the terms and conditions under which counties or municipalities may enter into certain one year, or less, contracts. For present provisions, see Code Section 36-60-14.

Law reviews.

For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990).

For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 36-60-13 does not violate the constitutional debt limitations of Ga. Const. 1983, Art. IX, Sec. V, Para. I. Barkley v. City of Rome, 259 Ga. 355, 381 S.E.2d 34, 1989 Ga. LEXIS 308 (1989).

Contract under section is not debt. — Contract which satisfies the requirements of O.C.G.A. § 36-60-13 does not constitute a "debt" within the meaning of Ga. Const. 1983, Art. IX, Sec. V, Para. I and therefore does not require voter approval. Barkley v. City of Rome, 259 Ga. 355, 381 S.E.2d 34, 1989 Ga. LEXIS 308 (1989).

Lease agreement is not debt. — There is no distinction in O.C.G.A. § 36-60-13 between real and personal property and the strictures on leases for each class of property are the same; similarly, Ga. Const. 1983, Art. IX, Sec. V, Para. I(a), providing for a popular vote on the assumption of debt, makes no distinction between the two classes of property. Therefore, a county's decision to enter a lease purchase agreement with the Association of County Commissioners of Georgia to finance and construct a new courthouse was not a debt requiring a vote under Ga. Const. 1983, Art. IX, Sec. V, Para. I(a) and was in compliance with O.C.G.A. § 36-60-13 because it did not require future county commissioners to renew the contract, it allowed the county to terminate its financial obligations at the end of each calendar year, and it would never require the county to expend more than would be legally available under O.C.G.A. § 36-60-13. Bauerband v. Jackson County, 278 Ga. 222, 598 S.E.2d 444, 2004 Ga. LEXIS 472 (2004).

Contract as to provision of legal services. — O.C.G.A. § 36-60-13 did not apply to regulate over contract between county commissioners and county attorney for the provision of legal services. Brennan v. Chatham County Comm'rs, 209 Ga. App. 177, 433 S.E.2d 597, 1993 Ga. App. LEXIS 785 (1993).

Contract for rail trail. — Denial of a city's motion to dismiss a corporation's breach of contract complaint for the development of a rail trail was upheld because the city's actions were primarily undertaken for the purpose of producing revenue, rather than for benefitting the public; thus, O.C.G.A. § 36-60-13(a) did not immunize the city from the breach claim, and the prohibition delineated in subsection (a) was inapplicable to the agreement as the subsection did not apply to proprietary functions of the government. City of Albany v. S. Ga. Rails to Trails, No. A25A0061, 2025 Ga. App. LEXIS 211 (Ct. App. May 6, 2025).

Requirements of section violated. — Multi-year computer lease purchase agreement entered into by the county violated the requirements of O.C.G.A. § 36-60-13; therefore, the trial court properly granted the county's motion for summary judgment. Wasilkoff v. Douglas County, 227 Ga. App. 232, 488 S.E.2d 722, 1997 Ga. App. LEXIS 866 (1997) (events occurred prior to 1996 amendment).

Multiyear lease provision ambiguous. — Multiyear lease provision allowing termination of the lease pursuant to O.C.G.A. § 36-60-13 was ambiguous and the record did not show whether a county and the county's lessee intended the provision to apply generally to the lease or only if § 36-60-13 became applicable (i.e., appropriated funds were no longer available to allow the county to perform the county's obligations under lease). Thus, the county's right to terminate the lease under that provision

was a fact issue for the jury to resolve. Etowah Valley Sporting Clay Park, LLC v. Dawson County, 294 Ga. App. 586, 669 S.E.2d 436, 2008 Ga. App. LEXIS 1170 (2008), cert. denied, No. S09C0464, 2009 Ga. LEXIS 266 (Ga. Apr. 28, 2009).

Settlement agreement enforceable. — Trial court erred in denying a property owner's motion for summary judgment in a county breach of contract action because a settlement agreement between the parties was enforceable; the county attorney had authority to make the settlement offer on behalf of the county board, and while a vote in a public meeting was a required formality to effectuate the purchase, the board's failure to complete that formality when voting in the public meeting could not destroy an already existing settlement agreement. Old Peachtree Partners, LLC v. Gwinnett County, 315 Ga. App. 342, 726 S.E.2d 437, 2012 Ga. App. LEXIS 259 (2012), cert. denied, No. S12C1338, 2013 Ga. LEXIS 43 (Ga. Jan. 7, 2013).

36-60-14. Authority to enter into certain one-year, or less, contracts; exception.

The governing body of each county or municipal corporation of this state is authorized to enter into one year, or less, contracts with private nonprofit organizations which are exempt from federal income taxes pursuant to Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code to utilize such organizations to identify, attract, and locate new business and industry into the county or municipality for the purposes of increasing trade, industry, agribusiness, commerce, and tourism and the improvement of employment opportunities within the county or municipality and to otherwise promote the general welfare of the county or municipality; provided, however, that the authority provided under this Code section shall not affect or in any way apply to any contract under Code Section 48-13-51 regarding the expenditure of proceeds collected under Article 3 of Chapter 13 of Title 48 unless that contract is executed by the governing body of a county in which is imposed, prior to January 1, 2001, the homestead option sales and use tax authorized under Code Section 48-8-102.

History.

Code 1981, § 36-60-14, enacted by Ga. L. 1990, p. 8, § 36; Ga. L. 2001, p. 100, § 1.

Editor's notes.

Ga. L. 1990, p. 8, § 55, part of an Act to correct errors and omissions in the Code effective February 16, 1990, repealed § 2 of Ga. L. 1988, p. 1954. Ga. L. 1990, p. 8, § 36, codified the subject matter of Ga. L. 1988, p. 1954, § 2 as this Code section.

U.S. Code.

Section 501 of the Internal Revenue Code, referred to in this Code section, is codified as 26 U.S.C. § 501.

Law reviews.

For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 189 (2001).

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

36-60-15. Property subject to contract for lease purchase or installment purchase.

Each county or municipality in this state is authorized to accept the title to property subject to a contract for lease purchase or installment purchase and is authorized to transfer title back to the vendor in the

name of the county or municipality in the event that the contract is not fully consummated.

History.

Code 1981, § 36-60-15, enacted by Ga. L. 1990, p. 254, § 1.

Code Commission notes.

Two 1990 Acts added a new Code Section 36-60-14. Pursuant to Code Section 28-9-5, the Code section enacted by Ga. L. 1990, p. 8 has retained the Code Section 36-60-14 designation and the Code section enacted by Ga. L. 1990, p. 254 has been redesignated as Code Section 36-60-15.

36-60-15.1. Operation and maintenance of water treatment systems by private entities.

Notwithstanding any other provision of law to the contrary, any county or municipal corporation of this state is authorized, in the discretion of its governing authority, to enter into valid and binding leases and contracts with private persons, firms, associations, or corporations for any period of time not to exceed 20 years to provide for the operation and maintenance of all or a portion of its waste-water treatment system, storm-water system, water system, or sewer system, or any combination of such systems, which leases and contracts may include provisions for the design, construction, repair, reconditioning, replacement, maintenance, and operation of the system, or any combination of such services and functions. If a contract or lease to be awarded pursuant to this Code section includes provisions for the construction of public works, the laws relating to the procurement of such contracts shall also apply; provided, however, that any bonding requirements shall apply only to the construction provisions of the contract or lease. Prior to entering into a lease or contract pursuant to this Code section, the governing authority shall solicit competitive sealed proposals. The governing authority shall first establish criteria for evaluation of any applicants submitting proposals on such leases or contracts for the purpose of assisting the governing authority in making a review of such applicants' previous performance on projects of comparable magnitude, the environmental compliance record of such applicants, and any relevant civil or criminal penalties incurred by such applicants during the five years immediately preceding the execution of the lease or contract. The governing authority shall take into consideration such information to assist it in determining the eligibility of any applicant. The award of a lease or contract pursuant to this Code section shall be made to the responsible and responsive applicant whose proposal is determined in writing to be the most advantageous to the governmental entity, taking into consideration the evaluation factors set forth in the request for proposals. All information required by the county or municipality pursuant to this Code section shall be provided by the applicant under oath. As used in this Code section, the term "applicant" means any individual, firm, association, or corporation submitting a proposal on such leases or contracts.

History.
Code 1981, § 36-60-15.1, enacted by Ga. L. 1999, p. 80, § 1; Ga. L. 2000, p. 837, § 1; Ga. L. 2025, p. 1029, § 36(18)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "As used in this Code section, the term 'applicant' means" for "For purposes of this Code section, 'applicant' means" in the last sentence.
Cross references.
Water resources, § 12-5-1 et seq.

36-60-16. Separate approval of municipal and county consolidation by referendum.

No municipal and county consolidation shall become effective unless such consolidation is separately approved by a majority of the qualified voters voting in a referendum thereon in each affected county or counties and in each affected municipality or municipalities located within such county or counties containing at least 10 percent of the population of the county participating in the consolidation. No municipal and county consolidation approved pursuant to this Code section shall include within the consolidated government any municipality located within a county containing less than 10 percent of the population of such county unless such consolidation is separately approved by a majority of the qualified voters voting in a referendum thereon in such municipality. Referendums held pursuant to this Code section shall be conducted in accordance with the provisions and requirements of Title 21.

History.
Code 1981, § 36-60-16, enacted by Ga. L. 1993, p. 394, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Meaning of "county." — "County", as used in O.C.G.A. § 36-60-16, means the whole county, not just the unincorporated portion thereof. 1995 Op. Att'y Gen. No. U95-5.

36-60-17. Duties of public and private water suppliers; right to statement of charges; liens by gas, sewer, and electricity suppliers.

(a) No public or private water supplier shall refuse to supply water to any single or multifamily residential property for which water has been furnished through the use of a separate water meter for each residential unit on application of the owner or new tenant of such property because of the indebtedness of a prior owner, prior occupant, or prior lessee to the water supplier for water previously furnished to such property.

(b) For each new or current account to supply water, the public and

private water suppliers shall maintain a record of identifying information on the applicant for the water service and shall seek reimbursement of unpaid charges for water service furnished initially from the person who incurred the charges.

(c)(1) Any real property owner or tenant, person having executed a contract for the purchase or occupancy of real property, attorney closing a real estate transaction for the purchase of real property, or lender considering the loan of funds to be secured by real property shall be entitled upon request to a statement from a public or private water supplier setting forth the amount of water charges currently and past due and any late charges and interest applicable for water supplied to such property. Such request shall:

(A) Be in writing;

(B) State the address of the real property for which water was supplied;

(C) Be delivered to the billing address of the public or private water supplier by certified mail, return receipt requested, statutory overnight delivery, or electronic means if electronic communication is permitted by such supplier; and

(D) State a return address or email address to which the statement reflecting the moneys owed is to be directed.

(2) Any request transmitted by electronic means shall be considered received on the first business day following such transmission.

(3) The public or private water supplier shall furnish such statement to the requestor by certified mail, return receipt requested, statutory overnight delivery, or electronic means if electronic communication is provided by the requestor within ten business days of receipt of such request. Such supplier may charge a fee not to exceed $10.00 to provide the requested information.

(4) The failure of the public or private water supplier to provide such statement within such ten business day period shall:

(A) Cause any lien for unpaid charges provided by this Code section to be extinguished and to be of no force or effect as to the title acquired by the purchaser or lender, if any, and their respective successors and assigns in the transaction contemplated in connection with such request; and

(B) Prevent the public or private water supplier from denying water services to the new real property owner or tenant.

(5) The information specified in the public or private water supplier's statement shall be binding upon the public or private water

supplier as of the date of the statement and for 30 days thereafter. When payment in full is tendered within such 30 day period, it shall extinguish any lien by operation of law which the public or private water supplier may have against such property.

(d) A public or private water supplier shall not impose a lien against real property to secure unpaid charges for water furnished unless the owner of such real property is the person who incurred the charges and shall not deny water services when such a lien has been extinguished.

(e) This Code section shall not apply to associations that are subject to Article 3 of Chapter 3 of Title 44 which supply water.

(f) A public or private supplier of gas, sewerage service, or electricity shall not impose a lien against real property to secure unpaid charges for gas, sewerage service, or electricity unless the owner of such real property is the person who incurred the charges.

History.

Code 1981, § 36-60-17, enacted by Ga. L. 1994, p. 1957, § 1; Ga. L. 2016, p. 240, § 1/SB 206; Ga. L. 2025, p. 1029, § 36(19)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "email" for "e-mail" in subparagraph (c)(1)(D).

Law reviews.

For annual survey on local government law, see 61 Mercer L. Rev. 255 (2009).

For annual survey on real property law, see 61 Mercer L. Rev. 301 (2009).

JUDICIAL DECISIONS

Pre-emption of city ordinance as to discontinuance of water service. — Pursuant to the uniformity clause of Ga. Const. 1983, Art. III, Sec. VI, Para. IV(a), § 154-120(1) of the Code of Ordinances of the City of Atlanta, Ga., which authorized the discontinuance of water service until a bill was paid, was pre-empted by O.C.G.A. § 36-60-17(a), which did not allow a supplier to refuse to supply water to a water meter because of a prior owner's indebtedness. Fed. Home Loan Mortg. Corp. v. City of Atlanta, 285 Ga. 189, 674 S.E.2d 905, 2009 Ga. LEXIS 91 (2009).

Statute not applicable to commercial property. — Trial court properly granted summary judgment to a city on a property owner's claims that the city unlawfully refused to supply water service to the owner's commercial property until the former tenant's water service charges were paid as the prohibition against refusing to supply water to certain property did not apply to non-residential property under O.C.G.A. § 36-60-17(a). Solid Equities, Inc. v. City of Atlanta, 308 Ga. App. 895, 710 S.E.2d 165, 2011 Ga. App. LEXIS 314 (2011).

Lien not authorized when water not furnished. — County was not authorized to impose liens against the lots to secure unpaid charges for water furnished because water was not furnished but merely available. Lincoln County v. Serenity Builders & Dev., 373 Ga. App. 395, 908 S.E.2d 663, 2024 Ga. App. LEXIS 450 (2024).

City ordinance properly permitted heightened status lien. — Section 154-120 of the Code of Ordinances of the City of Atlanta, Ga., was not in conflict with O.C.G.A. § 36-60-17(c) as the ordinance expressly recognized that the city's ability to impose a lien on real property on the basis of unpaid water bills for service to that property was limited by § 36-60-17, which only granted a heightened-status lien for unpaid water charges incurred by the owner as opposed to a non-owner occupant. Fed. Home Loan

Mortg. Corp. v. City of Atlanta, 285 Ga. 189, 674 S.E.2d 905, 2009 Ga. LEXIS 91 (2009).

36-60-17.1. Properties served by private wells not required to connect with public water system; applicability.

(a) No county, municipality, or local authority shall require a single-family residential property owner or farm served by a private well to connect with or use water supplied by a public water system, except where necessary to preclude the use of water obtained from such private well that is demonstrably unfit for human consumption or other intended use; nor shall it require such single-family residential property owner or farm whose water lines are not connected with such public water system to pay any charge or fee for water supply services made available but not used.

(b) Nothing in subsection (a) of this Code section shall preclude or authorize the denial of the repair or maintenance of a well serving a single-family residence so as to meet the requirements for allowing use of the same by a single-family residential property owner or farm without connecting to a public water system or payment of charges or fees in accordance with subsection (a) of this Code section. Such repairs shall be the sole responsibility of such owner.

(c) Nothing in subsection (a) of this Code section shall preclude or authorize the denial of the installation of a well serving a single-family residence situated on a parcel of one acre or more so as to meet the requirements for allowing use of the same by a single-family residential property owner without connecting to a public water system or payment of charges or fees in accordance with subsection (a) of this Code section. Such repairs shall be the sole responsibility of such owner.

(d) This Code section shall not apply to:

(1) Any public water system having more than a total of 70,000 active service connection accounts or more than 200 such accounts per square mile of total area served;

(2) A public water system with respect to a single-family residential property owner or farm who has been mailed written notice to his or her address of record on the property tax rolls by the appropriate county, municipality, or local authority by certified mail of his or her right to opt out of connecting with such system and paying charges or fees for system services made available but not used, if such property owner did not notify the county, municipality, or local authority in writing on a form provided thereby of his or her decision to exercise that option within 45 days after mailing of such notice by the county, municipality, or local authority;

(3) Any project of a public water system for which revenue bonds have been validated, issued, and sold prior to January 1, 2008; or

(4) Any public water system funded primarily through a federal or state grant that contains stipulations in such grant requiring the county, municipality, or local authority to levy a charge or fee for water supply services made available but not used. For all state grants, loans, or contracts for services issued on and after July 1, 2007, no state grant, loan, or contract for services funding any project of a public water system shall contain any stipulations requiring a county, municipality, or local authority to levy a charge or fee for water supply services made available but not used or requiring a county, municipality, or local authority to require single-family property owners or farms to connect with or use water supplied by a public water system, except where necessary to preclude the use of water obtained from another source that is demonstrably unfit for human consumption or other intended use. For the purposes of this paragraph, a federal grant is defined as money provided directly to a county or municipality. Federal money provided to a revolving loan fund or to the Georgia Environmental Finance Authority or such other mechanism shall not be considered a federal grant.

History.

Code 1981, § 36-60-17.1, enacted by Ga. L. 2007, p. 737, § 2/HB 247; Ga. L. 2010, p. 949, § 1/HB 244; Ga. L. 2023, p. 286, § 1/SB 121, effective July 1, 2023; Ga. L. 2024, p. 1052, § 6(26)/SB 448, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, in subsection (b), inserted "or authorize the denial of" near the beginning, and deleted "continued" following "requirements for allowing"; added present subsection (c); redesignated former subsection (c) as present subsection (d); and, in present subsection (d), substituted "Subsections (a), (b), and (c) of this Code section" for "Subsections (a) and (b) of this Code section".

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, deleted "Subsections (a), (b), and (c) of" from the beginning of subsection (d).

Law reviews.

For annual survey of local government law, see 59 Mercer L. Rev. 285 (2007).

For annual survey of local government law, see 60 Mercer L. Rev. 263 (2008).

36-60-17.2. Limited exemption from storm water fees.

Land located within a railroad's right of way and covered with ballast and rail shall be exempt from any fees imposed by any county or municipality for the management, collection, or disposal of storm water; provided, however, that railroad stations, maintenance buildings, or other developed land used for railroad purposes shall not be exempt from storm-water fees.

History.

Code 1981, § 36-60-17.2, enacted by Ga. L. 2018, p. 944, § 1/HB 735.

36-60-18. Obtaining real property within adjoining county which will be exchanged for federal property.

No county or municipality within the county shall purchase or accept title to any real property located in an adjoining county, which property will be exchanged for certain property belonging to the federal government as authorized by federal law, without the written consent of the governing authority of such adjoining county wherein the real property is located; provided, however, that the provisions of this Code section shall not apply to the exercise of eminent domain by a county or municipality as authorized under the Constitution or other provisions of law; provided, further, that the provisions of this Code section shall not apply to any agreement entered into by two or more counties, municipal corporations, consolidated governments, or development authorities or any combination thereof prior to July 1, 1994, nor shall the transfer of any land pursuant to any such agreement be affected by this Code section.

History.
Code 1981, § 36-60-18, enacted by Ga. L. 1994, p. 1940, § 2.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1994, this Code section, originally designated as Code Section 36-60-16, was redesignated as Code Section 36-60-18.

36-60-19. Dispatch centers; required training for communications officers; exceptions; penalty for noncompliance.

(a) On and after January 1, 1999, every dispatch center operated by any county or municipality to receive, process, or transmit public safety information and dispatch law enforcement officers, firefighters, medical personnel, or emergency management personnel shall comply with the requirements of this Code section. Each such dispatch center shall have on duty at all times at least one communications officer who is certified as having been trained in the use of telecommunications devices for the deaf (TDDs), as provided for in subsection (d) of Code Section 35-8-23. However, a dispatch center which is staffed by ten or fewer communications officers shall be considered in compliance with this Code section; provided, however, that on and after January 1, 1999, no dispatch center shall be permitted to employ any additional or replacement communications officers who are not certified as having been trained in the use of telecommunications devices for the deaf (TDDs) as provided for in subsection (d) of Code Section 35-8-23.

(b) On and after January 1, 1999, no monthly 9-1-1 charge provided for in Code Section 46-5-133 may be imposed for the support of any dispatch center unless such dispatch center is in compliance with the requirements of this Code section.

History.
Code 1981, § 36-60-19, enacted by Ga. L. 1998, p. 540, § 2; Ga. L. 2005, p. 660, § 6/HB 470; Ga. L. 2025, p. 1029, § 36(20)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "(TDDs)" for "(TDD's)" in two places in subsection (c).
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1998, Code Section 36-60-19 as enacted by Ga. L. 1998, p. 850, § 1, was redesignated as Code Section 36-60-20, and Code Section 36-60-19 as enacted by Ga. L. 1998, p. 928, § 1, was redesignated as Code Section 36-60-21.
Law reviews.
For review of 1998 legislation relating to state government, see 15 Ga. St. U.L. Rev. 245 (1998).

36-60-20. Political subdivisions have no liability for losses from any failure or malfunction of computer software.

(a) As used in this Code section, the term "political subdivision of the state" means any office, agency, department, commission, board, division, and institution of any county or municipality of the State of Georgia.

(b) A political subdivision of the state shall have no liability for losses from any failure or malfunction occurring before December 31, 2005, which is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times, if the failure or malfunction causing the loss was unforeseeable or if the failure or malfunction causing the loss was foreseeable but the plan or design or both for identifying and preventing the failure or malfunction was prepared in substantial compliance with generally accepted computer and information system design standards in effect at the time of the preparation of the plan or design.

History.
Code 1981, § 36-60-20, enacted by Ga. L. 1998, p. 850, § 1.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1998, Code Section 36-60-19 as enacted by Ga. L. 1998, p. 850, § 1, was redesignated as Code Section 36-60-20.

36-60-21. Contracts to construct and operate private toll roads and bridges to facilitate public transportation.

(a) The General Assembly finds that allowing local government to license, contract with, or both license and contract with private companies to finance, construct, maintain, improve, own, or operate, or any combination thereof, private toll roads and bridges can provide significant public benefits to the citizens of this state in facilitating transportation of the general public without the need for additional public tax revenues. The General Assembly also finds that such facilitation of

transportation of the public by private enterprise is an important public purpose and function. The General Assembly further finds that general law impediments to such arrangements should be removed. To implement these findings, this Code section shall control the subject matter thereof notwithstanding any other provision of law to the contrary.

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

(1) "Local government" means any county or municipality of this state.

(2) "Person" means any natural person, partnership, corporation, trust, association, or any other legal entity, other than the state or a political subdivision thereof.

(3) "Project" means a toll road or toll bridge.

(c) A local government may contract with, license, or both contract with and license a person to finance, construct, maintain, improve, own, or operate, or any combination thereof, a project along the boundaries of or within such local government. In furtherance of the enhanced transportation for its residents and others which such project can provide, such local government may finance, construct, maintain, improve, own, or operate, or any combination thereof, within the boundaries of such local government any necessary highway approaches to such project. Such contract, license, or contract and license may be executed by a local government without complying with the contracting requirements of Chapter 10 of this title. A contract, license, or contract and license authorized by this subsection may extend for any period as determined by the local government notwithstanding the provisions of Code Section 36-60-13 or any other provision of law. Such contract, license, or contract and license shall not impose any debt upon such local government unless that debt is incurred in conformity with Article IX, Section V of the Constitution. Such local government shall not lend its credit as part or in furtherance of such contract, license, or contract and license. Neither the local government nor the state shall make any improvements or otherwise expend public funds upon property owned by or leased to a person for a project.

(d) Any property or rights therein of another person which are necessary for the project authorized by such contract, license, or contract and license may be procured by such local government exercising its power of eminent domain on behalf of and for the project and may be leased or sold to the person whom the local government has contracted with, licensed, or contracted with and licensed for such project, unless such property or rights therein are owned by the state or a political subdivision of the state. In all other respects such power of eminent domain shall conform to the requirements imposed by law. Any such property or rights therein owned by the state or a political

subdivision thereof may be leased by such owner for any period, as determined by such owner, or sold by such owner and may only be leased or sold for fair market value. In determining such valuation, at least three written appraisals of the value of the property or rights therein shall be obtained by the owning state or political subdivision. Those appraisals shall be made by any person familiar with property values in the area where the property is situated, at least one of which appraisals shall be made by a member of a nationally recognized appraisal organization. If the state is the owner, such lease or sale shall be executed by the State Properties Commission and may be executed without competitive bidding upon written determination by that commission that such lease or sale is necessary for the project and the public interest is served by such use of state property; provided, however, that, if the Department of Transportation is the owner, such lease or sale shall be handled by the Department of Transportation in accordance with its normal procedures for the acquisition and disposal of department rights of way.

(e) A contract authorized under this Code section shall provide, in addition to any other requirements:

(1) The right to finance, construct, maintain, improve, own, or operate, or any combination thereof, the project and that such right shall be irrevocable but need not be exclusive;

(2) The right to own the project and to set, fix, change, and collect tolls;

(3) Rights of assignment and amendment;

(4) The duty of the person to provide for design and construction of the project and standards therefor;

(5) Provisions for maintenance and operation, liability, and other operational matters;

(6) Rights and duties of the parties regarding connecting roads, highways, streets, bridges, or transitways; and

(7) Such other matters as shall be deemed appropriate or necessary.

(f) A project operated pursuant to a contract, license, or contract and license authorized under this Code section shall not be subject to regulation as to toll amounts or any other matters by the Public Service Commission, the Department of Transportation, or the State Road and Tollway Authority, except those matters related to the regulation of safety or hazardous materials as provided for in Title 46.

(g) Nothing in this Code section shall limit the exercise of the power of eminent domain by the state or a local government regarding a project.

History.
Code 1981, § 36-60-21, enacted by Ga. L. 1998, p. 928, § 1; Ga. L. 1999, p. 81, § 36; Ga. L. 2001, p. 1251, § 2-1; Ga. L. 2025, p. 1029, § 36(21)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that," for "however, that" in the last sentence of subsection (d).
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1998, Code Section 36-60-19 as enacted by Ga. L. 1998, p. 928, § 1, was redesignated as Code Section 36-60-21.

36-60-22. Rock quarry operations prohibited under certain circumstances.

Any other provision of law to the contrary notwithstanding, if the director of the Environmental Protection Division of the Department of Natural Resources determines after a scientific analysis that such a quarry location has significant adverse impact on the water system, no person may commence the operation of a limestone or dolostone rock quarry within eight miles of any well or spring accessing an underground source of water which provides water to any county or municipality in an amount of at least 50 percent of such county's or municipality's water supply or two million gallons per day, whichever is less.

History.
Code 1981, § 36-60-22, enacted by Ga. L. 1999, p. 748, § 1.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1999, Code Section 36-60-19 as enacted by Ga. L. 1999, p. 1248, § 1, was redesignated as Code Section 36-60-23.

36-60-23. Volunteer firefighters for counties and municipalities.

(a) As used in this Code section, the term "volunteer firefighter" means a person who is a volunteer firefighter, as defined in Code Section 47-7-1, relating to definitions regarding the Georgia Firefighters' Pension Fund, and who receives no compensation for services as a volunteer firefighter other than:

(1) Actual expenses incurred;

(2) A per diem for services;

(3) Contributions to the Georgia Firefighters' Pension Fund;

(4) Workers' compensation coverage under Chapter 9 of Title 34; or

(5) Any combination of items specified in paragraphs (1) through (4) of this subsection.

(b) Notwithstanding the provisions of Code Section 36-30-4, 45-2-2, or any other provision of law to the contrary, a volunteer firefighter for a county or municipal corporation shall be eligible to serve as a member of the governing authority of that county or municipal corporation.

(c) Nothing in this Code section shall require a county or municipal governing authority to make any of the payments or offer the benefits to volunteer firefighters specified in subsection (a) of this Code section.

History.
Code 1981, § 36-60-23, enacted by Ga. L. 1999, p. 1248, § 1.

Cross references.
Firefighter appreciation day, § 1-4-12.
Georgia Firefighter Standards and Training Act, § 25-4-1 et seq.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1999, Code Section 31-60-19 as enacted by Ga. L. 1999, p. 1248, § 1, was redesignated as Code Section 36-60-23, and "Fund" was substituted for "fund" in paragraph (a)(3).

36-60-24. Sale or use or ignition of consumer fireworks products.

(a) The governing authority of a county or municipal corporation shall not prohibit the sale or use or ignition of consumer fireworks or other products or services which are lawful under Chapter 10 of Title 25, unless such prohibition is expressly authorized by general law.

(b) If the sale of a product or service is regulated by Chapter 10 of Title 25, the governing authority of a county or municipal corporation shall not enact additional regulation of the sale or use or ignition of such product or service, unless such additional regulation is expressly authorized by general law.

(c) Notwithstanding subsections (a) and (b) of this Code section, the governing authority of a county or municipal corporation may provide for permits or licenses for the sale or use of consumer fireworks as provided for under subsection (c) of Code Section 25-10-5.1.

(d) Notwithstanding subsections (a) and (b) of this Code section, the governing authority of a county or municipal corporation may further regulate the sale of consumer fireworks from temporary consumer fireworks retail sales stands until January 31, 2018.

(e) The governing authority of a county or municipal corporation shall not unreasonably delay or deny an application for a temporary consumer fireworks retail sales stand.

(f) As used in this Code section, the terms "consumer fireworks" and "consumer fireworks retail sales stand" shall have the same meanings as set forth in Code Section 25-10-1.

(g) Any ordinance enacted before, on, or after July 1, 2006, by a county or municipal corporation in violation of this Code section is void.

History.
Code 1981, § 36-60-24, enacted by Ga. L. 2006, p. 544, § 1/HB 304; Ga. L. 2015, p. 274, § 8/HB 110; Ga. L. 2016, p. 64, § 13/HB 727; Ga. L. 2025, p. 1029, § 36(22)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "As used in this Code section," for "For purposes of this subsection," and "set forth" for "provided" in subsection (f).

Law reviews.

For article on the 2016 amendment of this Code section, see 33 Ga. St. U.L. Rev. 55 (2016).

36-60-25. Certificates of public necessity and convenience and medallions for taxicabs.

(a) Each county and municipal corporation may require the owner or operator of a taxicab to obtain a certificate of public necessity and convenience or medallion in order to operate such taxicab within the unincorporated areas of the county or within the corporate limits of the municipal corporation, respectively, and may exercise its authority under Code Section 48-13-9 to require such owners or operators to pay a regulatory fee to the county or municipal corporation. The General Assembly finds and declares that any county or municipality exercising the powers granted in this Code section is legitimately concerned with the qualifications and records of drivers of taxicabs; with the location, accessibility, and insured state of companies operating taxicabs; and with the safety and comfort of taxicabs. Without limitation, each such county or municipality may exercise the powers granted in this Code section by ordinance to the same extent as the ordinances reviewed by the Georgia Court of Appeals in the case of Hadley v. City of Atlanta, 232 Ga. App. 871, 875 (1998), and each certificate of public convenience and necessity issued under those ordinances shall remain in full force and effect.

(b) Each certificate of public necessity and convenience or medallion issued at any time by a county or municipal corporation shall be fully transferable pursuant to a purchase, gift, bequest, or acquisition of the stock or assets of a corporation to any person otherwise meeting the requirements of the applicable local ordinance. Each such certificate of public necessity and convenience or medallion may be used as collateral to secure a loan and each lending institution making such a loan shall have all rights of secured parties with respect to such loan.

(c) Counties and municipalities which have adopted and have valid ordinances as of July 1, 2014, requiring taxicabs to have certificates of public necessity and convenience or medallions to operate within each such county or municipality may continue to require such certificates or medallions. Except as otherwise provided in this subsection, no county or municipality shall enact, adopt, or enforce any ordinance or regulation which requires taxicabs to have certificates of public necessity and convenience or medallions to operate within such county or municipality.

(d) No person shall operate a taxicab for the purpose of carrying or transporting passengers for hire unless such person has a for-hire license endorsement or private background check certification pursuant to Code Section 40-5-39. Counties and municipalities shall not impose further licensing requirements or background checks on such persons to operate taxicabs in their jurisdictions.

(e) As used in this subsection, the term "stage" means to stop, park, or otherwise place a vehicle for hire, other than a taxicab, in the loading or curbside area of any business for the purpose of soliciting a fare when such vehicle is not engaged in a prearranged round-trip or prearranged one-way fare. It shall be illegal to stage limousine carriers, as defined in paragraph (5) of Code Section 40-1-151, or ride share drivers, as defined in paragraph (3) of Code Section 40-1-190. A person who violates this subsection shall be guilty of a misdemeanor.

(f) No person shall operate a taxicab for the purpose of carrying or transporting passengers for hire unless such person maintains insurance from an insurance company licensed under Title 33, through a surplus line broker licensed under Title 33, or is qualified as a self-insurer pursuant to Code Section 33-34-5.1.

History.

Code 1981, § 36-60-25, enacted by Ga. L. 2007, p. 677, § 1/HB 519; Ga. L. 2015, p. 1262, § 1/HB 225.

Law reviews.

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 213 (2015).

For annual survey on commercial transportation, see 69 Mercer L. Rev. 41 (2017).

JUDICIAL DECISIONS

Impact of 2015 amendment. — Dismissal of the city taxi cab drivers' complaint for failure to state a cause of action that the 2015 amendment of O.C.G.A. § 36-60-25(a) resulted in an unconstitutional taking and inverse condemnation was affirmed because no law prohibited the city from increasing the Certificates of Public Necessity and Convenience (CPNC) limit and no property interest the drivers may have in their respective CPNCs extended to exclusivity or a limited supply of CPNCs. Abramyan v. State of Ga., 301 Ga. 308, 800 S.E.2d 366, 2017 Ga. LEXIS 385 (2017).

No inverse condemnation shown. — Taxicabs have been the subject of frequent and intensive regulation in the State of Georgia, and O.C.G.A. § 36-60-25(a) does not take business property for a public use, the statute merely requires an already regulated business to adjust its property to the new law. Abramyan v. State of Ga., 301 Ga. 308, 800 S.E.2d 366, 2017 Ga. LEXIS 385 (2017).

No contractual agreement established with city through statutes or ordinances. — In a suit brought by taxi cab companies, the trial court properly granted the city's motion to dismiss because the taxi cab companies failed to establish that the statutes permitting the issuance of Certificates of Public Necessity and Convenience (CPNC), or the city's ordinances, created a

clear and unequivocal intent by the city to create a contractual or franchise agreement that prevented the city allowing personal transportation network companies to operate in the city. Atlanta Metro Leasing, Inc. v. City of Atlanta, 353 Ga. App. 785, 839 S.E.2d 278, 2020 Ga. App. LEXIS 81 (2020), cert. denied, No. S2000994, 2020 Ga. LEXIS 845 (Ga. Sept. 28, 2020).

36-60-26. Unlawful to issue backdated license, permit, or other authorizing document.

(a) It shall be unlawful for any county, municipal corporation, or other issuing authority to issue any backdated license, permit, or other authorizing document, including but not limited to any building permit, sign permit, occupation tax certificate, zoning action, subdivision of land, final plat, or other similar authorization, in any territorial or geographic area which, due to the formation of a county, incorporation of a municipality, annexation or deannexation of territory, or other action, is no longer within the regulatory jurisdiction of said issuing authority. For purposes of this Code section, a license, permit, or other authorizing document shall be considered to be backdated if it in any manner purports to have been issued or have become effective prior to its actual date of issuance.

(b) A license, permit, or other authorizing document in violation of this Code section shall be void in its entirety, and no person shall acquire any rights thereunder.

(c) Any county or municipal officer or employee who knowingly violates this Code section shall be upon conviction guilty of a misdemeanor.

History.

Code 1981, § 36-60-26, enacted by Ga. L. 2008, p. 154, § 1/HB 975.

Editor's notes.

Ga. L. 2008, p. 154, § 2/HB 975, not codified by the General Assembly, provides: "The General Assembly declares its belief that this Act is declaratory of previously existing law; and the passage of this Act shall not be construed to imply that prior law was to the contrary."

JUDICIAL DECISIONS

Acquisition of vested rights in permits. — Void county sign ordinance could not be used as the basis for the denial of sign companies' applications for permits to construct billboards, and the invalidity of the ordinance resulted in there being no valid restriction on the construction of billboards in the county. Accordingly, the sign companies obtained vested rights in the issuance of the billboard construction permits which the companies sought before the city ordinances were enacted. Fulton County v. Action Outdoor Adver., JV, LLC, 289 Ga. 347, 711 S.E.2d 682, 2011 Ga. LEXIS 473 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Offenses arising under O.C.G.A. § 36-60-26 are designated as offenses for which those charged are to be fingerprinted. 2009 Op. Att'y Gen. No. 2009-1.

36-60-27. Banking improvement zones.

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

(1) "Bank" shall have the same meaning as provided in paragraph (7) of Code Section 7-1-4.

(2) "Department" means the Department of Community Affairs.

(3) "Local government" means any county or municipality of this state.

(b) Upon submission of an application by a local government, the department may designate a banking improvement zone within the jurisdiction of such local government for the purpose of encouraging the establishment of branches or representative offices of a bank within an area which is underserved by banking services. Application to establish a banking improvement zone shall be made to the department in such form as shall be prescribed by the department. The department may exercise its discretion in its consideration to approve a local government as eligible for a banking improvement zone; provided, however, that prior to the designation of a banking improvement zone, the department shall make a determination whether any potential gains to a bank from a below rate interest agreement authorized pursuant to subsection (c) of this Code section is ample consideration for a substantial public benefit in compliance with Article III, Section VI, Paragraph VI(a) of the Georgia Constitution. Such decision shall also take into consideration:

(1) The location, number, and proximity of sites where banking services are available in the proposed banking improvement zone;

(2) Consumer needs for banking services in the proposed banking improvement zone;

(3) The economic viability and local credit needs of the local government in the proposed banking improvement zone;

(4) The existing commercial development in the proposed banking improvement zone; and

(5) The impact additional banking services would have on potential economic development in the proposed banking improvement zone.

(c) Upon approval of a banking improvement zone, the governing body of a local government may, through ordinance or resolution, designate a bank to be located within a banking improvement zone as

the depository for local government funds, provided that applicable standards for deposits of public funds set forth in Chapter 8 of Title 45 have been satisfied. Subject to agreement between the governing body of a local government and a bank, such ordinance or resolution shall designate a fixed interest rate that is at or below the posted two-year certificate of deposit rate at the bank.

History.
Code 1981, § 36-60-27, enacted by Ga. L. 2020, p. 578, § 1/SB 20.

36-60-28. Penalties for alarm system contractors for false alarms.

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

(1) "Alarm system" shall have the same meaning as provided in Code Section 43-14-2.

(2) "Alarm system contractor" shall mean any alarm system monitoring business or alarm system installation and repair business.

(3) "Alarm system installation and repair business" means any person engaged in leasing, maintaining, servicing, repairing, altering, replacing, installing or inspecting any alarm system, or in causing any alarm system to be leased, maintained, serviced, repaired, altered, replaced, or installed in any building, structure, or facility.

(4) "Alarm system monitoring business" means any company that intercepts signals indicating the activation of an alarm system and relays this information to a public safety agency.

(5) "False alarm" means the activation of any alarm system that results in a request for police assistance for which the responding public safety agency finds no evidence of criminal activity.

(6) "Local government" means any county or municipality of this state.

(7) "Public safety agency" shall have the same meaning as provided in Code Section 16-10-28.

(b) Notwithstanding any other provision of law, a local government may enact, adopt, or enforce any ordinance, resolution, or regulation requiring any alarm system contractor to pay for or be responsible for any fines, fees, or other penalties relative to false alarms only in situations when the false alarm is attributed to an error of the alarm system contractor or improper installation by the alarm system contractor or if the alarm system contractor cannot provide evidence of telephone logs, other electronic means, or visual evidence that the

alarm verification process as provided in Code Section 35-1-9 was followed. In cases where the alarm system contractor was in compliance with such provisions, a local government may require that the alarm user responsible for the false alarm pay for or be responsible for any fines, fees, or other penalties relative to false alarms.

History.
Code 1981, § 36-60-28, enacted by Ga. L. 2021, p. 214, § 1/HB 465.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2021, Code Section 36-60-28, as enacted by Ga. L. 2021, p. 620, § 2/HB 286, was redesignated as Code Section 36-60-29.

Law reviews.
For article, "HB 286: Restricting Local and Municipal Governments' Ability to Reduce Police Department Funding," see 38 Ga. St. U.L. Rev. 201 (2021).

36-60-29. Limitation on decreasing funding for municipal police force; exceptions.

(a)(1) Except as provided in paragraph (2) of this subsection, the governing authority of a municipality that has established a municipal police force shall not decrease the annual budgetary appropriation for such police force by more than 5 percent of the previous fiscal year's appropriation for such police force.

(2)(A) Paragraph (1) of this subsection shall not apply if actual or anticipated revenues of the municipality for the applicable fiscal year decrease by more than 5 percent. In such event, the governing authority shall be authorized to decrease the budgetary appropriation for such police force, but in no event shall the budget of the police force be decreased by a greater percentage than the overall percentage decrease in actual or anticipated revenues of the municipality.

(B) Paragraph (1) of this subsection shall not apply if during the previous fiscal year the municipality made a one-time capital public safety facility, equipment, or software purchase or incurred a one-time legal obligation that increased the annual budgetary appropriation of such police force by more than 4 percent above the annual budgetary appropriation for such police force for the fiscal year immediately preceding the previous fiscal year and the current fiscal year.

(b)(1) Except as provided for in paragraph (2) of this subsection, the governing authority of a municipality that has established a municipal police force shall ensure that the annual budgetary appropriations for such police force during a rolling five-year period shall not decrease by more than 5 percent during such time period.

(2) Paragraph (1) of this subsection shall not apply if actual or anticipated revenues of the municipality for the applicable time

period decrease by more than 5 percent. In such event, the governing authority shall be authorized to decrease the budgetary appropriation for such police force, but in no event shall the budget of the police force be decreased by a greater percentage than the overall percentage decrease in actual or anticipated revenues of the municipality.

(c) Subsections (a) and (b) of this Code section shall not apply if:

(1) The governing authority ensures that an equal or greater level of law enforcement services will be provided to the municipality by another local government pursuant to an intergovernmental agreement;

(2) During the applicable time period, the municipality is ordered by a court of competent jurisdiction to begin providing a public service at a level such municipality was not providing prior to the issuance of such court order necessitating city-wide budgetary adjustments; or

(3) Whenever a governing authority shall propose to adopt a police department budget which would exceed any limits provided for in subsections (a) and (b) of this Code section, it shall adopt that budget rate at an advertised public meeting and at a time and place convenient to the taxpayers of the taxing jurisdiction. The governing authority shall also place an advertisement in a newspaper of general circulation serving the residents of the unit of local government and post such advertisement on the website of the governing authority, which describes the proposed percentage reduction in police services from the previous year's appropriation for police services. At least one week prior to the meeting of the governing authority at which adoption of the budget rate will be considered, the governing authority shall conduct a public hearing, at which time any persons wishing to be heard on the budget reduction may appear.

(d) This Code section shall also apply to any consolidated government that operates a police force, and such police force shall be considered a municipal police force for the purposes of this Code section.

(e) This Code section shall not apply to any municipal police force employing less than 25 full-time or part-time certified law enforcement officers.

History.

Code 1981, § 36-60-29, enacted by Ga. L. 2021, p. 620, § 2/HB 286.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2021, Code Section 36-60-28, as enacted by Ga. L. 2021, p. 620, § 2/HB 286, was redesignated as Code Section 36-60-29.

36-60-30. Local regulation of leaf blowers.

(a) This Code section shall be known and may be cited as the "Landscape Equipment and Agricultural Fairness (LEAF) Act."

(b) The General Assembly finds that:

(1) Prudent regulation of gasoline-powered leaf blowers is crucial to the welfare of Georgia's economy;

(2) Urban agriculture, homeowners, and landscape service professionals are sensitive to the costs and regulation of gasoline-powered leaf blowers; and

(3) If individual political subdivisions of the state regulate gasoline-powered leaf blowers, there exists the potential for confusing and varying regulations which could lead to unnecessary increased costs for urban agriculture, homeowners, and landscape service professionals to comply with such regulations.

(c) As used in this Code section, the term "gasoline-powered leaf blowers" means any machine that is powered by a two-stroke or four-stroke engine and uses as fuel gasoline or a blend of gasoline and oil, used to blow leaves, dirt, or other debris off of sidewalks, driveways, lawns, or other surfaces.

(d) Any local prohibition or regulation regarding the use, disposition, or sale or any imposition of any restriction, fee imposition, or taxation at the retail, manufacturer, or distributor setting shall not create differing standards for or distinguish gasoline-powered leaf blowers from any other gasoline-powered, electric, or similar such equipment or any other type of leaf blower. Nothing in this subsection shall apply to the use of gasoline-powered leaf blowers on property owned by a county or municipality.

(e) Nothing in this Code section shall be construed to prohibit or limit any county or municipal program to encourage the use of alternative leaf blower equipment, such as battery powered tools.

History.
Code 1981, § 36-60-30, enacted by Ga. L. 2023, p. 411, § 1/HB 374, effective May 2, 2023.

Effective date.
This Code section became effective July 1, 2023.

Code Commission notes.
Both Ga. L. 2023, p. 411, § 1/HB 374 and Ga. L. 2023, p. 569, § 2/SB 62 enacted Code Section 36-60-30. Pursuant to Code Section 28-9-5, in 2023, Code Section 36-60-30 as enacted by Ga. L. 2023, p. 569, § 2/SB 62 was redesignated as Code Section 36-60-31.

36-60-31. Obstruction of sidewalks by camping or sleeping; enforcement.

(a) A county or municipal corporation shall not adopt or enforce any written policy under which the county or municipal corporation prohibits the enforcement of any order or ordinance prohibiting unauthorized public camping, sleeping, or obstruction of sidewalks.

(b) A county or municipal corporation shall not adopt a written policy prohibiting a peace officer or prosecuting attorney who is employed by or otherwise under the direction or control of such county or municipal corporation from enforcing any order or ordinance prohibiting unauthorized public camping, sleeping, or obstruction of sidewalks.

(c) The provisions of this Code section shall not be construed to prohibit a county or municipal corporation from adopting a policy that encourages diversion programs or that offers the provision of services in lieu of citation or arrest.

(d)(1) The Attorney General shall be authorized to bring a civil action in any court of competent jurisdiction against any county or municipal corporation to enjoin a violation of this Code section.

(2) The Attorney General may recover reasonable expenses incurred in any successful civil action brought pursuant to this Code section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(3) A person may bring a writ of mandamus for a violation of this Code section for the person and for the state. The person may recover court expenses and fees if successful in their writ.

History.
Code 1981, § 36-60-31, enacted by Ga. L. 2023, p. 569, § 2/SB 62, effective July 1, 2023.

Effective date.
This Code section became effective July 1, 2023.

Code Commission notes.
Both Ga. L. 2023, p. 411, § 1/HB 374 and Ga. L. 2023, p. 569, § 2/SB 62 enacted Code Section 36-60-30. Pursuant to Code Section 28-9-5, in 2023, Code Section 36-60-30 as enacted by Ga. L. 2023, p. 569, § 2/SB 62 was redesignated as Code Section 36-60-31.

36-60-32. Video surveillance equipment at gas stations.

A county, municipal corporation, or consolidated government shall not require the placement of video surveillance equipment in the interior or exterior of any business or location where the retail sale of automotive gasoline, as that term is defined in Code Section 10-1-232, occurs; provided, however, that a county, municipal corporation, or consolidated government which, prior to May 6, 2024, has adopted one or more ordinances related to the placement of video surveillance

equipment at any business or location where the retail sale of automotive gasoline occurs is authorized to continue regulating the placement of said video surveillance equipment pursuant to any such ordinances adopted prior to May 6, 2024.

History.
Code 1981, § 36-60-32, enacted by Ga. L. 2024, p. 784, § 1-A/HB 1073, effective May 6, 2024; Ga. L. 2025, p. 667, § 1/HB 513, effective July 1, 2025.

Effective date.
This Code section became effective May 6, 2024.

Amendments.
The 2025 amendment, effective July 1, 2025, added the proviso at the end of this Code section.

36-60-33. Local regulation of cottage food industries.

Except as authorized under and in accordance with Code Section 26-2-478, no county or municipality shall prohibit or regulate cottage food items as such term defined in Code Section 26-2-470. No county or municipality shall prohibit commercial delivery companies from delivering cottage food items.

History.
Code 1981, § 36-60-33, enacted by Ga. L. 2025, p. 582, § 5/HB 398, effective July 1, 2025.

Effective date.
This Code section became effective July 1, 2025.

CHAPTER 61

URBAN REDEVELOPMENT

Sec.	
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36-61-18.	Creation of agency; appointment of board of commissioners; compensation, term, and certificate; annual report; removal of commissioners.
36-61-19.	Interest by public official or employee or employee of redevelopment agency in redevelopment project or property; disclosure; eligibility of commissioners and officers of housing authorities for other office.

Cross references.

Community redevelopment generally, Ga. Const. 1983, Art. IX, Sec. II, Para. VII.

Clearance and rehabilitation of blighted areas generally, § 8-4-1 et seq.

Administrative rules and regulations.

Opportunity Zone Job Tax Credit Program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Rule 110-24-1-.01 et seq.

Law reviews.

For note discussing meaning of "public use" and analyzing theories of excess condemnation, see 18 Mercer L. Rev. 274 (1966).

JUDICIAL DECISIONS

This chapter provides for rehabilitation, clearance, and redevelopment of slums in cities and towns in the state. McCord v. Housing Auth., 246 Ga.

547, 272 S.E.2d 247, 1980 Ga. LEXIS 1190 (1980).

36-61-1. Short title.

This chapter shall be known and may be cited as the "Urban Redevelopment Law."

History.
Ga. L. 1955, p. 354, § 1.
Editor's notes.
Ga. 1976, p. 946, § 4, not codified by the General Assembly, provides that all powers, privileges, duties, or immunities now or heretofore granted to municipalities by the Urban Redevelopment Law (this chapter), and all Acts amendatory thereof, are granted and conferred upon every county of this state.
Law reviews.
For survey article on zoning and land use law, see 59 Mercer L. Rev. 493 (2007).
For survey article on zoning and land use law, see 60 Mercer L. Rev. 457 (2008).

JUDICIAL DECISIONS

Housing Authority could sell acquired property to private party. — Georgia's Urban Redevelopment Law, O.C.G.A. § 36-61-1 et seq., authorized a housing authority to exercise eminent domain to acquire and redevelop urban property found to be a "slum area;" the housing authority's disposition of condemned property was authorized, and the housing authority was entitled to summary judgment on a former owner's claim that property had been acquired and then sold to a private party. Talley v. Housing Auth., 279 Ga. App. 94, 630 S.E.2d 550, 2006 Ga. App. LEXIS 392 (2006), cert. dismissed, No. S06C1682, 2006 Ga. LEXIS 785 (Ga. Oct. 2, 2006).

RESEARCH REFERENCES

ALR.
Application of *Kelo v. City of New London,* 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005), to "Public Use" restrictions in federal and state constitutions takings clauses and eminent domain statutes, 21 A.L.R.6th 261.

36-61-2. Definitions.

As used in this chapter, the term:

(1) "Agency" or "urban redevelopment agency" means a public agency created by Code Section 36-61-18.

(2) "Area of operation" means the area within the corporate limits of the municipality or county and the area within five miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated municipality or another county unless a resolution is adopted by the governing body of such other municipality or county declaring a need therefor.

(3) "Board" or "commission" means a board, commission, department, division, office, body, or other unit of the municipality or county.

(4) "Bonds" means any bonds (including refunding bonds), notes, interim certificates, certificates of indebtedness, debentures, or other obligations.

(5) "Clerk" means the clerk or other official of the municipality or county who is the custodian of the official records of such municipality or county.

(6) "County" means any county in this state.

(7) "Downtown development authority" means an authority created pursuant to Chapter 42 of this title.

(8) "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(9) "Housing authority" means a housing authority created by and established pursuant to Article 1 of Chapter 3 of Title 8, the "Housing Authorities Law."

(10) "Local governing body" means the council or other legislative body charged with governing the municipality and the board of commissioners or governing authority of the county.

(11) "Mayor" means the mayor of a municipality or other officer or body having the duties customarily imposed upon the executive head of a municipality.

(12) "Municipality" means any incorporated city or town in this state.

(13) "Obligee" includes any bondholder, agents, or trustees for any bondholders, or any lessor demising to the municipality or county property used in connection with an urban redevelopment project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality or county.

(14) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(15) "Pocket of blight" means an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age, or obsolescence; inadequate provision for ventilation, light, air, sanitation, or open spaces; high density of population and overcrowding; existence of conditions which endanger life or property by fire and other causes; or any combination of such factors, are conducive to ill health,

transmission of disease, infant mortality, juvenile delinquency, or crime and detrimental to the public health, safety, morals, or welfare. Pocket of blight also means an area which by reason of the presence of a substantial number of deteriorated or deteriorating structures; predominance of defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; unsanitary or unsafe conditions; deterioration of site or other improvements; tax or special assessment delinquency exceeding the fair value of the land; the existence of conditions which endanger life or property by fire and other causes; having development impaired by airport or transportation noise or other environmental hazards; or any combination of such factors, substantially impairs or arrests the sound growth of a municipality or county, retards the provisions of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(16) "Pocket of blight clearance and redevelopment" may include:

(A) Acquisition of a pocket of blight or portion thereof;

(B) Rehabilitation or demolition and removal of buildings and improvements;

(C) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban redevelopment provisions of this chapter in accordance with the urban redevelopment plan; and

(D) Making the land available for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality or county itself, at its fair value for uses in accordance with the urban redevelopment plan.

(17) "Public body" means the state or any municipality, county, board, commission, authority, district, housing authority, urban redevelopment agency, or other subdivision or public body of the state.

(18) "Real property" includes all lands, including improvements and fixtures thereon and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest, right, and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise.

(19) "Rehabilitation" or "conservation" may include the restoration and redevelopment of a pocket of blight or portion thereof, in accordance with an urban redevelopment plan, by:

(A) Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

(B) Acquisition of real property and rehabilitation or demolition and removal of buildings and improvements thereon where necessary to eliminate unhealthful, unsanitary, or unsafe conditions, to lessen or increase density, to reduce traffic hazards, to eliminate obsolete or other uses detrimental to the public welfare, to otherwise remove or prevent the spread of pockets of blight or deterioration, or to provide land for needed public facilities or improvements, including, but not limited to, surface transportation projects;

(C) Installation, construction, or reconstruction of streets, transit facilities and improvements, sidewalks, streetscapes, trails, bicycle facilities, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban redevelopment provisions of this chapter; and

(D) The disposition of any property acquired in such urban redevelopment area, including sale, initial leasing or retention by the municipality or county itself, at its fair value for uses in accordance with the urban redevelopment plan.

(20) "Slum clearance and redevelopment" may include:

(A) Acquisition of a slum area or portion thereof;

(B) Rehabilitation or demolition and removal of buildings and improvements;

(C) Installation, construction, or reconstruction of streets, transit facilities, sidewalks, streetscapes, trails, bicycle facilities, utilities, parks, playgrounds, and other public facilities and improvements necessary for carrying out in the area the urban redevelopment provisions of this chapter in accordance with the urban redevelopment plan; and

(D) Making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality or county itself) at its fair value for uses in accordance with the urban redevelopment plan.

(21) "Sponsoring local government" means the municipality or county which approves and is, directly or indirectly, providing the greatest percentage of the public funding, exclusive of federal funding, for a surface transportation project.

(22) "Surface transportation project" means a project for public improvement and any related public facilities which is planned to impact 10,000 or more acres and at least ten transit miles within the area of operation of the sponsoring local government, including any

related facilities, systems, parks, trails, streets, greenspace, and any other integrated public or private development features included within any adopted infrastructure or transportation plan, urban redevelopment plan, strategic implementation plan, redevelopment plan, workable programs, or comprehensive plans; provided that the location of such surface transportation project is wholly within a county or counties that have approved a referendum pursuant to Section 24 of an Act creating the Metropolitan Atlanta Rapid Transit Authority, approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended; and provided, further, that the project is within one-half mile of a transportation/communications/utilities corridor, which has been designated by the local governing body on or before January 1, 2015, or within the boundaries of a tax allocation district authorized under the provisions of Chapter 44 of this title in effect as of January 1, 2015.

(23) "Urban redevelopment area" means a pocket of blight which the local governing body designates as appropriate for an urban redevelopment project.

(24) "Urban redevelopment plan" means a plan, as it exists from time to time, for an urban redevelopment project, which plan shall:

(A) Conform to the general plan for the municipality or county as a whole; and

(B) Be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban redevelopment area; zoning and planning changes, if any; land uses; maximum densities; building requirements; and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(25) "Urban redevelopment project" may include undertakings or activities of a municipality or county in an urban redevelopment area for the elimination and for the prevention of the development or spread of pockets of blight and may involve pocket of blight clearance and redevelopment in an urban redevelopment area, rehabilitation or conservation in an urban redevelopment area, the implementation of public improvements, including, but not limited to, surface transportation projects, or any combination or part thereof, in accordance with an urban redevelopment plan. Although the power of eminent domain may not be exercised for the following purposes, such undertakings or activities may include:

(A) Acquisition, without regard to any requirement that the area be a pocket of blight, of air rights in an area consisting of lands and

highways, railway or subway tracks, bridge or tunnel entrances, or other similar facilities which have a blighting influence on the surrounding area and over which air rights sites are to be developed for the elimination of such blighting influences and for the provision of housing and related facilities and uses designed for, and limited primarily to, families and individuals of low or moderate income; and

(B) Construction of foundations and platforms necessary for the provision of air rights sites of housing and related facilities and uses designed for, and limited primarily to, families and individuals of low or moderate income or construction of foundations necessary for the provision of air rights sites for development of nonresidential facilities.

History.

Ga. L. 1955, p. 354, § 19; Ga. L. 1963, p. 644, § 1; Ga. L. 1971, p. 445, §§ 3-5; Ga. L. 1976, p. 946, §§ 2, 3; Ga. L. 1982, p. 3, § 36; Ga. L. 1992, p. 2533, §§ 11, 12; Ga. L. 2015, p. 1318, § 1/HB 174; Ga. L. 2015, p. 1329, § 2/SB 4; Ga. L. 2016, p. 864, § 36/HB 737.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, "Authorities" was substituted for "Authority" in paragraph (9).

Pursuant to Code Section 28-9-3, in 2015, the amendment of paragraph (19) of this Code section by Ga. L. 2015, p. 1318, § 1/HB 174, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 1329, § 2/SB 4, due to irreconcilable conflict.

Pursuant to Code Section 28-9-5, in 2015, former paragraphs (19) through (24) were redesignated as present paragraphs (20) through (25), respectively, to maintain alphabetical order.

RESEARCH REFERENCES

Am. Jur. 2d.

40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, §§ 1 et seq., 15, 18.

C.J.S.

39A C.J.S., Health and Environment, §§ 58, 59. 62 C.J.S., Municipal Corporations, §§ 1 et seq., 257, 549 et seq. 64A C.J.S., Municipal Corporations, § 1595.

ALR.

What constitutes "Blighted Area" within urban renewal and redevelopment statutes, 45 A.L.R.3d 1096.

36-61-3. Legislative findings and declaration of necessity.

(a) It is found and declared that there exist in municipalities and counties of this state pockets of blight, as defined in paragraph (15) of Code Section 36-61-2, which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of this state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities and counties, retards the provision of housing accommodations, aggravates traffic problems, and substantially impairs or arrests the elimination of traffic hazards and

the improvement of traffic facilities; and that the prevention and elimination of pockets of blight is a matter of state policy and state concern, in order that this state and its municipalities and counties shall not continue to be endangered by areas which are local centers of disease, promote juvenile delinquency, and, while contributing little to the tax income of this state and its municipalities and counties, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities.

(b) It is further found and declared that certain pockets of blight or portions thereof may require acquisition, clearance, and disposition, subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that the other areas or portions thereof, through the means provided in this chapter, may be susceptible of conservation or rehabilitation in such a manner that the conditions and evils enumerated in subsection (a) of this Code section may be eliminated, remedied, or prevented and that, to the extent that is feasible, salvable pockets of blight should be conserved and rehabilitated through voluntary action and the regulatory process.

(c) It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and the power of eminent domain may be exercised. The necessity, in the public interest, for the provisions enacted in this chapter is declared as a matter of legislative determination.

History.
Ga. L. 1955, p. 354, § 2; Ga. L. 1993, p. 91, § 36; Ga. L. 2015, p. 1318, § 2/HB 174.

JUDICIAL DECISIONS

Constitutionality. — The Urban Redevelopment Law is expressly authorized by the Constitution, and it and the acts proposed to be taken thereunder, and in conformity therewith, are not unconstitutional. Bailey v. Housing Auth., 214 Ga. 790, 107 S.E.2d 812, 1959 Ga. LEXIS 347 (1959).

RESEARCH REFERENCES

C.J.S.
39A C.J.S., Health and Environment, § 61 et seq.
ALR.
Constitutionality, construction, and application of statutes or governmental projects for improvement of housing conditions (slum clearance), 130 A.L.R. 1069; 172 A.L.R. 966.

36-61-3.1. Eminent domain to be exercised solely for public use.

(a) As used in this Code section, the term "public use" shall have the meaning specified in Code Section 22-1-1.

(b) Any exercise of the power of eminent domain under this chapter must:

(1) Be for a public use; and

(2) Be approved by resolution of the governing body of the municipality or county in conformity with the procedures specified in Code Section 22-1-10.

History.
Code 1981, § 36-61-3.1, enacted by Ga. L. 2006, p. 39, § 22/HB 1313.

Editor's notes.
Ga. L. 2006, p. 39, § 1/HB 1313, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'The Landowner's Bill of Rights and Private Property Protection Act.'"

Ga. L. 2006, p. 39, § 25/HB 1313, not codified by the General Assembly, provides that this Code section shall apply to those condemnation proceedings filed on or after February 9, 2006, where title has not vested in the condemning authority unless constitutionally prohibited.

Law reviews.
For article on 2006 enactment of this Code section, see 23 Ga. St. U.L. Rev. 157 (2006).

36-61-4. Encouragement of private enterprise.

(a) A municipality or county, to the greatest extent it determines to be feasible in carrying out the provisions of this chapter, shall afford maximum opportunity, consistent with the sound needs of the municipality or county as a whole, to the rehabilitation or redevelopment of the urban redevelopment area by private enterprise. A municipality or county shall give consideration to this objective in exercising its powers under this chapter, including: the formulation of a workable program; the approval of urban redevelopment plans consistent with the general plan for the municipality or county; the adoption and enforcement of ordinances as provided for in Code Section 36-61-11; the exercise of its zoning powers; the enforcement of other laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements; the disposition of any property acquired; and the provision of necessary public improvements.

(b) Notwithstanding anything in this chapter or other provisions of law to the contrary, and in order to give effect to the encouragement of private enterprise contemplated in this Code section, the following shall apply to contracts and agreements for surface transportation projects entered into pursuant to this chapter:

(1) In addition to other methods of procurement authorized by law, the sponsoring local government, urban redevelopment agency, or other governing body shall be authorized to utilize the procedures of this chapter to provide for the planning, design, finance, construction, acquisition, leasing, operation, and maintenance of surface transportation projects. The provisions of this chapter shall be an alternative

to such other methods to be exercised at the option of each sponsoring local government or public body;

(2) One or more public bodies may participate in the consideration and implementation of a surface transportation project at the discretion of the sponsoring local government. Where more than one public body agrees to participate in the consideration or implementation of a surface transportation project, the participants may designate one or more representatives of each such participating public body, as agreed to by the sponsoring local government or the urban redevelopment agency;

(3)(A) An urban redevelopment agency designated by the sponsoring local government may evaluate a project to determine the appropriate or desirable levels of public and private participation in planning, designing, financing, constructing, operating, maintaining, or facilitating, or any combination thereof, for the execution of such project. Such urban redevelopment agency may designate a public nonprofit, private corporation, body, or entity to perform this function and to otherwise perform the activities contemplated in this Code section.

(B) A sponsoring local government or an urban redevelopment agency shall be authorized to issue, individually or in sequenced stages, written requests for expressions of interest, qualifications, or proposals, or any combination thereof, or other similar methods of procurement or solicitation. Such requests shall indicate the scope of the project, the proposed public and private financial participation in the project, including, but not limited to, the rights, responsibilities, obligations, revenue sharing features, any lease, license, availability or other payment rights, and any other allocations of interests and federal and state income tax benefits in respect of real and personal property relating to a project. Such requests shall include the factors to be used in evaluating responses, the relative importance of any applicable evaluation factors, and other contractual terms and conditions expected, including any unique capabilities or qualifications that will be required of respondents, as determined in the sole discretion of the designated representative of the sponsoring local government. Public notice of such requests shall be made at least 30 days prior to the date set for the release of said request by posting a legal notice on the websites and weekly in the legal organ of the sponsoring local government and the public body implementing the project, in substantially the same manner utilized by such public bodies in order to solicit requests for proposals, with a copy of such notice provided simultaneously to each affected public body.

(C)(i) The public body implementing the project and the sponsoring local government, with the participation of any designated

representatives of other participating public bodies as determined by the sponsoring local government, may engage in individual discussions and interviews with each respondent deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence and ability to meet the level of private financial participation as called for in such request. Repetitive interviews may be conducted. Any such interviews shall be deemed to be a part of the procurement process.

(ii)(I) At the conclusion of the final stage, on the basis of evaluation factors published in the request and all information developed in the selection process, the public body implementing the surface transportation project, in an open and public meeting subject to the provisions of Chapter 14 of Title 50, shall rank the proposals in accordance with the factors set forth in the request for proposal or invitation for bids.

(II) After ranking the proposals, the public body implementing the project shall begin negotiations with the first ranked private entity. If such public body and first ranked private entity do not reach a comprehensive agreement or interim agreement, such public body may conduct negotiations with the next ranked private entity. Such process shall continue until such public body either voluntarily abandons the process or executes a comprehensive agreement or interim agreement with a private entity. Negotiations conducted with one or more selected respondents pursuant to this Code section shall continue to be deemed an active procurement until the execution of the final, definitive agreement with the selected respondent or respondents.

(iii) The public body implementing the project shall select for approval the respondent offering the most satisfactory and advantageous contract terms for the project based upon a thorough assessment of any one or more of the following: experience and reputation with similar projects; engineering and design quality; value; projected savings during, before, or after construction; and the ability of the final project's characteristics to meet the goals of the sponsoring local government, consistent with applicable plans and programs. The fair market value of any property included as a part of the procurement may be based on the consideration of the above factors, but it shall not be less than the initial cost to obtain the property. Before making such selection, the designated representative shall consult in an open and public meeting subject to the provisions of Chapter 14 of

Title 50 with the representatives of any participating local governing authority, participating local authority, participating state agency, department, or authority, and affected local government. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the request, the implementing public body may award contracts to more than one respondent. Should the implementing public body determine in writing that only one respondent is fully qualified, or that one respondent is clearly more highly qualified and suitable than the other respondents under consideration, a contract may be negotiated and awarded to that respondent.

(iv) Upon approval of the selection by the implementing public body, a contract or contracts not exceeding 50 years in duration may be entered into by the urban redevelopment agency or any one or more of the participating public bodies and the selected respondent or respondents. The private financial data or financial plans which qualify as trade secrets pursuant to Code Section 10-1-761 and paragraph (34) of subsection (a) of Code Section 50-18-72 provided by the respondents shall remain exempt from Code Section 50-18-72 during and after the conclusion of the related selection process.

(D) A dispute over the award of a contract under this chapter shall be resolved by the filing of a petition in the superior court of the county in which the sponsoring local government is located within 30 days of the awarding of such contract and shall be determined through the use of a special master appointed by the judge of the superior court of the county in which the sponsoring local government is located. The special master shall not be authorized to enjoin or otherwise delay or suspend the execution of the contract and any work to be performed under such contract. The decision of the special master with regard to such dispute shall be appealable for a de novo review to the superior court of the county in which the sponsoring local government is located within 30 days following the decision of the special master.

(E) Nothing in this chapter shall require the designated representatives, the sponsoring local government, the implementing public body, or any participating public body to continue negotiations or discussions arising out of any request or any other procurement initiated under the provisions of this Code section.

(F) Every public body shall be authorized to promulgate reasonable rules and regulations to assist in its evaluation of responses and to implement the purposes of this chapter; provided, however, that unsolicited proposals shall not be permitted;

(4) No public officer, employee, or member of any participating

public body, with respect to contracts of such public body, or the General Assembly shall serve as an agent, lobbyist, or board member for any private entity directly or indirectly under a contract or negotiating a contract provided for by this chapter for one year after leaving his or her position as a public officer, employee, or member of the public body or the General Assembly; and

(5) Contracts entered into with a private enterprise in respect to the design, construction, operation, financing, or management of the public components of a surface transportation project shall not constitute the acquisition of property for a private use, nor shall such contracts be deemed a sale, lease, or other disposition of the related interests in property under any provisions of this chapter or other provision of applicable law, and such public components of a surface transportation project shall be deemed a public use for all purposes under applicable provisions of law, including, without limitation, Code Sections 36-61-9 and 36-61-10.

History.
Ga. L. 1955, p. 354, § 3; Ga. L. 2015, p. 1329, § 3/SB 4; Ga. L. 2016, p. 864, § 36/HB 737.

Law reviews.
For article, "Cities and Towns in Georgia: A Distinction with a Difference?," see 14 Mercer L. Rev. 385 (1963).

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 5.

C.J.S.
39A C.J.S., Health and Environment, §§ 58, 59.

ALR.
Validity, construction, and effect of statutes providing for urban redevelopment by private enterprise, 44 A.L.R.2d 1414.

36-61-5. Resolution of necessity prerequisite to exercise of powers.

No municipality or county shall exercise any of the powers conferred upon municipalities and counties by this chapter until after its local governing body has adopted a resolution finding that:

(1) One or more pockets of blight exist in such municipality or county; and

(2) The rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of the municipality or county.

History.
Ga. L. 1955, p. 354, § 5; Ga. L. 2015, p. 1318, § 3/HB 174.

JUDICIAL DECISIONS

Under this section, it is not required that any evidence or proof be taken or considered but simply that a resolution be adopted. This can only mean that the officials concerned exercise the officials' own judgment based upon what the officials know or believe and make their findings. The very nature of matters required to be found by the resolution shows them not capable of being brought under judicial determination. Allen v. City Council, 215 Ga. 778, 113 S.E.2d 621, 1960 Ga. LEXIS 337 (1960).

36-61-6. Formulation of workable program.

For the purposes of this chapter, a municipality or county may formulate a workable program for utilizing appropriate private and public resources, including those specified in Code Section 36-61-11, to eliminate and prevent the development or spread of pockets of blight, to encourage needed urban rehabilitation, to provide for the redevelopment of pockets of blight, or to undertake such of the aforesaid activities or such other feasible municipal or county activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for the prevention of the spread of pockets of blight into areas of the municipality or county which are free from pockets of blight, through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation or conservation of pockets of blight or portions thereof by replanning, removing congestion, providing parks, playgrounds, and other public improvements, including without limitation surface transportation projects, encouraging voluntary rehabilitation, and compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of pockets of blight or portions thereof.

History.
Ga. L. 1955, p. 354, § 4; Ga. L. 2015, p. 1318, § 4/HB 174; Ga. L. 2015, p. 1329, § 4/SB 4.

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 15.

36-61-7. Preparation of redevelopment plan; approval; modification; effect of approval.

(a) A municipality or county shall not approve an urban redevelopment plan for an urban redevelopment area unless the governing body, by resolution, has determined such area to be a pocket of blight and designated such area as appropriate for an urban redevelopment project. Authority is vested in every municipality and county to prepare, to adopt, and to revise, from time to time, a general plan for the physical

development of the municipality or county as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal and county planning activities, and to make available and to appropriate the necessary funds therefor. A municipality or county shall not acquire real property for an urban redevelopment project unless the local governing body has approved the urban redevelopment plan in accordance with subsection (d) of this Code section.

(b) The municipality or county may itself prepare or cause to be prepared an urban redevelopment plan; alternatively, any person or agency, public or private, may submit a plan to a municipality or county.

(c) The local governing body of the municipality or county shall hold or shall cause some agency of the municipality or county to hold a public hearing on an urban redevelopment plan or a substantial modification of an approved urban redevelopment plan, after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality or county. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban redevelopment area covered by the plan, and shall outline the general scope of the urban redevelopment project under consideration.

(d) Following such hearing, the local governing body may approve an urban redevelopment plan if it finds that:

(1) A feasible method exists for the relocation of families who will be displaced from the urban redevelopment area in decent, safe, and sanitary dwelling accommodations within their means and without undue hardship to such families;

(2) The urban redevelopment plan conforms to the general plan of the municipality or county as a whole; and

(3) The urban redevelopment plan will afford maximum opportunity, consistent with the sound needs of the municipality or county as a whole, for the rehabilitation or redevelopment of the urban redevelopment area by private enterprise.

(e) An urban redevelopment plan may be modified at any time, provided that, if modified after the lease or sale by the municipality or county of real property in the urban redevelopment project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser or his or her successor or successors in interest may be entitled to assert. Any proposed modification which will substantially change the urban redevelopment plan as previously approved by the local governing body shall be subject to the requirements of this Code section, including the requirement of a public hearing, before it may be approved.

(f) Upon the approval of an urban redevelopment plan by a municipality or county, the provisions of the plan with respect to the future use and building requirements applicable to the property covered by the plan shall be controlling with respect thereto.

History.
Ga. L. 1955, p. 354, § 6; Ga. L. 1982, p. 3, § 36; Ga. L. 2015, p. 1318, § 5/HB 174.

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, §§ 15, 19.

C.J.S.
39A C.J.S., Health and Environment, § 59.

36-61-8. Powers of municipalities and counties generally.

Every municipality and every county shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others granted in this chapter:

(1) To undertake and carry out urban redevelopment projects within its area of operation; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter; and to disseminate pocket of blight clearance and urban redevelopment information;

(2) To provide, to arrange, or to contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with an urban redevelopment project and to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements, provided that neither the municipality or county itself nor an urban redevelopment agency or housing authority or downtown development authority acting pursuant to an election under Code Section 36-61-17 shall provide, install, or construct any public utility of the same kind or character as an existing utility operating in the municipality or county if such existing utility is providing reasonably adequate and proper service, as determined by the Public Service Commission; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or to compliance with labor standards in the undertaking or carrying out of an urban redevelopment project, and to include, in any contract let in connection with such a project, provisions to fulfill such conditions as it may deem reasonable and appropriate;

(3) Within its area of operation, to enter upon any building or

property in any urban redevelopment area in order to make surveys, appraisals, soundings, or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire, by purchase, lease, option, gift, grant, bequest, devise, or otherwise, any real property (or personal property for its administrative purposes) together with any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality or county against any risks or hazards, and to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter; provided, however, that no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality or county or other public body exercising powers under this chapter in the exercise of such functions with respect to an urban redevelopment project, unless the General Assembly shall specifically so state;

(4) To invest any urban redevelopment project funds held in reserves or sinking funds or any such funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control; and to redeem such bonds as have been issued pursuant to Code Section 36-61-12 at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled;

(5) To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this chapter, and to give such security as may be required and to enter into and carry out contracts in connection therewith. A municipality or county may include in any contract for financial assistance with the federal government for an urban redevelopment project such conditions imposed pursuant to federal law as the municipality or county may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter;

(6) Within their area of operation, to make or have made all plans necessary to the carrying out of the purposes of this chapter and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans. Such plans may include, without limitation:

(A) A general plan for the locality as a whole;

(B) Urban redevelopment plans;

(C) Plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, to include but not to be limited to making loans and grants from funds received from the federal government, as well as from funds received from the repayment of such loans and interest thereon, to persons, public or private, owning private housing for the purpose of financing the rehabilitation of such housing;

(D) Plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements; and

(E) Appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban redevelopment projects.

The municipality or county is authorized to develop, test, and report methods and techniques and to carry out demonstrations and other activities for the prevention and elimination of pockets of blight and to apply for, accept, and utilize grants of funds from the federal government for such purposes;

(7) To prepare plans and provide reasonable assistance for the relocation of families displaced from an urban redevelopment area, to the extent essential for acquiring possession of and clearing such area or parts thereof to permit the carrying out of the urban redevelopment project;

(8) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this chapter and to levy taxes and assessments for such purposes; to close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; to plan or replan, zone, or rezone any part of the municipality or county or make exceptions from building regulations; and to enter into agreements, under Code Section 36-61-17, with a housing authority, a downtown development authority, or an urban redevelopment agency vested with urban redevelopment project powers, which agreements may extend for up to 50 years respecting action to be taken by such municipality or county pursuant to any of the powers granted by this chapter. The reasonable costs of removing, relocating, and rearranging public utility facilities within urban renewal areas may constitute a cost of carrying out the purposes of this chapter, and every municipality and county may, in their discretion, pay such reasonable costs or any portion thereof;

(9) Within their areas of operation, to organize, coordinate, and

direct the administration of the provisions of this chapter as they apply to such municipality or county, in order that the objective of remedying pockets of blight and preventing the causes thereof within the municipality or county may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or county or to reorganize existing offices in order to carry out such purpose most effectively; and

(10) To exercise all or any part or combination of powers granted in this Code section.

History.
Ga. L. 1955, p. 354, § 7; Ga. L. 1963, p. 644, § 2; Ga. L. 1976, p. 946, § 1; Ga. L. 1992, p. 2533, § 13; Ga. L. 2015, p. 1318, § 6/HB 174.

JUDICIAL DECISIONS

Lease of facilities to private enterprises for commercial use authorized. — Under the Urban Redevelopment Law, O.C.G.A. § 36-61-1 et seq., the city may provide facilities in connection with an urban redevelopment project, including facilities leased to private enterprises for commercial use. Nations v. Downtown Dev. Auth., 256 Ga. 158, 345 S.E.2d 581, 1986 Ga. LEXIS 756 (1986).

OPINIONS OF THE ATTORNEY GENERAL

Loans of federal money to private housing owners not allowed. — Municipalities and counties to which the Urban Redevelopment Law applies may not, pursuant to this section, make loans or grants from moneys received from the federal government under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.) to owners of private housing for the purpose of financing the rehabilitation of such housing. 1975 Op. Att'y Gen. No. 75-119.

Repair or disposal of dwellings outside redevelopment area. — Municipality may acquire, rehabilitate, and dispose of substandard residential dwellings to the housing authority when such dwellings are outside an officially declared urban redevelopment area, if such activities are designed to provide low-rent housing to persons displaced by activities within such area. 1982 Op. Att'y Gen. No. U82-28.

Repairing low-rent homes for use by persons displaced by an urban redevelopment project, though outside an officially designated urban redevelopment area, would appear to be "in connection with" that project within the meaning of paragraph (2) of O.C.G.A. § 36-61-8. 1982 Op. Att'y Gen. No. U82-28.

RESEARCH REFERENCES

C.J.S.
39A C.J.S., Health and Environment, § 58 et seq. 63 C.J.S., Municipal Corporations, § 1135. 64 C.J.S., Municipal Corporations, §§ 1138, 1248,1427. 64A C.J.S., Municipal Corporations, §§ 192, 2092 et seq., 2184

ALR.
What are "prevailing wages," or the like, for purposes of state statute

requiring payment of prevailing wages on public works projects, 7 A.L.R.5th 400.

Employers subject to state statutes requiring payment of prevailing wages on public works projects, 7 A.L.R.5th 444.

36-61-9. Power of eminent domain; conditions; title acquired.

(a) Except as otherwise provided in subsection (c) of this Code section, a municipality or county shall have the right to acquire, by exercise of the power of eminent domain, any real property which it may deem necessary for its purposes under this chapter, after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. A municipality or county may exercise the power of eminent domain in the manner provided in Title 22; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired, provided that no real property belonging to the municipality, the county, the state, or any political subdivision thereof may be acquired without its consent.

(b) Whenever condemnation proceedings are instituted and carried on by a municipality or county in accordance with subsection (a) of this Code section or through any other method of condemnation provided by law, upon the payment by the municipality or county seeking condemnation of the amount of the award and final judgment on appeal the municipality or county shall become vested with a fee simple indefeasible title to the property to which the condemnation proceedings relate. Such payment may be offset in whole or in part by the amount of any municipal or county tax liens on the condemned property and by any existing special assessments tax liens on the condemned property, including without limitation education or special district taxes collected by the municipality or county; provided, however, that any such setoff shall be subject to any existing tax liens having higher priority pursuant to Code Section 48-2-56 and to the interest in the condemned property of any known beneficiary of a year's support pursuant to former Code Section 53-5-2 as such existed on December 31, 1997, if applicable, or Code Sections 53-3-1, 53-3-2, 53-3-4, 53-3-5, and 53-3-7; provided, further, that where the condemned property is subject to a valid deed to secure debt, such setoff shall only be allowed for tax liens which arose as a result of an assessment against such property. It is declared to be necessary, to enable such municipalities and counties to exercise their powers under this Code section, that upon the condemnation proceedings being had, the municipalities and counties shall become vested with fee simple indefeasible title to the property involved in the proceedings.

(c) Unless the property is to be acquired for the purpose of devoting it to a public use, a municipality or county may not acquire real

property through the exercise of the power of eminent domain pursuant to subsection (a) of this Code section until the following conditions and requirements have been met:

(1) The municipality or county which adopted the urban redevelopment plan has approved a resolution authorizing the exercise of the power of eminent domain by the agency to acquire the property;

(2) The municipality or county shall, in writing, notify the owner of the real property proposed to be acquired of the planned rehabilitation of the property as set forth in the urban redevelopment plan for the urban redevelopment area wherein the property is located;

(3) Within 30 days after being so notified, the owner of the property shall have the option of notifying the municipality or county, in writing, of his willingness and intention to rehabilitate and maintain the property in accordance with the urban redevelopment plan. In the event of multiple ownership of the property, unanimous agreement by the owners shall be required; and the failure of any one owner to notify the municipality or county, within the time limitation specified in this paragraph, of his willingness and intention to rehabilitate and maintain the property in accordance with the urban redevelopment plan shall be deemed to be a failure to exercise the option provided in this paragraph; and

(4) The owner of the property may execute an agreement with the municipality or county to rehabilitate the property in accordance with the urban redevelopment plan. Any such agreement shall be as the municipality or county deems necessary and appropriate as to form and content; in connection therewith, the municipality or county shall have the right to require sufficient performance, payment, and completion bonds. In the event that any such owner, at any time, fails to comply with or defaults in the performance of the provisions of the agreement, such property shall no longer be subject to the agreement, the option provided by paragraph (3) of this subsection shall no longer apply, and the property may be acquired by the municipality or county by purchase or through the exercise of the power of eminent domain. In the alternative, the municipality or county may either specifically enforce the agreement, exercise any rights under any bonds which may have been required, and obtain any other legal or equitable relief as may be available to the municipality or county or, if the owner fails to exercise the option to rehabilitate the property or defaults on the agreement to rehabilitate the property, the municipality or county may implement those portions of the urban development plan with respect to such property to the extent the municipality or county deems necessary and the costs of implementing such plan shall be a lien against the property enforceable in the same manner as tax liens.

History.

Ga. L. 1955, p. 354, § 8; Ga. L. 1971, p. 445, §§ 1, 2; Ga. L. 1982, p. 3, § 36; Ga. L. 1992, p. 6, § 36; Ga. L. 1992, p. 2533, § 14; Ga. L. 1994, p. 877, § 1; Ga. L. 1998, p. 128, § 36; Ga. L. 2011, p. 752, § 36/HB 142.

Law reviews.

For article surveying developments in Georgia real property law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 219 (1981).

For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 212 (1994).

JUDICIAL DECISIONS

Demand that just and adequate compensation be first paid is imperative. It means that such payment covers its value at the time of taking and not its value many rental periods or years prior to the actual institution of condemnation proceedings. Housing Auth. v. Schroeder, 222 Ga. 417, 151 S.E.2d 226, 1966 Ga. LEXIS 496 (1966).

Exercise of power of eminent domain under this section must be pursuant to the formulation of an urban redevelopment plan which necessitates the acquisition of specific real property to effectuate its purposes. McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247, 1980 Ga. LEXIS 1190 (1980).

Qualification on right of eminent domain. — Right of the state to obtain private property for the public purpose of urban redevelopment is qualified by the requirement that the property owner must be permitted to develop the owner's land personally in accordance with the proposed plan, if the owner so desires and if the owner has the resources to do so. McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247, 1980 Ga. LEXIS 1190 (1980); Ward v. Housing Auth., 157 Ga. App. 825, 278 S.E.2d 715, 1981 Ga. App. LEXIS 2024 (1981).

Requirement of specificity in urban redevelopment plan. — When, pursuant to court order, condemnee was provided with a map showing the proposed use of the condemnee's land, in conjunction with the lands of other owners, as part of a 66,600 square foot warehouse, any requirement of specificity in an urban redevelopment plan was amply satisfied by this information. Waller v. Clayton County, 200 Ga. App. 706, 409 S.E.2d 561, 1991 Ga. App. LEXIS 1128 (1991), cert. denied, No. S91C1499, 1991 Ga. LEXIS 577 (Ga. Sept. 6, 1991).

Option of landowner to develop personally. — This section gives a private landowner the option of retaining ownership of the land and developing the land in accordance with the urban redevelopment plan when the land was to be put to a nonpublic use. McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247, 1980 Ga. LEXIS 1190 (1980).

Term "multiple ownership" refers to a situation when a particular parcel within the tract to be condemned is owned by more than one person, rather than to all owners of all parcels within the tract. McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247, 1980 Ga. LEXIS 1190 (1980).

Term "property" refers to each individual parcel within the tract to be condemned, rather than to the tract as a whole, thus extending to each parcel owner the option of retaining ownership and developing in accordance with the urban redevelopment plan. McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247, 1980 Ga. LEXIS 1190 (1980).

Not applicable to conveyance of previously condemned property. — Even assuming the original condemnation proceeding was conducted pursuant to the Urban Redevelopment Law and that O.C.G.A. § 36-61-9 was applicable to it, the 2003 conveyance was not a re-taking by a municipality or county and thus the transaction was not governed by the requirements of § 36-61-9. By its terms, the statute applies to the original taking of property by eminent domain. The 2003 conveyance was, instead, a re-purposing of the property from that involved in the original taking. Darling Int'l, Inc. v.

Carter, 294 Ga. 455, 754 S.E.2d 347, 2014 Ga. LEXIS 101 (2014).

Subsection (c) distinguishes between procedures to be followed in acquiring property for public use and in acquiring property for nonpublic use. McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247, 1980 Ga. LEXIS 1190 (1980).

Planned parking structure was to be devoted to "public use" within the meaning of subsection (c) of O.C.G.A. § 36-61-9 and therefore did not trigger the requirements of that subsection. Allright Auto Parks, Inc. v. City of Atlanta, 257 Ga. 315, 357 S.E.2d 797, 1987 Ga. LEXIS 816 (1987).

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Eminent Domain, §§ 23 et seq., 433 et seq.

ALR.

Constitutionality, construction, and application of statutes or governmental projects for improvement of housing conditions (slum clearance), 130 A.L.R. 1069; 172 A.L.R. 966.

Depreciation in value, from project for which land is condemned, as a factor in fixing compensation, 5 A.L.R.3d 901.

What constitutes "Blighted Area" within urban renewal and redevelopment statutes, 45 A.L.R.3d 1096.

Eminent domain: possibility of overcoming specific obstacles to contemplated use as element in determining existence of necessary public use, 22 A.L.R.4th 840.

Eminent Domain: Construction or Expansion of Parking Facility as Public Use or Purpose, 87 A.L.R.7th 2.

36-61-10. Disposal of property in redevelopment area generally; notice and bidding procedures; exchange with veterans' organization; temporary operation of property.

(a) A municipality or county may sell, lease, or otherwise transfer real property in an urban redevelopment area or any interest therein acquired by it and may enter into contracts with respect thereto, for residential, recreational, commercial, industrial, or other uses or for public use; or the municipality or county may retain such property or interest for public use, in accordance with the urban redevelopment plan, subject to such covenants, conditions, and restrictions, including covenants running with the land and including the incorporation by reference therein of the provisions of an urban redevelopment plan or any part thereof, as it may deem to be in the public interest or necessary or desirable to assist in preventing the development or spread of future pockets of blight or to otherwise carry out the purposes of this chapter. Such sale, lease, other transfer, or retention and any agreement relating thereto may be made only after the approval of the urban redevelopment plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban redevelopment plan and may be obligated to comply with such other requirements as the municipality or county may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on the real property required by the urban redevelopment plan. Such real property or interest shall be sold, leased, otherwise trans-

ferred, or retained at not less than its fair value for uses in accordance with the urban redevelopment plan. In determining the fair value of real property for uses in accordance with the urban redevelopment plan, a municipality or county shall take into account and give consideration to the uses provided in such plan; the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality or county retaining the property; and the objectives of such plan for the prevention of the recurrence of pockets of blight. The municipality or county in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality or county until he or she has completed the construction of any and all improvements which he or she has obligated himself or herself to construct thereon. Real property acquired by a municipality or county which, in accordance with the provisions of the urban redevelopment plan, is to be transferred shall be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the urban redevelopment plan. The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions, including the incorporation by reference therein of the provisions of an urban redevelopment plan or any part thereof, shall not prevent the filing of the contract or conveyance in the land records of the county in such manner as to afford actual or constructive notice thereof.

(b)(1) A municipality or county may dispose of real property in an urban redevelopment area to private persons only under such reasonable competitive bidding procedures as it shall prescribe, as are provided in this subsection or, solely with respect to and for the benefit of advancing surface transportation projects, as provided in Code Section 36-61-4. A municipality or county, by public notice by publication once each week for two consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under this Code section, may invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban redevelopment area or any part thereof. The notice shall identify the area or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in the notice. The municipality or county shall consider all such redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out and may negotiate with any persons for proposals for the purchase,

lease, or other transfer of any real property acquired by the municipality or county in the urban redevelopment area. The municipality or county may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this chapter. The municipality or county may execute contracts in accordance with subsection (a) of this Code section and deliver deeds, leases, and other instruments and take all steps necessary to effectuate such contracts.

(2) Notwithstanding the provisions or requirements of this Code section, any municipality or county may exchange real property or land, whether vacant or improved, in any urban redevelopment area for real property or land, whether vacant or improved, owned by any post, barracks, encampment, chapter, subsidiary, or any other division or unit of any veterans' organization chartered by the United States Congress, provided such real property or land was owned by the veterans' organization on March 6, 1962, and, provided, further, that the municipality or county owning such urban redevelopment area desires to obtain the real property or land owned by the veterans' organization for civic improvements, including, but not limited to, the building of art theaters, stadiums, parks, playgrounds, auditoriums, civic theaters, and performing arts theaters.

(c) A municipality or county may temporarily operate and maintain real property acquired in an urban redevelopment area, pending the disposition of the property for redevelopment, without regard to subsection (a) of this Code section, for such uses and purposes as may be deemed desirable, even if such uses and purposes are not in conformity with the urban redevelopment plan.

History.
Ga. L. 1955, p. 354, § 9; Ga. L. 1962, p. 702, § 1; Ga. L. 2015, p. 1318, § 7/HB 174; Ga. L. 2015, p. 1329, § 5/SB 4.

JUDICIAL DECISIONS

Factors other than price are to be considered in evaluating bids. Bidders to property under the classification of urban redevelopment projects must be charged with knowledge and held to be on notice of such additional criteria. Dyson v. Dixon, 219 Ga. 427, 134 S.E.2d 1, 1963 Ga. LEXIS 473 (1963).

Housing Authority could sell acquired property to private party. — Georgia's Urban Redevelopment Law, O.C.G.A. § 36-61-1 et seq., authorized a housing authority to exercise eminent domain to acquire and redevelop urban property found to be a "slum area;" the housing authority's disposition of condemned property was authorized, and the housing authority was entitled to summary judgment on a former owner's claim that property had been acquired and then sold to a private party. Talley v. Housing Auth., 279 Ga. App. 94, 630 S.E.2d 550, 2006 Ga. App. LEXIS 392 (2006), cert. dismissed, No. S06C1682, 2006 Ga. LEXIS 785 (Ga. Oct. 2, 2006).

OPINIONS OF THE ATTORNEY GENERAL

Repair or disposal of dwellings outside redevelopment area. — Municipality may acquire, rehabilitate, and dispose of substandard residential dwellings to the housing authority when such dwellings are outside an officially declared urban redevelopment area, if such activities are designed to provide low-rent housing to persons displaced by activities within such area. 1982 Op. Att'y Gen. No. U82-28.

RESEARCH REFERENCES

C.J.S.

39A C.J.S., Health and Environment, § 58 et seq. 63 C.J.S., Municipal Corporations, § 862 et seq.

ALR.

Sufficiency of compliance with condition of sale or lease by municipality of public utility plants, 52 A.L.R. 1052.

Application of *Kelo v. City of New London,* 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005), to "Public Use" restrictions in federal and state constitutions takings clauses and eminent domain statutes, 21 A.L.R.6th 261.

36-61-11. Repair, closing, and demolition of dwellings unfit for human habitation.

Any municipality or county may, by ordinance, require the repair, closing, or demolition of dwellings or other structures intended for human habitation which are, as defined in the ordinance, unfit for human habitation or which may imperil the health, safety, or morals of the occupants thereof or of surrounding areas. Such ordinances may include the following:

(1) Definition of the construction, condition, facilities, ventilation, and other conditions which shall render such structures unfit for human habitation or a nuisance;

(2) Designation of a public official or officials with authority to enforce such ordinances and establishment of procedures therefor;

(3) Provision for the enforcement of such ordinances by the municipal court of the municipality, as defined in Code Section 41-2-5, which may include provision for the abatement thereof as nuisances, as provided in such Code section; and

(4) Provision for the posting of notices on dwellings and other structures intended for human habitation, indicating the actions taken by enforcement officials or the court with respect thereto, and the fixing of penalties for the defacing, destruction, or removal of such notices; provided, however, that no such notice shall be posted on any property then designated by proper governmental authority for acquisition by eminent domain.

History.
Ga. L. 1955, p. 354, § 18; Ga. L. 1960, p. 1052, § 1; Ga. L. 1987, p. 3, § 36.
Cross references.
Eminent domain, T. 22.
Condemnation procedure, § 22-2-1 et seq.
Law reviews.
For article surveying developments in Georgia real property law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 219 (1981).

JUDICIAL DECISIONS

Ordinance unconstitutional if effect is to take property by denying right to rebuild. — When the effect of an ordinance passed pursuant to this section and the application thereof is to take from a property owner the owner's property, not through eminent domain, but by denying the owner a right to rebuild under a zoning code and requiring the owner to demolish under a slum clearance code, the ordinance is unconstitutional, null, and void. Shaffer v. City of Atlanta, 223 Ga. 249, 154 S.E.2d 241, 1967 Ga. LEXIS 481 (1967).

Any ordinance which authorizes demolition of a structure within the city without compensation to the owner merely because the cost of repair exceeds the value of the structure or any percentage thereof, without first allowing opportunity to repair (and, if necessary, providing for discovery of the criteria which must be met to bring the structure up to a minimum standard) is unconstitutional and void. Horne v. City of Cordele, 140 Ga. App. 127, 230 S.E.2d 333, 1976 Ga. App. LEXIS 1369 (1976).

RESEARCH REFERENCES

C.J.S.
39A C.J.S., Health and Environment, §§ 52, 53.
ALR.
What constitutes "Blighted Area" within urban renewal and redevelopment statutes, 45 A.L.R.3d 1096.

36-61-12. Issuance of bonds; payment; tax exemption; form; terms; signatures; negotiability; effect of recitation on bonds.

(a) A municipality or county shall have power to issue bonds, in its discretion, from time to time, to finance the undertaking of any urban redevelopment project under this chapter, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban redevelopment projects and shall also have power to issue refunding bonds for the payment of retirement of such bonds previously issued by it. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality or county derived from or held in connection with its undertaking and carrying out of urban redevelopment projects under this chapter; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban redevelopment

projects of the municipality or county under this chapter, and by a mortgage of any such urban redevelopment projects or any part thereof, title to which is in the municipality, county, or redevelopment agency.

(b) Bonds issued under this Code section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this Code section shall be authorized by resolution or ordinance of the local governing body. They may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by the resolution of the local governing body or by the trust indenture or mortgage issued pursuant thereto.

(d) All revenue bonds, but not notes or other obligations, issued under this Code section shall be issued and validated under and in accordance with the procedure set forth in Article 3 of Chapter 82 of this title. The provisions of any resolution or ordinance authorizing the issuance of bonds under this Code section shall be a contract with every holder of such bonds and enforceable by any bondholder by mandamus or other appropriate action or proceeding at law or in equity.

(e) If any of the public officials of the municipality or county whose signatures appear on any bonds or coupons issued under this chapter cease to be such officials before the delivery of the bonds, such signatures, nevertheless, shall be valid and sufficient for all purposes, the same as if the officials had remained in office until the delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

(f) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality or county in connection with an urban redevelopment project, as defined in paragraph (25) of Code Section 36-61-2, shall be conclusively deemed to have been issued for such purpose and such

project shall be conclusively deemed to have been planned, located, and carried out in accordance with this chapter.

(g) Any urban redevelopment agency or housing authority which a municipality or county has elected to exercise powers under Code Section 36-61-17 may also issue bonds, as provided in this Code section, in the same manner as a municipality or county, except that such bonds shall be authorized and the terms and conditions thereof shall be prescribed by the commissioners of such urban redevelopment agency or housing authority in lieu of the local governing body.

History.
Ga. L. 1955, p. 354, § 10; Ga. L. 1970, p. 115, § 1; Ga. L. 1980, p. 1352, § 1; Ga. L. 1982, p. 3, § 36; Ga. L. 1993, p. 91, § 36; Ga. L. 2015, p. 1329, § 6/SB 4.

Cross references.
Revenue bonds generally, § 36-82-60 et seq.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2015, "paragraph (25)" was substituted for "paragraph (24)" in the middle of subsection (f).

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 28.

C.J.S.
39A C.J.S., Health and Environment, § 58 et seq. 64A C.J.S., Municipal Corporations, § 2025 et seq.

ALR.
Assignment and transfer of government bonds, 22 A.L.R. 775.

Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year, 29 A.L.R. 1109.

36-61-13. Bonds declared legal investments.

All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality or county pursuant to this chapter or by any urban redevelopment agency or housing authority vested with urban redevelopment project powers under Code Section 36-61-17, provided that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government, in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of the bonds or other obligations, moneys in an amount which (together with any other

moneys irrevocably committed to the payment of interest on the bonds or other obligations) will suffice to pay the principal of the bonds or other obligations with interest to maturity thereon, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal of and the interest on the bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this Code section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this Code section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

History.
Ga. L. 1955, p. 354, § 11.

36-61-14. Exemption of property from execution, levy, and sale; tax exemption.

(a) All property of a municipality or county, including funds owned or held by it for the purposes of this chapter, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same, nor shall judgment against a municipality or county be a charge or lien upon such property; provided, however, that this Code section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this chapter by a municipality or county on its rents, fees, grants, or revenues from urban redevelopment projects.

(b) The property of a municipality, county, or any other public body, acquired or held for the purpose of this chapter, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof. Such tax exemption shall terminate when the municipality or county sells, leases, or otherwise disposes of property in an urban redevelopment area to a purchaser or lessee who or which is not a public body.

History.
Ga. L. 1955, p. 354, § 12; Ga. L. 2015, p. 1329, § 7/SB 4.

36-61-15. Presumption as to title of purchaser of property from municipality or county.

Any instrument executed by a municipality or county and purporting to convey any right, title, or interest in any property under this chapter

shall be conclusively presumed to have been executed in compliance with this chapter insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

History.
Ga. L. 1955, p. 354, § 14.

RESEARCH REFERENCES

ALR.
Sufficiency of compliance with condition of sale or lease by municipality of public utility plants, 52 A.L.R. 1052.

36-61-16. Assistance by public bodies generally; powers of public bodies; powers of municipalities and counties.

(a) For the purpose of aiding in the planning, undertaking, or carrying out of an urban redevelopment project located within the area in which it is authorized to act, any public body, upon such terms, with or without consideration, as it may determine, may:

(1) Dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a municipality or county;

(2) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this Code section;

(3) Do any and all things necessary to aid or cooperate in the planning or carrying out of an urban redevelopment plan;

(4) Lend, grant, or contribute funds to a municipality or county;

(5) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or county or other public body respecting action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance in connection with an urban redevelopment project and other provisions allocating legal responsibility for matters arising under or in connection with transactions entered into pursuant to Code Section 36-61-4; and

(6) Cause public buildings and public facilities, including parks, trails, greenspace, playgrounds, recreational, community, education, transit, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan, replan, zone, or rezone any part of the public body or make exceptions from building regulations; and cause administrative and other services to be furnished to the municipality or county.

If at any time title to or possession of any urban redevelopment project is held by any public body or governmental agency, other than the municipality or county, which is authorized by law to engage in the undertaking, carrying out, or administration of urban redevelopment projects, including any agency or instrumentality of the United States of America, the provisions of the agreements referred to in this subsection shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this subsection, the terms "municipality" and "county" shall also include an urban redevelopment agency or a housing authority vested with all of the urban redevelopment project powers pursuant to Code Section 36-61-17.

(b) Any sale, conveyance, lease, or agreement provided for in this Code section may be made by a public body without appraisal, public notice, advertisement, or public bidding.

(c) For the purpose of aiding in the planning, undertaking, or carrying out of an urban redevelopment project of an urban redevelopment agency or a housing authority under this chapter, a municipality or county may, in addition to their other powers and upon such terms, with or without consideration, as they may determine, do and perform any or all of the actions or things which, by subsection (a) of this Code section, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

(d) For the purposes of this Code section or for the purpose of aiding in the planning, undertaking, or carrying out of an urban redevelopment project of a municipality or county, such municipality or county may, in addition to any authority to issue bonds pursuant to Code Section 36-61-12, issue and sell its general obligation bonds. Any bonds issued by a municipality or county pursuant to this Code section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality and county for public purposes generally.

History.
Ga. L. 1955, p. 354, § 13; Ga. L. 1982, p. 3, § 36; Ga. L. 2015, p. 1329, § 8/SB 4.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 472 et seq.

C.J.S.
39A C.J.S., Health and Environment, § 58 et seq. 63 C.J.S., Municipal Corporations, § 1113 et seq.

36-61-17. Exercise of redevelopment powers by municipalities and counties; delegation to redevelopment agency or housing authority.

(a) A municipality or county may itself exercise its "urban redevelopment project powers," as defined in subsection (b) of this Code section, or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban redevelopment agency created by Code Section 36-61-18 or by a housing authority, if one exists or is subsequently established in the community, or by an existing or subsequently established downtown development authority. In the event that the local governing body makes such determination, the urban redevelopment agency or the housing authority or downtown development authority, as the case may be, shall be vested with all of the "urban redevelopment project powers" of the municipality or county conferred in this chapter, in the same manner as though all such powers were conferred on the agency or authority instead of the municipality or county; and any public body may cooperate with the urban redevelopment agency or housing authority or the downtown development authority to the same extent that it could cooperate with the municipality or county itself if the municipality or county were exercising its urban redevelopment project powers. If the local governing body does not elect to make such determination, the municipality or county in its discretion may exercise its urban redevelopment project powers through a board or commissioner or through such officers of the municipality or county as the local governing body may by resolution determine.

(b) As used in this Code section, the term "urban redevelopment project powers" shall include all of the rights, powers, functions, duties, privileges, immunities, and exemptions granted to a municipality or county under this chapter, except the following:

(1) The power to determine an area to be a pocket of blight and to designate such area as appropriate for an urban redevelopment project;

(2) The power to approve and amend urban redevelopment plans;

(3) The power to establish a general plan for the locality as a whole;

(4) The power to formulate a workable program under Code Section 36-61-6;

(5) The powers, duties, and functions referred to in Code Section 36-61-11;

(6) The power to make the determinations and findings provided

for in Code Section 36-61-4, Code Section 36-61-5, and subsection (d) of Code Section 36-61-7;

(7) The power to issue general obligation bonds; and

(8) The power to appropriate funds, to levy taxes and assessments, and to exercise other powers provided for in paragraph (8) of Code Section 36-61-8.

History.
Ga. L. 1955, p. 354, § 16; Ga. L. 1982, p. 3, § 36; Ga. L. 1987, p. 3, § 36; Ga. L. 1992, p. 2533, § 15; Ga. L. 2015, p. 1318, § 8/HB 174.

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, §§ 1 et seq., 15.

36-61-18. Creation of agency; appointment of board of commissioners; compensation, term, and certificate; annual report; removal of commissioners.

(a) There is created in each municipality and in each county a public body corporate and politic to be known as the "urban redevelopment agency" of the municipality or county. Such agency shall not transact any business or exercise its powers under this Code section until or unless the local governing body has made the finding prescribed in Code Section 36-61-5 and has elected to have the urban redevelopment project powers exercised by an urban redevelopment agency as provided in Code Section 36-61-17.

(b) If the urban redevelopment agency is authorized to transact business and exercise powers under this Code section, the mayor, by and with the advice and consent of the local governing body, or the board of commissioners or other governing body of the county shall appoint a board of commissioners of the urban redevelopment agency, which shall consist of such number of commissioners, with such terms of office, as shall be determined by the local governing body. If the governing body of a municipality designates members of a downtown development authority as an urban redevelopment agency, the method of appointment, number of commissioners, and terms of office shall be in conformity with the requirements of Code Section 36-42-4.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality or county and such

certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

(d) The powers of an urban redevelopment agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws require a larger number. Any person may be appointed as commissioner if he resides within the area of operation of the agency, which shall be coterminous with the area of operation of the municipality or county, and is otherwise eligible for such appointments under this chapter.

(e) The mayor or the board of commissioners or other governing body of the county shall designate a chairman and vice-chairman from among the commissioners. An agency may employ an executive director, technical experts, and such other agents and employees, permanent and temporary, as it may require and may determine their qualifications, duties, and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file with the local governing body, on or before March 31 of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality or county and that the report is available for inspection during business hours in the office of the city or county clerk and in the office of the agency.

(f) For inefficiency, neglect of duty, or misconduct in office, a commissioner may be removed, but only after a hearing. He shall be given a copy of the charges at least ten days prior to such hearing and shall have an opportunity to be heard in person or by counsel.

History.
Ga. L. 1955, p. 354, § 16; Ga. L. 1992, p. 2533, § 16.

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 9 et seq.

C.J.S.
62 C.J.S., Municipal Corporations, §§ 434 et seq., 442, 518 et seq.

36-61-19. Interest by public official or employee or employee of redevelopment agency in redevelopment project or property; disclosure; eligibility of commissioners and officers of housing authorities for other office.

(a) No public official or employee of a municipality or county or of a board or commission thereof and no commissioner or employee of a housing authority or urban redevelopment agency which has been vested by a municipality or county with urban redevelopment project powers under Code Section 36-61-17 shall voluntarily acquire any interest, direct or indirect, in any urban redevelopment project of such municipality or county or in any property included or planned to be included in any such urban redevelopment project or in any contract or proposed contract in connection with such urban redevelopment project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body. If any such official, commissioner, or employee presently owns or controls, or owned or controlled within the preceding two years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban redevelopment project, he shall immediately disclose this in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body; any such official, commissioner, or employee shall not participate in any action by the municipality or county or a board or commission thereof, the housing authority, or the urban redevelopment agency affecting such property. Any disclosure required to be made by this Code section to the local governing body shall concurrently be made to a housing authority or urban redevelopment agency which has been vested with urban redevelopment project powers by the municipality or county pursuant to Code Section 36-61-17.

(b) Directors of a downtown development authority designated as an urban redevelopment agency pursuant to this chapter and other public officers of the municipality or county may serve as commissioners of the urban redevelopment agency, provided that such persons comply with the provisions of subsection (a) of this Code section.

(c) Any violation of this Code section shall constitute misconduct in office.

History. Ga. L. 1955, p. 354, § 17; Ga. L. 1992, p. 2533, § 17; Ga. L. 2010, p. 834, § 1/SB 456.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 245 et seq. 63C Am. Jur. 2d, Public Officers and Employees, §§ 195, 235, 236, 242 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, § 416 et seq.

CHAPTER 62

DEVELOPMENT AUTHORITIES

Article 1

General Provisions

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36-62-15. Short title.

36-62-16. Legislative findings.

36-62-17. Assessments for qualifying improvements.

36-62-18. Limitation of liability.

36-62-19. Authorization by resolution.

Cross references.

Housing authorities of counties and municipalities, § 8-3-1 et seq.

Downtown development authorities, § 36-42-1 et seq.

Administrative rules and regulations.

Job Tax Credit Program Regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Job Tax Credit Program, Rule 110-9-1-.01 et seq.

Law reviews.

For note, "Procedural Requirements for Public Approval of Tax-Exempt Industrial Development Bonds Under TEFRA," see 19 Ga. St. B.J. 84 (1982).

For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

JUDICIAL DECISIONS

Similarity to Downtown Development Authorities Law. — Although the Downtown Development Authorities Law, O.C.G.A. § 36-62-1 et seq., expands the scope of permissible authority projects beyond that of the Development Authorities Law to include all types of commercial projects, the Downtown Development Authorities Law otherwise resembles the Development Authorities Law in design and purpose. Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110, 1983 Ga. LEXIS 789 (1983).

OPINIONS OF THE ATTORNEY GENERAL

For multifaceted discussion of the operation of this chapter, see 1980 Op. Att'y Gen. No. 80-158.

Development authority may not disburse funds to a chamber of commerce for general promotion and other described activities without violating Ga. Const. 1976, Art. III, Sec. VIII, Para. XII (see now Ga. Const. 1983, Art. III, Sec. VI, Para. VI). 1983 Op. Att'y Gen. No. U83-7.

City development authority could transfer assets, including cash and contract rights, to a joint city-county development authority in return for services. 1996 Op. Att'y Gen. No. U96-24.

RESEARCH REFERENCES

ALR.

Adverse impact upon existing business as factor affecting validity and substantive requisites of issuance, by state or local governmental agencies, of economic development bonds in support of private business enterprise, 39 A.L.R.4th 1096.

Eminent domain: industrial park or similar development as public use justifying condemnation of private property, 62 A.L.R.4th 1183.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes.

Ga. L. 2024, p. 434, § 2/HB 206, effective April 25, 2024, designated Code Sections 36-62-1 through 36-62-14 as this article.

36-62-1. Short title.

This chapter may be referred to as the "Development Authorities Law."

History.
Ga. L. 1963, p. 531, § 1; Ga. L. 1969, p. 137, § 1.

Law reviews.
For article discussing industrial development bond financing under Georgia development authority law, see 14 Ga. St. B.J. 10 (1977).

For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

RESEARCH REFERENCES

C.J.S.
62 C.J.S., Municipal Corporations, § 1 et seq. 64 C.J.S., Municipal Corporations, § 1248 et seq.

36-62-2. Definitions.

As used in this chapter, the term:

(1) "Authority" means each public corporation created pursuant to this chapter.

(2) "Cost of project" includes:

(A) All costs of construction, purchase, or other form of acquisition;

(B) All costs of real or personal property required for the purposes of such project and of all facilities related thereto, including land and any rights or undivided interest therein, easements, franchises, water rights, fees, permits, approvals, licenses, and certificates and the securing of such franchises, permits, approvals, licenses, and certificates and the preparation of applications therefor;

(C) All machinery, equipment, initial fuel, and other supplies required for such project;

(D) Financing charges and interest prior to and during construction and during such additional period as the authority may reasonably determine to be necessary for the placing of such project in operation;

(E) Costs of engineering, architectural, and legal services;

(F) Fees paid to fiscal agents for financial and other advice or supervision;

(G) Cost of plans and specifications and all expenses necessary or incidental to the construction, purchase, or acquisition of the completed project or to determining the feasibility or practicability of the project; and

(H) Administrative expenses and such other expenses as may be necessary or incidental to the financing authorized in this chapter.

There may also be included, as part of such cost of project, the

repayment of any loans made for the advance payment of any part of such cost, including the interest thereon. The cost of any project may also include a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, and such other reserves as may be reasonably required by the authority with respect to the financing and operation of its projects and as may be authorized by any bond resolution or trust agreement or indenture pursuant to the provisions of which the issuance of any such bonds may be authorized. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds or notes issued under this chapter.

(3) "County" means any county of this state.

(4) "Governing body" means the elected or duly appointed officials constituting the governing body of each municipal corporation and county in the state.

(5) "Municipal corporation" means each city and town in the state.

(6) "Project" includes:

(A) Any one or more buildings or structures to be used in the production, manufacturing, processing, assembling, storing, or handling of any agricultural, manufactured, mining, or industrial product or any combination of the foregoing, in every case with all necessary or useful furnishings, machinery, equipment, parking facilities, landscaping, and facilities for outdoor storage, all as determined by the authority, which determination shall be final and not subject to review; and there may be included as part of any such project all improvements necessary to the full utilization thereof, including site preparation, roads and streets, sidewalks, water supply, outdoor lighting, belt line railroad sidings and lead tracks, bridges, causeways, terminals for railroad, automotive, and air transportation, transportation facilities incidental to the project, and the dredging and improving of harbors and waterways, none of which foregoing descriptive words shall be construed to constitute a limitation, provided that none of the improvements described in this sentence shall be the primary purpose of any project;

(B) The acquisition, construction, leasing, or equipping of new industrial facilities or the improvement, modification, acquisition, expansion, modernization, leasing, equipping, or remodeling of existing industrial facilities located or to be located within the area of operation of the authority;

(C) The acquisition, construction, improvement, or modification of any property, real or personal, which any industrial concern

might desire to use, acquire, or lease in connection with the operation of any plant or facility located or to be located within the area of operation of the authority;

(D) The acquisition, construction, improvement, or modification of any property, real or personal, used as air or water pollution control facilities which any federal, state, or local agency having jurisdiction in the premises shall have certified as necessary for the continued operation of the industry or industries which the same is to serve and which is necessary for the public welfare, provided that for the purposes of this subparagraph, the term "air pollution control facility" means any property used, in whole or in substantial part, to abate or control atmospheric pollution or contamination by removing, altering, disposing of, or storing atmospheric pollutants or contaminants, if such facility is in furtherance of applicable federal, state, or local standards for abatement or control of atmospheric pollutants or contaminants; and provided, further, that for the purpose of this subparagraph, the term "water pollution control facility" means any property used, in whole or in substantial part, to abate or control water pollution or contamination by removing, altering, disposing, or storing pollutants, contaminants, wastes, or heat, including the necessary intercepting sewers, outfall sewers, pumping, power, and other equipment, holding ponds, lagoons, and appurtenances thereto, if such facility is in the furtherance of applicable federal, state, or local standards for the abatement or control of water pollution or contamination;

(E) The acquisition, construction, improvement, or modification of any property, real or personal, used as or in connection with a sewage disposal facility or a solid waste disposal facility which any federal, state, or local agency having jurisdiction in the premises shall have certified as necessary for the continued operation of the industries which the same is to serve and which is necessary for the public welfare, provided that if such facility is to be operated by, or is to serve related facilities of, a political subdivision or municipal corporation of this state or an agency, authority, or instrumentality thereof, for its general constituency, the certification need only state that such facility is necessary for the public welfare; provided, further, that for the purposes of this subparagraph, the term "sewage disposal facility" means any property used for the collection, storage, treatment, utilization, processing, or final disposal of sewage; for the purposes of this subparagraph, the term "solid waste disposal facility" means any property used for the collection, storage, treatment, utilization, processing, or final disposal of solid waste; for the purposes of this subparagraph, the term "solid waste" means garbage, refuse, or other discarded solid materials, including solid waste materials resulting from industrial and

agricultural operations and from community activities but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as salt, dissolved or suspended solids in industrial waste-water effluents, and dissolved materials in irrigation return flows; and for the purposes of this subparagraph, the word "garbage" includes putrescible wastes, including animal and vegetable matters, animal offal and carcasses, and recognizable industrial by-products but excludes sewage and human wastes; and the word "refuse" includes all nonputrescible wastes;

(F) The acquisition, construction, improvement, or modification of any property, real or personal or both, used as a peak shave facility, provided that "peak shave facility" shall have the meaning generally accepted and understood in the natural gas distribution industry as that term is generally understood to describe a storage facility for the purpose of avoiding undesirable consequences in the distribution system during peak periods of consumption; and any project involving a "peak shave facility" may be undertaken as otherwise provided in this chapter;

(G) The acquisition, construction, leasing, improvement, or modification of any facilities and any property, real or personal or both, useful or necessary in the transportation of persons or property by air, provided that such projects shall not include the creation of airports or airport terminal facilities or improvements thereon, except as incidentally related to the furnishing of transportation of persons or property by air as provided in this subparagraph; such projects may include, but shall not be limited to, aircraft, aircraft maintenance and reconditioning equipment, aircraft communications equipment and facilities for the maintenance and repair of such equipment, ground support equipment and facilities used by aircraft, any necessary or useful real or personal property or rights to such property, all licenses, storage facilities including storage and distribution facilities for fuel, and the acquisition, modernization, or expansion of existing facilities or systems for transportation of persons or property by air, all as determined by the authority, which determination shall be final and not subject to review; such projects for the transportation of persons or property by air are authorized to assist state and local governments to secure adequate systems of transportation of passengers for hire as authorized by law and for the development of trade, commerce, industry, and employment opportunities; and such projects for the transportation of persons or property by air may be undertaken to the same extent and on the same conditions as otherwise provided in this chapter for other facilities, except that such projects may be authorized only for air transportation

systems which are not eligible to receive subsidies from the federal government at the time the project is undertaken, only where the corporate headquarters, the general maintenance, repair, support, and communication facilities, the general reservations, scheduling, and dispatch facilities, and the personal residence of the majority of the employees are all located within the geographic jurisdiction of the authority, and only if the aircraft are routinely dispatched from and returned to the geographic jurisdiction of the authority, provided that the operation of flight equipment and incidental ground support facilities and equipment and the location of employees of such a project outside of the geographic jurisdiction of the authority shall not be prohibited if the conditions specified in this subparagraph are met; and provided, further, that no city, county, political subdivision, or any development authority may ever operate any such facility and the same must be acquired and operated by a private company or individual who shall guarantee the repayment of any obligations assumed, who shall be fully responsible for all operating expenses and losses, and who shall be taxable as any other private undertaking would be;

(H) The acquisition, construction, improvement, or modification of any property, real or personal, which shall be suitable for or used as or in connection with:

(i) Sports facilities, including private training and related office and other facilities when authorized by the governing authority of the political subdivision or municipal corporation in which the facility is to be constructed and maintained if such sports facilities promote trade, commerce, industry, and employment opportunities by hosting regional, state-wide, or national events;

(ii) Convention or trade show facilities;

(iii) Airports, docks, wharves, mass commuting facilities, parking facilities, or storage or training facilities directly related to any of the foregoing;

(iv) Facilities for the local furnishing of electric energy or gas;

(v) Facilities for the furnishing of water, if available, on reasonable demand to members of the general public;

(vi) Hotel and motel facilities for lodging which also may provide meals, provided that such facilities are constructed in connection with and adjacent to convention, sports, or trade show facilities. No project as defined by this division shall be exempt from any ad valorem taxation; and

(vii) Amphitheaters with seating capacity exceeding 1,000 patrons and any facilities directly related to the operation of such

amphitheaters, if such amphitheaters promote trade, commerce, industry, and employment opportunities by hosting regional, state-wide, or national events;

(I) The acquisition or development of land as the site for an industrial park, provided that for purposes of this subparagraph, the term "development of land" includes the provision of water, sewage, drainage, or similar facilities or transportation, power, or communication facilities which are incidental to use of the site as an industrial park but, except with respect to such facilities, does not include the provision of structures or buildings;

(J) The acquisition, construction, leasing, or financing of:

(i) An office building facility and related real and personal property for use by any business enterprise or charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state and which shall be adjacent to or used in conjunction with any other existing or proposed project defined in this paragraph, which existing or proposed project is located within the area of operation of the authority and which is used or intended to be used by such business enterprise or charitable corporation, association, or similar entity; or

(ii) A separate office building facility and related real and personal property for use by any business enterprise or charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state.

No such office building facility as defined in this subparagraph shall be undertaken by an authority unless the authority determines that the business enterprise or charitable corporation, association, or similar entity to use such facility will be the primary tenant;

(K) Any one or more buildings or structures used or to be used as a skilled nursing home or intermediate care home subject to regulation and licensure by the Department of Community Health and all necessary, convenient, or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities;

(K.1) The provision of financing to property owners for the purpose of installing or modifying improvements to their property in order to reduce the energy or water consumption on such property or to install an improvement to such property that produces energy from renewable resources;

(L) The acquisition, construction, design, engineering, improvement, leasing, maintenance, modification, rebuilding, and repair of any facilities and any property utilized in connection with a community antenna television system or any combination of the foregoing, including all necessary or useful land or rights in land and all necessary or useful furnishings, machinery, vehicles, equipment, and parking facilities, all as determined by the authority, which determination shall be final and not subject to review; such projects are authorized to promote the expansion and development of the cable communication industry, to enhance employment opportunities throughout this state, and to encourage local origination programming by community antenna television systems on one or more channels, to include, but not be limited to, public access, government, and education programs; and the installation of such community antenna television systems shall not occur in areas adequately served by private enterprise;

(M) The acquisition, construction, equipping, improvement, modification, or expansion of any property, real or personal, for use as or in connection with research and development facilities. As used in this subparagraph, the term "research and development facilities" means any property used in whole or in substantial part in conducting basic and applied research for commercial, industrial, or governmental institutions in connection with institutions of higher education, which research is determined by the authority to contribute to the development and promotion of trade, commerce, industry, and employment opportunities for the public good and general welfare in furtherance of the purposes for which the authority was created. The authority's determination as to such matters shall be final and not subject to review; and

(N) The acquisition, construction, installation, modification, renovation, or rehabilitation of land, interests in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential public purpose of the development of trade, commerce, industry, and employment opportunities. A project may be for any industrial, commercial, business, office, parking, public, or other use, provided that a majority of the members of the authority determines, by a duly adopted resolution, that the project and such use thereof would further the public purpose of this chapter.

History.

Ga. L. 1963, p. 531, § 2; Ga. L. 1969, p. 137, § 1; Ga. L. 1971, p. 177, § 1; Ga. L. 1975, p. 1259, § 1; Ga. L. 1976, p. 708, §§ 1, 2; Ga. L. 1976, p. 1483, § 1; Ga. L. 1977, p. 789, § 1; Ga. L. 1978, p. 1162, §§ 1, 2; Ga. L. 1979, p. 413, § 1; Ga. L. 1980, p. 1332, § 1; Ga. L. 1981, p. 1457, §§ 1, 2; Ga. L. 1982, p. 3, § 36; Ga. L. 1982, p. 1706, §§ 1, 6; Ga. L. 1984, p. 22, § 36; Ga. L. 1988, p. 685, § 1; Ga. L. 1992, p. 2533, § 18; Ga. L. 1996, p. 1105, § 1; Ga. L. 2003, p. 390, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 261, § 2/HB 1388.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1988, a comma was inserted following "power" in subparagraph (6)(D).

Editor's notes.

Ga. L. 1978, p. 1162, § 3, which Act deleted language at the end of paragraph (6) and added subparagraphs (H) and (I) to paragraph (6), provides that if any provision of § 1 or § 2 of the Act is held to be invalid or inoperative, the remaining provisions of the Act shall be deemed to be void and of no effect.

Ga. L. 1979, p. 413, § 3, which Act added subparagraph (J) of paragraph (6) provides that if any provision of § 1 or § 2 of the Act is held to be invalid or inoperative, the remaining provisions of the Act shall be deemed to be void and of no effect.

Ga. L. 1980, p. 1322, § 3, which Act added subparagraph (K) of paragraph (6), provides that if any part of the Act is declared unconstitutional, such adjudication shall affect the other parts of the Act, which shall thereafter be of no force and effect.

Law reviews.

For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

JUDICIAL DECISIONS

Constitutionality of subparagraph (6)(K). — Subparagraph (6)(K) of O.C.G.A. § 36-62-2 is not contrary on the statute's face to Ga. Const. 1976, Art. IX, Sec. VIII, Para. II (see now Ga. Const. 1983, Art. IX, Sec. VI, Paras. III and IV). Development Auth. v. Beverly Enters., 247 Ga. 64, 274 S.E.2d 324, 1981 Ga. LEXIS 626 (1981).

Paragraph (6)(N) was constitutional. — Trial court erred in refusing to validate $35 million in revenue bonds under O.C.G.A. § 36-62-2(6)(N) to finance a grocery store because the store was a traditional, for-profit business enterprise, and employment opportunities at the new grocery store were, therefore, opportunities resulting directly from the trade or commerce to be financed. The trial court also erred in holding paragraph (6)(N) as unconstitutional in violation of the uniformity provision of Ga. Const. 1983, Art. IX, Sec. VI, Para. III. Dev. Auth. v. State of Ga., 306 Ga. 375, 829 S.E.2d 160, 2019 Ga. LEXIS 391 (2019).

Definition of "project" was not intended to encompass retail grocery stores, just as it was not intended to encompass gasoline filling stations or retail hardware, clothing or drug stores, restaurants or fast food outlets, or similar endeavors. Day v. Development Auth., 248 Ga. 488, 284 S.E.2d 275, 1981 Ga. LEXIS 1074 (1981), superseded by statute as stated in Long v. Development Authority of Fulton County, 352 Ga. App. 815, 835 S.E.2d 717, 2019 Ga. App. LEXIS 635 (2019).

Golf course proposed to be constructed by a development authority violated both the Ga. Const. 1983, Art. IX, Sec. VI, Para. III and the Development Authority Law (O.C.G.A. § 36-62-1 et seq.) because it is neither a sports facility nor for the public purpose of developing trade, commerce, and industry. Haney v. Development Auth., 271 Ga. 403, 519 S.E.2d 665, 1999 Ga. LEXIS 659 (1999).

"Convention facility" is a means used to facilitate assembly of members of a particular group; when the evidence supports a finding that the purpose of a project for a motel with a meeting room is to attract groups of up to 150 persons meeting for a particular purpose, by offering lodging and a meeting room which will accommodate the group, the project is a "convention facility" within the meaning of subparagraphs (6)(H)(ii) and (vi) of

O.C.G.A. § 36-62-2, and therefore is a permissible project under the Development Authority Law. Alexander v. Macon-Bibb County Urban Dev. Auth. & Urban Properties #47, 257 Ga. 181, 357 S.E.2d 62, 1987 Ga. LEXIS 785 (1987).

Failure to meet characteristics of office building or hotel facility. — In a taxpayers' suit against a county and officials, the court upheld the grant of summary judgment to the county because the testimony of counsel for the taxpayers was insufficient to create an issue of material fact on the taxpayer's claims in regard to the tax-exempt status of the county development authority-owned properties as there was no evidence that any of the properties actually possessed the characteristics of an office building or hotel facility as defined in O.C.G.A. § 36-62-2. SJN Props., LLC v. Fulton County Bd. of Assessors, 296 Ga. 793, 770 S.E.2d 832, 2015 Ga. LEXIS 192 (2015).

Bond validation upheld. — Trial court orders validating the bonds for all three portions of a county project were upheld because the challengers cited no deficiencies that the county did not comply with O.C.G.A. § 36-82-75, the county provided unrebutted testimony that the office, hotel, and retail projects would provide economic benefits to the county and state, and that issuance of the bonds was in the public interest and, thus, qualified as projects within the meaning of O.C.G.A. § 36-62-2(6)(N). Long v. Development Authority of Fulton County, 352 Ga. App. 815, 835 S.E.2d 717, 2019 Ga. App. LEXIS 635 (2019).

Georgia Court of Appeals held that under the plain language of O.C.G.A. § 36-62-2, a development authority was authorized by the statute's catchall provision of paragraph (6)(N) to pursue an office project, but only if that project meets that subsection's requirement that a majority of the members of the authority determines and adopts a resolution that the office project would further the public purpose of the law. Long v. Development Authority of Fulton County, 352 Ga. App. 815, 835 S.E.2d 717, 2019 Ga. App. LEXIS 635 (2019).

Superior court did not err in validating the bonds because the purpose of the bonds, to finance a portion of a mixed-use commercial development and economic development project under O.C.G.A. § 36-62-2(6)(N), was authorized by statute and the appellees proved that the bonds would be used for purposes outlined in the petitions. Bene v. State, 362 Ga. App. 73, 865 S.E.2d 249, 2021 Ga. App. LEXIS 563 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Planning commissioner is public officer. — Member of municipal or county planning commission is a "public officer." 1969 Op. Att'y Gen. No. 69-488.

RESEARCH REFERENCES

C.J.S.

64 C.J.S., Municipal Corporations, § 1556 et seq.

ALR.

Abstention from voting of member of municipal council present at session as affecting requisite voting majority, 63 A.L.R.3d 1072.

36-62-2.1. Definitions related to financing for qualifying improvements.

As used in this chapter, the term:

(1) "Assessment" means a special assessment imposed by a participating local government pursuant to Article 2 of this chapter.

(2) "Assessment agreement" means an agreement between an

authority and a qualifying property owner in which, among other things, the authority agrees to pay the costs of qualifying improvements and the qualifying property owner voluntarily requests assessments to be imposed by the participating local government on the qualifying property.

(3) "Assessment financing" means the financing or refinancing of qualifying improvements.

(4) "Capital provider" means a private entity or its designee, successor, or assign that purchases an obligation of an authority pursuant to this article.

(5) "Cost of the qualifying improvements" or "cost of any qualifying improvement" means and includes:

(A) All costs of acquisition (by purchase or otherwise), construction, assembly, installation, modification, renovation, or rehabilitation incurred in connection with any qualifying improvement or any part of any qualifying improvement;

(B) All costs of real property, fixtures, or materials used in or in connection with or necessary for any qualifying improvement or for any facilities related thereto, including, but not limited to, the cost of all easements, rights, improvements, water rights, connections for utility services, fees, franchises, permits, approvals, licenses, and certificates; the cost of securing any such franchises, permits, approvals, licenses, or certificates; and the cost of preparation of any application therefor and the cost of all labor and materials used in or in connection with or necessary for any qualifying improvement;

(C) All financing charges and loan fees and all interest on revenue bonds, notes, or other obligations of an authority that accrues or is paid prior to and during the period of construction of a qualifying improvement and during such additional period as the authority may reasonably determine to be necessary to place such qualifying improvement in operation;

(D) All costs of engineering, architectural, and legal services and all expenses incurred by engineers, architects, and attorneys in connection with any qualifying improvement;

(E) All expenses for inspection and any third-party review or verification fees;

(F) All fees of fiscal agents, paying agents, and trustees for bondholders under any trust agreement, indenture of trust, or similar instrument or agreement; all expenses incurred by any such fiscal agents, paying agents, and trustees; and all other costs

and expenses incurred relative to the issuance of any revenue bonds, notes, or other obligations for any qualifying improvement, including capital provider's fees;

(G) All fees of any type charged by an authority in connection with any qualifying improvement;

(H) All expenses necessary or incidental to determining the feasibility or practicability of any qualifying improvement;

(I) All costs of plans and specifications for any qualifying improvement;

(J) Repayment of any loans made for the advance payment of any part of any of the foregoing costs, including interest thereon and any other expenses of such loans;

(K) Administrative expenses of the authority and such other expenses as may be necessary or incidental to any qualifying improvement or the financing thereof or the placing of any qualifying improvement in operation; and

(L) The establishment of a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, or such other funds or reserves, including for ad valorem taxes and insurance, as the authority may approve with respect to the financing and operation of any qualifying improvement and as may be authorized by any bond resolution, trust agreement, indenture of trust, or similar instrument or agreement pursuant to the provisions of which the issuance of any revenue bonds, notes, or other obligations of the authority may be authorized.

Any cost, obligation, or expense incurred for any of the foregoing purposes shall be a part of such defined term and may be paid or reimbursed as such out of proceeds of revenue bonds, notes, or other obligations issued by the authority.

(6) "Financing application" means an application submitted to an authority or program administrator to demonstrate that the proposed improvements qualify for financing pursuant to a program.

(7) "Intergovernmental assessment agreement" means a contract entered into pursuant to Article IX, Section III, Paragraph I of the Constitution of Georgia between a county or a municipal corporation, as party of the first part, and an authority, as party of the second part, pursuant to which the county or municipal corporation agrees to make payments to the authority, the sole source of which shall be assessments and no other public moneys, to furnish financial assistance to aid in the planning, undertaking, or carrying out of a qualifying improvement.

(8) "Participating local government" means a municipal corporation or a county that enters into an intergovernmental assessment agreement with an authority.

(9) "Program" means a commercial property assessed conservation, energy, and resiliency program established by an authority.

(10) "Program administrator" means any official or agency designated by an authority to administer a program or a private and independent third party designated by an authority to administer a program, provided that the administration procedures used conform to the requirements of this article.

(11) "Program guidebook" means a comprehensive document that establishes appropriate guidelines, specifications, approval criteria, and other standard forms consistent with administering a program and not detailed in this article, including forms for an assessment agreement, notice of assessment, and financing application.

(12) "Qualifying improvement" means a permanently affixed energy efficiency improvement, renewable energy improvement, water conservation improvement, or resiliency improvement installed on qualifying property as part of the construction or renovation of the qualifying property.

(13) "Qualifying property" means privately owned or leased commercial, industrial,or agricultural real property or multifamily residential real property with five or more dwelling units.

(14) "Resiliency improvement" means any improvement to qualifying property intended to increase resilience and improve durability of such property, including, but not limited to, seismic retrofits, flood mitigation, fire suppression, wind resistance, energy storage, microgrids, and backup power generation.

History.
Code 1981, § 36-62-2.1, enacted by Ga. L. 2024, p. 434, § 3/HB 206, effective April 25, 2024.

Effective date.
This Code section became effective April 25, 2024.

36-62-3. Constitutional authority for chapter; finding of public purposes; tax exemption.

This chapter is passed pursuant to authority granted the General Assembly by Article IX, Section VI, Paragraph III of the Constitution of this state. Each authority created by this chapter is created for nonprofit and public purposes, and it is found, determined, and declared that the creation of each such authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of this state and that the authority is an institution of purely public charity and will be performing an essential governmental function in

the exercise of the power conferred upon it by this chapter. For such reasons, the state covenants, from time to time, with the holders of the bonds issued under this chapter that such authority shall be required to pay no taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others (other than property leased for the purposes of a "project" as defined in subparagraph (J) or (K) of paragraph (6) of Code Section 36-62-2, which shall be taxable by the state and its counties, municipal corporations, political subdivisions, and taxing districts) or upon its activities in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise, and that the bonds of such authority, their transfer, and the income therefrom shall at all times be exempt from taxation within this state. The tax exemption provided in this Code section shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority.

History.

Ga. L. 1963, p. 531, § 13; Ga. L. 1969, p. 137, § 10; Ga. L. 1979, p. 413, § 2; Ga. L. 1980, p. 1332, § 2; Ga. L. 1983, p. 3, § 57; Ga. L. 1987, p. 3, § 36; Ga. L. 1992, p. 6, § 36.

Cross references.

Prepayment of ad valorem or school taxes by developers of major industrial projects, § 48-5-31.

Editor's notes.

Ga. L. 1979, p. 413, § 3, which Act amended this section, provides that if any provision of § 1 or § 2 of the Act is held to be invalid or inoperative, the remaining provisions of the Act shall be deemed to be void and of no effect.

Ga. L. 1980, p. 1332, § 3, which Act amended this section, provides that if any part of the Act is declared or adjudged invalid or unconstitutional, such adjudication shall affect the other parts of the Act, which shall thereafter be of no force and effect.

Law reviews.

For article, "Tax-Exempt Financing of Section 8 Housing Projects," see 15 Ga. St. B.J. 68 (1978).

For article discussing the role of Georgia development authorities in tax-exempt financing of private business, see 16 Ga. St. B.J. 8 (1979).

For article discussing tax-exempt financing in Georgia, see 18 Ga. St. B.J. 20 (1981).

JUDICIAL DECISIONS

Business taking leasehold from authority subject to taxation. — While the authority is exempt under O.C.G.A. § 36-62-3, a business which takes a leasehold from the authority is subject to ad valorem taxation on the fair market value of the possessory interest held. DeKalb County Bd. of Tax Assessors v. W.C. Harris & Co., 248 Ga. 277, 282 S.E.2d 880, 1981 Ga. LEXIS 991 (1981).

Bond approval not proper. — Trial court erred by validating taxable revenue bonds for a county development authority as the order validating the bonds failed to set forth sufficient findings of fact and conclusions of law to support the court's holdings and, thus, failed to satisfy the requirements of O.C.G.A. § 9-11-52(a). Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663, 2013 Ga. App. LEXIS 258 (2013).

Tax exempt status not shown. — In a

taxpayer's suit against a county and officials, the court upheld the grant of summary judgment to the county because the testimony of the counsel for the taxpayers was insufficient to create an issue of material fact on the taxpayer's claims in regard to the tax-exempt status of the county development authority-owned properties as there was no evidence that any of the properties actually possessed the characteristics of an office building or hotel facility as defined in O.C.G.A. § 36-62-2. SJN Props., LLC v. Fulton County Bd. of Assessors, 296 Ga. 793, 770 S.E.2d 832, 2015 Ga. LEXIS 192 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Property held by other entity subject to taxation. — While a development authority is not required to pay any ad valorem taxes on any estate the authority holds, an estate in property held by another entity is not exempt from ad valorem taxation. 1974 Op. Att'y Gen. No. U74-5.

RESEARCH REFERENCES

C.J.S.

64 C.J.S., Municipal Corporations, § 1248 et seq. 64A C.J.S., Municipal Corporations, § 2175 et seq.

ALR.

Bond or warrant of governmental subdivision as subject of taxation or exemption, 44 A.L.R. 510.

Tax exemptions and the contract clause, 173 A.L.R. 15.

36-62-4. Development authorities created; appointment and terms of directors; quorum; adoption and filing of resolution of need.

(a) There is created in and for each county and municipal corporation in the state a public body corporate and politic to be known as the "development authority" of such county or municipal corporation, which shall consist of a board of not less than seven and not more than nine directors to be appointed by resolution of the governing body of the county or municipal corporation. At the expiration of the current terms of office of the first four members of the board of directors, the governing body of the county or municipal corporation shall elect successors to such members to serve for initial terms of two years and shall elect successors to the remaining members of the board for initial terms of four years. Thereafter, the terms of all directors shall be for four years. The terms of any directors added to the original seven directors shall be four years. If, at the end of any term of office of any director, a successor thereto has not been elected, the director whose term of office has expired shall continue to hold office until his or her successor is so elected; provided, however, that such hold-over period shall not exceed six months. In the event that such six-month hold-over period expires without a successor being elected, the remaining directors shall elect such successor.

(b) A majority of the directors shall constitute a quorum, but no

action may be taken by the board without the affirmative vote of a majority of the full membership of the board.

(c) No authority shall transact any business or exercise any powers under this chapter until the governing body of the county or municipal corporation, by proper resolution, declares that there is a need for an authority to function in the county or municipal corporation. A copy of the resolution shall be filed with the Secretary of State, who shall maintain a record of all authorities activated under this chapter.

(d) In each county of this state having a population of not less than 41,700 nor more than 42,300 according to the United States decennial census of 1990 or any future such census, the board of directors of an industrial development authority in such county which is created directly by the Constitution of Georgia shall assume all the powers, duties, and responsibilities of and shall become the board of directors of any development authority created under this chapter which is located in such county or in any municipal corporation in such county.

(e) In each county of this state having a population of not less than 24,000 nor more than 26,000 according to the United States decennial census of 1990 or any future such census, the board of directors of an industrial development authority in such county which is created directly by the Constitution of Georgia may assume all the powers and responsibilities of and may become the board of directors of any development authority created under this chapter which is located in such county or in any municipal corporation in such county. Such joint boards shall have the authority to transfer any and all assets of the development authority created under this chapter to the industrial development authority which is created directly by the Constitution of Georgia; provided, however, that the governing authority of said county or municipal corporation shall approve the assumption of such powers and responsibilities.

History.

Ga. L. 1963, p. 531, § 3; Ga. L. 1969, p. 137, § 2; Ga. L. 1981, p. 542, § 1; Ga. L. 1982, p. 3, § 36; Ga. L. 1985, p. 390, § 1; Ga. L. 1992, p. 1157, § 1; Ga. L. 1992, p. 1207, § 1; Ga. L. 1992, p. 1614, § 1; Ga. L. 2022, p. 254, § 1/HB 923; Ga. L. 2024, p. 182, § 1/SB 171, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, in subsection (a), added the proviso at the end of the fifth sentence and added the sixth sentence.

RESEARCH REFERENCES

C.J.S.

62 C.J.S., Municipal Corporations, § 558.

36-62-4.1. (Effective January 1, 2026.) Massively municipalized county; acceptance of title in connection with certain property tax incentive project.

(a) As used in this Code section, the term "massively municipalized county" means any county without a consolidated or unified government in which the corporate limits of two or more municipalities cover 95 percent or more of the land area of the county.

(b) No county development authority for a massively municipalized county shall purchase or accept title to any real or personal property in connection with a property tax incentive project within the parts of such county that are within the corporate limits of any municipality that is located north of the northernmost corporate limit of the municipality in which the county site of such county is located if the governing authority of the municipality in which such property is located has adopted a resolution to limit such development authority from operating within such municipality.

(c) The provisions of this Code section shall not apply to any project approved by a development authority prior to January 1, 2026, nor shall any amendments, refinancing, renewals, or the transfer of any property related to such prior projects be affected by this Code section.

History.
Code 1981, § 36-62-4.1, enacted by Ga. L. 2025, p. 476, § 1-3/HB 155, effective January 1, 2026.

Effective date.
This Code section becomes effective January 1, 2026.

36-62-5. Directors; officers; compensation; adoption of bylaws; delegation of powers and duties; conflicts of interest; audits.

(a) The directors shall be taxpayers residing in the county or municipal corporation for which the authority is created, and their successors shall be appointed as provided by the resolution provided for in Code Section 36-62-4. The governing authority of a county or municipality may appoint no more than one member of the governing authority as a director.

(b) The directors shall elect one of their members as chairman and another as vice-chairman and shall also elect a secretary and a treasurer or a secretary-treasurer, either of whom may, but need not, be a director.

(c) The directors shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties; provided, however, that the directors of the development authority activated by counties having a population of

550,000 or more according to the United States decennial census of 1980 or any future such census shall be paid a per diem allowance to be determined by the governing authority of such counties for each day, or part thereof, spent in the performance of their duties and further provided that any such per diem allowance shall not exceed the per diem allowance set for members of the General Assembly in paragraph (22) of subsection (a) of Code Section 45-7-4.

(d) The authority may make bylaws and regulations for its governance and may delegate to one or more of its officers, agents, and employees such powers and duties as may be deemed necessary and proper.

(e)(1)(A) The provisions of Code Sections 45-10-3 and 45-10-4 shall apply to all directors of the authority, and a director of the authority shall not engage in any transaction with the authority.

(B) The provisions of paragraph (9) of Code Section 45-10-3 and subparagraph (A) of this paragraph shall be deemed to have been complied with and the authority may purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any director or any organization or person with which any director of the authority is in any way interested or involved, provided (1) that any interest or involvement by such director is disclosed in advance to the directors of the authority and is recorded in the minutes of the authority, (2) that any interest or involvement by such director with a value in excess of $200.00 per calendar quarter is published by the authority one time in the legal organ in which notices of sheriffs' sales are published in each county affected by such interest, at least 30 days in advance of consummating such transaction, (3) that no director having a substantial interest or involvement may be present at that portion of an authority meeting during which discussion of any matter is conducted involving any such organization or person, and (4) that no director having a substantial interest or involvement may participate in any decision of the authority relating to any matter involving such organization or person. As used in this subsection, a "substantial interest or involvement" means any interest or involvement which reasonably may be expected to result in a direct financial benefit to such director as determined by the authority, which determination shall be final and not subject to review.

(2) Nothing contained in paragraph (1) of this subsection or in Code Section 45-10-3 shall be deemed to prohibit any director who is present at any meeting or who participates in any decision of the authority from providing legal services in connection with any of the undertakings of the authority or from being paid for such services.

(3)(A) Concurrent jurisdiction to enforce this subsection is granted to the State Ethics Commission created under Code Section 21-5-4.

(B) Upon formal charges being filed with an alternate enforcement authority provided for in subparagraph (A) of this paragraph relative to a violation of this subsection on the part of a member of any such development authority, the enforcement authority or its designated agent shall conduct a hearing for the purpose of receiving evidence relative to the merits of such charges. The development authority member so charged shall be given at least 30 days' notice prior to such hearing. If such charges are found to be true, the enforcement authority shall forthwith remove such member from office and the vacancy shall be filled as provided by law. Such hearing shall be held in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and judicial review of any such decision shall be in accordance with such chapter.

(C) The State Ethics Commission is vested with the same powers with respect to this Code section as enumerated in Code Section 21-5-6.

(f) Each development authority shall provide to its respective county or municipal fiscal officer, as the case may be, an audited financial statement if such audit has been required by the respective county or municipality within six months of the end of the previous fiscal year.

History.

Ga. L. 1963, p. 531, § 4; Ga. L. 1969, p. 137, § 3; Ga. L. 1980, p. 806, § 1; Ga. L. 1982, p. 1706, §§ 2, 7; Ga. L. 1983, p. 1346, § 4; Ga. L. 1984, p. 22, § 36; Ga. L. 1995, p. 1188, §§ 1, 2; Ga. L. 2000, p. 1336, § 1; Ga. L. 2010, p. 834, § 2/SB 456; Ga. L. 2022, p. 254, § 2/HB 923; Ga. L. 2023, p. 608, § 7/HB 572, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, substituted "State Ethics Commission" for "Georgia Government Transparency and Campaign Finance Commission" in subparagraphs (e)(3)(A) and (e)(3)(C).

OPINIONS OF THE ATTORNEY GENERAL

Interest in bank providing loans. — An individual, who is a chairperson and stockholder in a local bank negotiating authority loans, may be a member of a downtown authority and an industrial authority provided that the provisions of O.C.G.A. §§ 36-62A-1 and 36-62-5 are met. 1983 Op. Att'y Gen. No. U83-30.

RESEARCH REFERENCES

C.J.S.

62 C.J.S., Municipal Corporations, § 558.

36-62-5.1. Joint authorities.

(a) By proper resolution of the local governing bodies, an authority may be created and activated by:

(1) Any two or more municipal corporations;

(2) Any two or more counties;

(3) One or more municipal corporations and one or more counties; or

(4) Any county in this state and any contiguous county in an adjoining state.

(b) A joint authority so created shall be governed by this chapter in the same manner as other authorities created pursuant to this chapter, except as specifically provided otherwise in this Code section.

(c) The resolutions creating and activating a joint authority shall specify the number of members of the authority, the number to be appointed by each participating county or municipal corporation, their terms of office, and their residency requirements.

(d) The resolutions creating and activating joint authorities may be amended by appropriate concurrent resolutions of the participating governing bodies.

(e)(1) A joint authority created by two or more contiguous counties pursuant to this Code section must be an active, bona fide joint authority; must have a board of directors; must meet at least quarterly; and must develop an operational business plan. A county may belong to more than one such joint authority.

(2) A business enterprise as defined under subsection (a) of Code Section 48-7-40 located within the jurisdiction of a joint authority established by two or more contiguous counties shall qualify for an additional $500.00 tax credit for each new full-time employee position created. The $500.00 job tax credit authorized by this paragraph shall be subject to all the conditions and limitations specified under Code Section 48-7-40, as amended; provided, however, that a business enterprise located in a county that belongs to more than one joint authority shall not qualify for an additional tax credit in excess of $500.00 for each new full-time employee position created.

(f) With respect to a joint authority created on or before March 31, 1995, and notwithstanding any provision of this Code section to the contrary, any taxpayer eligible for a tax credit pursuant to subsection (e) of this Code section shall have the option of electing to utilize for a given project the tax credit formerly authorized under this Code section for taxable years beginning prior to January 1, 1995, in lieu of the tax

credit otherwise available pursuant to this Code section for taxable years beginning on or after January 1, 1995. Such election shall be made for each committed project in writing on or before July 1, 1995, to the commissioner of community affairs. Such election shall not be effective unless approved in writing by the commissioner of community affairs. The Board of Community Affairs shall promulgate regulations necessary for the implementation of this subsection.

(g)(1) By May 15, 2019, and then by February 15, 2020, and annually thereafter, each joint authority with established revenue sharing agreements between the joint authority and its participating local governments and revenue emanating pursuant to such an agreement shall furnish to the state revenue commissioner and the state auditor:

(A) A statement that identifies and separately states all real and personal property and all property interests that are owned, in part or in full, by such joint authority together with the nature of any encumbrances, liens, or covenants on such property;

(B) A complete copy of all current agreements or contracts related to such joint authority that are between or among one or more counties, municipalities, joint authorities, or private parties that references matters related to taxation, payments in lieu of taxation, tax abatements, leasehold interests or estates, leaseback agreements, or the sharing of revenue, funds, fees, taxes, assessments, fines, or any other income; and

(C) All additional information determined by the state revenue commissioner or state auditor to be necessary to accurately determine the net taxable digest of each county or municipality participating in such joint authority and any affected school district.

(2) The information compiled by the state auditor pursuant to this subsection shall be utilized in determining any equalized adjusted property tax digest prepared pursuant to Code Section 48-5-274.

(3) On or before July 1, 2019, and then on or before April 1, 2020, and annually thereafter, a report that compiles the information gathered by the state auditor and that sets out the net impact of the total activities of the joint authority on the tax digest of each affected taxing jurisdiction shall be furnished to the tax commissioner of each affected county, to the governing authority of each affected county or municipality, to each affected local board of education, to the joint development authority, and to the State Board of Education. Each tax commissioner shall utilize such net impact to adjust the net assessed value of each of his or her taxing jurisdictions in order to fully account for activities of any joint authority in digest values submitted pursuant to Code Sections 48-5-32 and 48-5-32.1.

(4) The state revenue commissioner and the state auditor shall be authorized to:

(A) Conduct audits of any joint authority subject to the requirements of this subsection; and

(B) Promulgate rules and regulations necessary to administer, implement, and enforce this Code section.

History.

Ga. L. 1981, p. 1419, § 1; Ga. L. 1994, p. 928, § 7; Ga. L. 1995, p. 585, § 9; Ga. L. 2003, p. 390, § 2; Ga. L. 2004, p. 921, § 1; Ga. L. 2019, p. 767, § 1/HB 406.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1995, in subsection (f), "commissioner of community affairs" was substituted for "Commissioner of community affairs" in the second sentence and "Board of Community Affairs" was substituted for "board of community affairs" in the fourth sentence.

Pursuant to Code Section 28-9-5, in 2004, in paragraph (e)(2), "located" was substituted for "locating" in the second sentence.

Editor's notes.

Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provided that this Act was applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provided that this Act was applicable to all taxable years beginning on or after January 1, 1995.

Administrative rules and regulations.

Job Tax Credit Program Regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Job Tax Credit Program, Rule 110-9-1-.01 et seq.

High Technology Data Center Equipment, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Sales and Use Tax Division, Substantive Rules and Regulations, Rule 560-12-2-.117.

Law reviews.

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 249 (1994).

36-62-5.2. Creation of regional industrial development authorities; application; tax credits.

(a) As used in this Code section, the term "participating counties" means all counties party to a proper joint resolution as set forth in subsection (b) of this Code section.

(b) By proper joint resolution of the local governing bodies, an authority, to be known as a regional industrial development authority, may be created and activated by any group of three to five contiguous counties, provided that at least one-half of the members of the governing body from each county have completed a basic economic development training course certified by the Department of Community Affairs

as meeting certain minimum educational standards, which such department shall prescribe by rule and regulation.

(c) A regional industrial development authority so created shall be governed by this chapter in the same manner as other authorities created pursuant to this chapter, except as specifically provided otherwise in this Code section.

(d) A joint resolution creating and activating a regional industrial development authority shall specify the total number of members of the governing body of the authority, the number of such members to be appointed by each participating county, their respective terms of office, and their residency requirements.

(e) A joint resolution creating and activating a regional industrial development authority may be amended from time to time by appropriate concurrent joint resolutions of the regional industrial development authority and all of the participating counties.

(f) Each regional industrial development authority created pursuant to this Code section shall:

(1) Be an active, bona fide authority;

(2) Have a board of directors;

(3) Meet at least quarterly;

(4) Develop an operational business plan;

(5) Own property lying within one or more of the participating counties with all of the participating counties; and

(6) Maintain among itself and the participating counties an active intergovernmental agreement that provides for sharing:

(A) The operating expenses for all real property described in paragraph (5) of this subsection; and

(B) The proceeds generated from ad valorem taxes assessed and collected on all such real property, excluding the proceeds that are pledged to secure bonded indebtedness or dedicated by law to specific purposes inconsistent with such sharing.

(g) A county shall not belong to more than one regional industrial development authority.

(h) A taxpayer whose qualified investment property, as such terms are defined in Code Section 48-7-40.17, is located on property as described in paragraph (5) of subsection (f) of this Code section shall be eligible for a tax credit for each new quality job at such location as provided by Code Section 48-7-40.17 for the lowest tier participating county within the regional industrial development authority; provided,

however, that the tax credit authorized by this paragraph shall be subject to all other conditions and limitations provided by Code Section 48-7-40.17.

History.
Code 1981, § 36-62-5.2, enacted by Ga. L. 2022, p. 807, § 1/HB 1044.

Administrative rules and regulations.
Job Tax Credit, Description and Definitions, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, Rule 560-7-8-.36.

36-62-6. Powers of authority generally.

(a) Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the power:

(1) To bring and defend actions;

(2) To adopt and amend a corporate seal;

(3) To make and execute contracts and other instruments necessary to exercise the powers of the authority, any of which contracts may be made with the county in which the authority is located or with any one or more municipal corporations in such county; each such county and all municipal corporations therein are authorized to enter into contracts with the authority;

(4) To receive and administer gifts, grants, and devises of any property and to administer trusts;

(5) To acquire, by purchase, gift, or construction, any real or personal property desired to be acquired as part of any project or for the purpose of improving, extending, adding to, reconstructing, renovating, or remodeling any project or part thereof already acquired or for the purpose of demolition to make room for such project or any part thereof;

(6) To sell, lease, exchange, transfer, assign, pledge, mortgage, dispose of, or grant options for any real or personal property or interest therein for any such purposes;

(7) Except as otherwise provided in paragraph (7.1) of this Code section, to dispose of any real property for fair market value, regardless of prior development of such property as a project, whenever the board of directors of the authority may deem such disposition to be in the best interests of the authority if the board of directors of the authority prior to such disposition shall determine that such real property no longer can be used advantageously as a project for the development of trade, commerce, industry, and employment opportunities;

(7.1) Notwithstanding any other provision of this chapter to the contrary, to dispose of any real property for fair market value or any amount below fair market value as determined by the board of directors of the authority, regardless of prior development of such property as a project, whenever the board of directors of the authority may deem such disposition to be in the best interests of the authority if the board of directors of the authority prior to such disposition shall determine that such real property no longer can be used advantageously as a project for the development of trade, commerce, industry, and employment opportunities and if title to such real property is to be transferred to the state;

(8) To mortgage, convey, pledge, or assign any properties, revenues, income, tolls, charges, or fees owned or received by the authority;

(9) To appoint officers and retain agents, engineers, attorneys, fiscal agents, accountants, and employees and to provide for their compensation and duties;

(10) To extend credit or make loans to any person, firm, corporation, or other industrial entity for the planning, design, construction, acquisition, or carrying out of any project, which credit or loans shall be secured by loan agreements, mortgages, security agreements, contracts, and all other instruments, fees, or charges, upon such terms and conditions as the authority shall determine reasonable in connection with such loans, including provision for the establishment and maintenance of reserves and insurance funds; and, in the exercise of powers granted by this Code section in connection with a project for such person, firm, corporation, or other industrial entity, to require the inclusion in any contract, loan agreement, security agreement, or other instrument, of such provisions for guaranty, insurance, construction, use, operation, maintenance, and financing of a project as the authority may deem necessary or desirable;

(11) To acquire, accept, or retain equitable interests, security interests, or other interest in any property, real or personal, by mortgage, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer, in order to secure the repayment of any moneys loaned or credit extended by the authority;

(12) To construct, acquire, own, repair, remodel, maintain, extend, improve, and equip projects located on land owned or leased by the authority or land owned or leased by others and to pay all or part of the cost of any such project from the proceeds of revenue bonds of the authority or from any contribution or loans by persons, firms, or corporations or any other contribution, all of which the authority is authorized to receive, accept, and use;

(13) To borrow money and issue its revenue bonds and bond anticipation notes from time to time and to use the proceeds thereof for the purpose of paying all or part of the cost of any project, including the cost of extending, adding to, or improving the project, or for the purpose of refunding any such bonds of the authority theretofore issued and to otherwise carry out the purposes of this chapter and to pay all other costs of the authority incident to or necessary and appropriate to such purposes, including the providing of funds to be paid into any fund or funds to secure such bonds and notes, provided that all such bonds and notes shall be issued in accordance with the procedures and subject to the limitations set forth in Code Section 36-62-8;

(14) As security for repayment of authority obligations, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property, real or personal, of such authority and to execute any trust agreement, indenture, or security agreement containing any provisions not in conflict with law, which trust agreement, indenture, or security agreement may provide for foreclosure or forced sale of any property of the authority upon default, on such obligations, either in payment of principal or interest or in the performance of any term or condition, as are contained in such agreement or indenture. This state, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein, waives any right which it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority so mortgaged or encumbered, and any such mortgage or encumbrance may be foreclosed in accordance with law and the terms thereof;

(15) If any authority authorizing an air transportation facility, to contract with any county or municipal corporation in the state; and any county or municipal corporation in the state is empowered to contract with any such authority to furnish air transportation services where such service is not otherwise in existence;

(16) To expend for the promotion of industry, agriculture, and trade within its area of operations any funds of the authority determined by the authority to be in excess of those needed for the other corporate purposes of the authority; and

(17) To do all things necessary or convenient to carry out the powers expressly conferred by this chapter.

(b) This Code section shall not be construed as authorizing an authority as defined in this chapter to exercise the power of eminent domain.

History.

Ga. L. 1963, p. 531, § 5; Ga. L. 1969, p. 137, § 4; Ga. L. 1975, p. 1259, § 2; Ga. L. 1976, p. 708, § 3; Ga. L. 1987, p. 1067, § 1; Ga. L. 1991, p. 1044, § 1; Ga. L. 1995, p. 440, § 1; Ga. L. 2006, p. 39, § 23/HB 1313.

Editor's notes.

Ga. L. 2006, p. 39, § 1/HB 1313, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'The Landowner's Bill of Rights and Private Property Protection Act.'"

Ga. L. 2006, p. 39, § 25/HB 1313, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to petitions for condemnation filed on or after April 4, 2006.

Law reviews.

For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 157 (2006).

For annual survey on real property, see 69 Mercer L. Rev. 251 (2017).

JUDICIAL DECISIONS

Nursing home is proper project. — Health care need not be listed in the Constitution as a public purpose for nursing homes to be a proper project under O.C.G.A. Ch. 62, T. 36. Development Auth. v. Beverly Enters., 247 Ga. 64, 274 S.E.2d 324, 1981 Ga. LEXIS 626 (1981).

Development authority not required to own or operate project to issue bonds. — Proposed bond transaction did not violate Ga. Const. 1983, Art. IX, Sec. VI, Para. I and O.C.G.A. § 36-82-66 of the Revenue Bond Law merely because the development authority would not own or operate the proposed stadium; the development authority could use bond proceeds for paying all or part of the cost of any project (O.C.G.A. § 36-62-6(a)(13)), not only those projects the authority developed, and the authority could pay the costs of another government entity's project pursuant to O.C.G.A. § 36-62-9. Cottrell v. Atlanta Dev. Auth., 297 Ga. 1, 770 S.E.2d 616, 2015 Ga. LEXIS 179 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Equipment certified as necessary if enhances pollution abatement goal. — Environmental Protection Division of the Department of Natural Resources may certify equipment or facilities as necessary and in furtherance of pollution abatement and control purposes, pursuant to this chapter and apposite Internal Revenue Service regulations, if the equipment or facilities enhance the industry's pollution abatement goal and, although possibly having other functions, have as their predominant purpose the assistance or aid of pollution control or abatement. 1973 Op. Att'y Gen. No. 73-175.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 472 et seq., 554. 64 Am. Jur. 2d, Public Securities and Obligations, § 72.

C.J.S.

63 C.J.S., Municipal Corporations, § 1114 et seq. 64 C.J.S., Municipal Corporations, §§ 1248 et seq., 1556 et seq.

ALR.

Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year, 29 A.L.R. 1109.

Disposition of revenues from operation of revenue-producing enterprise owned by municipal corporation, 165 A.L.R. 854.

36-62-6.1. Obtaining real property within adjoining county which will be exchanged for federal property.

No development authority of a county or municipality within the county or joint development authority within the county shall purchase or accept title to any real property located in an adjoining county, which property will be exchanged for certain property belonging to the federal government as authorized by federal law, without the written consent of the governing authority of such adjoining county wherein the real property is located; provided, however, that the provisions of this Code section shall not apply to any agreement entered into by two or more counties, municipal corporations, consolidated governments, or development authorities or any combination thereof prior to July 1, 1994, nor shall the transfer of any land pursuant to any such agreement be affected by this Code section.

History.
Code 1981, § 36-62-6.1, enacted by Ga. L. 1994, p. 1940, § 3.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1994, "this Code section" was substituted for "this Code Section" near the middle of this Code section.

36-62-6.2. Powers of development authorities relating to financing for qualifying improvements.

(a) In addition to the powers otherwise granted in this article, each authority shall have the following powers:

(1) To make and execute intergovernmental assessment agreements, assessment agreements, and agreements for grants or loans to finance or refinance qualifying improvements;

(2) To finance by loan, grant, or otherwise, including through assessment agreements, and refinance qualifying improvements and to pay the cost of any qualifying improvement from the proceeds of revenue bonds, notes, or other obligations of the authority or any other funds of the authority, or from any contributions or loans by persons, corporations, partnerships, whether limited or general, or other entities, all of which the authority is authorized to receive, accept, and use;

(3) To issue revenue bonds, notes, or other obligations of the authority and use the proceeds thereof for the purpose of paying, or loaning or granting the proceeds thereof to pay, all or any part of the cost of any qualifying improvement and otherwise to further or carry out the public purpose of the authority and to pay all costs of the authority incidental to, or necessary and appropriate to, furthering or carrying out such purpose;

(4) To extend credit or make loans or grants to any person,

corporation, partnership, whether limited or general, or other entity for the costs of any qualifying improvement or any part of the costs of any qualifying improvement, which credit, loans, or grants may be evidenced or secured by loan agreements, grant agreements, assessment agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, or such other instruments, or by assessments, revenues, fees, or charges, upon such terms and conditions as the authority shall determine to be reasonable in connection with such extension of credit, loans, or grants, including provision for the establishment and maintenance of reserve funds; and, in the exercise of powers granted by this article in connection with any qualifying improvement, the authority shall have the right and power to require the inclusion in any such loan agreement, grant agreement, assessment agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument of such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a qualifying improvement, and such other terms and conditions as the authority may deem necessary or desirable;

(5) As security for repayment of any revenue bonds, notes, or other obligations of the authority, to pledge, convey, assign, hypothecate, or otherwise encumber any property of the authority, including, but not limited to, contract rights under intergovernmental assessment agreements and revenues or other funds, and to execute any trust indenture; trust agreement; agreement for the sale of the authority's revenue bonds, notes, or other obligations; loan agreement; security agreement; assignment; or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such revenue bonds, notes, or the obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument. The State of Georgia, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein, waives any right it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority upon such default and agrees that any agreement or instrument encumbering such property may be foreclosed in accordance with law and the terms thereof;

(6) To receive and use the proceeds of any assessment imposed by a municipal corporation or a county to pay the costs of any qualifying improvement or for any other purpose for which the authority may use its own funds pursuant to this article, including the payment of

principal or premium, if any, and interest on revenue bonds, notes, or other obligations of the authority; and

(7) To establish and administer programs and to appoint, select, and employ program administrators and to fix their compensation and pay their expenses.

(b) When an authority exercises its grant powers given by subsection (a) of this Code section, in determining compliance with Article III, Section VI, Paragraph VI(a) of the Constitution of Georgia, the authority may take into consideration the assessments to be paid by the grant recipient, as well as the substantiality of the public purpose to be achieved by the grant.

History.
Code 1981, § 36-62-6.2, enacted by Ga. L. 2024, p. 434, § 4/HB 206, effective April 25, 2024.

Effective date.
This Code section became effective April 25, 2024.

36-62-7. Operation of project by governmental units prohibited; sale or lease of property for operation.

No project acquired under this chapter shall be operated by an authority or any municipal corporation, county, or other governmental subdivision. Such a project shall be leased or sold to, or managed by, one or more persons, firms, or private corporations. Any disposition of real property by an authority pursuant to paragraph (7) of subsection (a) of Code Section 36-62-6 shall be made to one or more persons, firms, corporations, or governmental or public entities. If revenue bonds or other obligations are to be issued to pay all or part of the cost of the project, the project must be so leased or the contract for its sale or management must be entered into prior to or simultaneously with the issuance of the bonds or obligations; provided, however, that the acquisition and development of land by an authority as the site for an industrial park as provided in this chapter or the acquisition and development of land by an authority as the site for a sports facility or amphitheater in accordance with Code Section 36-62-2 and the operation of such a sports facility or amphitheater shall not be deemed to be the operation of a project and, notwithstanding anything in this chapter to the contrary, an authority shall not be required to enter into a lease of such a project or a contract for its sale or management as a condition to the issuance of bonds or other obligations of the authority to provide financing therefor. If sold, the purchase price may be paid at one time or in installments falling due over not more than 40 years from the date of transfer of possession. The lessee or purchaser shall be required to pay all costs of operating and maintaining the leased or purchased property and to pay rentals or installments in amounts sufficient to pay the principal of and the interest and premium, if any, on all of its bonds and other obligations as such principal and interest

become due. If the project is managed, the management contract must contain a term not less than the final maturity date of any bonds or other obligations of the authority to provide financing for the managed project and must provide that all costs of operating and maintaining the managed project, including all management fees payable under the management contract, shall be paid solely from the revenues of the managed project and from the proceeds of any bonds or other obligations of the authority to provide financing for the managed project. Any such management contract may contain provisions allowing the authority to terminate the management contract, but if the authority exercises any right to terminate a management contract, it must immediately enter into another management contract meeting the requirements of this Code section.

History.

Ga. L. 1963, p. 531, § 6; Ga. L. 1969, p. 137, § 5; Ga. L. 1982, p. 1706, §§ 3, 8; Ga. L. 1987, p. 1067, § 2; Ga. L. 1993, p. 91, § 36; Ga. L. 1996, p. 1105, § 2; Ga. L. 2003, p. 390, § 3; Ga. L. 2018, p. 1112, § 36/SB 365.

JUDICIAL DECISIONS

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113, 2012 Ga. App. LEXIS 707 (2012).

36-62-8. Obligations of authority; use of proceeds; status as revenue obligations; subsequent series of bonds or notes; bond anticipation notes; interest rates; issuance and validation.

(a) Subject to the limitations and procedures provided by this Code section, the obligations of any authority evidenced by bonds, bond anticipation notes, trust indentures, deeds to secure obligations, security agreements, or mortgages executed in connection therewith may contain such provisions not inconsistent with law as shall be determined by the board of directors of the authority. The authority, in such instruments, may provide for the pledging of all or any part of its revenues, income, or charges and for the mortgaging, encumbering, or conveying of all or any part of its real or personal property; may covenant against pledging any or all of its revenues, income, or charges; and may further provide for the disposition of proceeds realized from the sale of any bonds and bond anticipation notes, for the replacement

of lost, destroyed, stolen, or mutilated bonds and notes, and for the payment and redemption of such bonds and notes. Similarly, subject to the limitations and procedures of this Code section, undertakings of an authority may prescribe the procedure by which bondholders and noteholders may enforce rights against the authority and may provide for rights upon breach of any covenant, condition, or obligation of the authority; and bonds, resolutions, trust indentures, mortgages, or deeds to secure obligations executed by an authority and bond anticipation notes executed by an authority may contain such provisions not otherwise contrary to law as the authority shall deem necessary or desirable.

(b) The proceeds derived from the sale of all bonds and bond anticipation notes issued by an authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this chapter, all or part of the cost of any project, including the cost of extending, financing, adding to, or improving the project, for the purpose of refunding any bond anticipation notes issued in accordance with this chapter or refunding any previously issued bonds of the authority.

(c) All bonds and bond anticipation notes issued by an authority shall be revenue obligations of the authority and may be made payable out of any revenues or other receipts, funds, or moneys of the authority, subject only to any agreements with the holders of other bonds or bond anticipation notes or to particular security agreements pledging any particular revenues, receipts, funds, or moneys.

(d) Issuance by an authority of one or more series of bonds or bond anticipation notes for one or more purposes shall not preclude it from issuing other bonds or notes in connection with the same project or with any other projects; but the proceeding wherein any subsequent bonds or bond anticipation notes are issued shall recognize and protect any prior pledge or mortgage made in any prior security agreement or made for any prior issue of bonds or bond anticipation notes, unless in the resolution authorizing such prior issue the right is expressly reserved to the authority to issue subsequent bonds or bond anticipation notes on a parity with such prior issue.

(e) An authority shall have the power and is authorized, whenever revenue bonds of the authority have been validated as provided in this chapter, to issue, from time to time, its notes in anticipation of the issuance of such bonds as validated and to renew, from time to time, any such notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, the

authority may sell such notes at public or private sale. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority or any issue thereof; and the authority may include in any notes any terms, covenants, or conditions which it is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of the notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued.

(f) The interest rate on or rates to be borne by any bonds, notes, or other obligations issued by the authority shall be fixed by the board of directors of the authority. Any limitations with respect to interest rates found in Article 3 of Chapter 82 of this title or the usury laws of this state shall not apply to obligations issued under this chapter.

(g) All revenue bonds issued by an authority under this chapter shall be issued and validated under and in accordance with Article 3 of Chapter 82 of this title, except as provided in subsection (f) of this Code section and except as specifically set forth below:

(1) Revenue bonds issued by an authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide;

(2) Revenue bonds shall bear a certificate of validation. The signature of the clerk of the superior court of the judicial circuit in which the issuing authority is located may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state;

(3) The notice to the district attorney or the Attorney General and the notice to the public of the time, place, and date of the validation hearing need not state the rate of interest the bonds will bear;

(4) The term "cost of project" shall have the meaning prescribed in paragraph (2) of Code Section 36-62-2 whenever referred to in bond resolutions of an authority, bonds and bond anticipation notes issued by an authority, or notices and proceedings to validate such bonds.

History.
Ga. L. 1963, p. 531, § 7; Ga. L. 1969, p. 137, § 6; Ga. L. 1976, p. 708, § 4; Ga. L. 1982, p. 3, § 36; Ga. L. 1982, p. 1706, §§ 4, 9.

Cross references.
Revenue bonds generally, § 36-82-60 et seq.
Repeal of interest rate limitations, § 36-82-123.

JUDICIAL DECISIONS

Validation order insufficient. — Because a revenue bond validation order contained merely a dry recitation that certain legal requirements had been met, adequate appellate review of the trial court's decision making process was effectively prevented; the validation order did not specifically address a resident's objection that the transaction did not comply with the Development Authorities Law, O.C.G.A. § 36-62-8(b), or the process by which the court came to the court's conclusion that the proposed transaction followed all proper and necessary steps. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113, 2012 Ga. App. LEXIS 707 (2012).

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113, 2012 Ga. App. LEXIS 707 (2012).

Bond approval not proper. — Trial court erred by validating taxable revenue bonds for a county development authority as the order validating the bonds failed to set forth sufficient findings of fact and conclusions of law to support the court's holdings and, thus, failed to satisfy the requirements of O.C.G.A. § 9-11-52(a). Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663, 2013 Ga. App. LEXIS 258 (2013).

RESEARCH REFERENCES

C.J.S.
64A C.J.S., Municipal Corporations, §§ 2025 et seq., 2032 et seq.
ALR.
Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year, 29 A.L.R. 1109.

36-62-8.1. Issuance of revenue bonds, notes, or other obligations to finance qualifying improvements.

(a) Revenue bonds, notes, or other obligations issued by an authority to finance or refinance the cost of any qualifying improvement shall be paid solely from the property, including, but not limited to, contract rights, revenues, or other funds, pledged, conveyed, assigned, hypothecated, or otherwise encumbered to secure or to pay such bonds, notes, or other obligations.

(b) All revenue bonds, notes, and other obligations shall be autho-

rized by resolution of the authority, adopted by a majority vote of the directors of the authority at a regular or special meeting.

(c) Revenue bonds, notes, or other obligations issued to finance or refinance the cost of any qualifying improvement shall bear such date or dates; shall mature at such time or times, not more than 40 years from their respective dates; shall bear interest at such rate or rates, which may be fixed or may fluctuate or otherwise change from time to time; shall be subject to redemption on such terms; and shall contain such other terms, provisions, covenants, assignments, and conditions as the resolution authorizing the issuance of such bonds, notes, or other obligations may permit or provide. The terms, provisions, covenants, assignments, and conditions contained in or provided or permitted by any resolution of the authority authorizing the issuance of such revenue bonds, notes, or other obligations shall bind the directors of the authority then in office and their successors.

(d) The authority shall have the power from time to time and whenever it deems it expedient to refund any revenue bonds, notes, or other obligations issued to finance or refinance the cost of any qualifying improvement by the issuance of new revenue bonds, notes, or other obligations, whether or not the revenue bonds, notes, or other obligations to be refunded have matured, and may issue revenue bonds, notes, or other obligations partly to refund revenue bonds, notes, or other obligations then outstanding and partly for any other purpose permitted under this article. The refunding revenue bonds, notes, or other obligations may be exchanged for the revenue bonds, notes, or other obligations to be refunded, with such cash adjustments as may be agreed upon, or may be sold and the proceeds applied to the purchase or redemption of the revenue bonds, notes, or other obligations to be refunded.

(e) There shall be no limitation upon the amount of revenue bonds, notes, or other obligations that an authority may issue to finance or refinance the cost of any qualifying improvement. Any limitations with respect to interest rates or any maximum interest rate or rates found in Article 3 of Chapter 82 of this title, the "Revenue Bond Law," the usury laws of this state, or any other laws of this state shall not apply to revenue bonds, notes, or other obligations of an authority issued to finance or refinance the cost of any qualifying improvement.

(f) All revenue bonds issued by an authority under this article to finance or refinance the cost of any qualifying improvement shall be issued and validated under and in accordance with Article 3 of Chapter 82 of this title, the "Revenue Bond Law," except as provided in this article, provided that notes and other obligations of an authority may, but shall not be required to, be so validated.

(g) The terms "cost of the qualifying improvement" and "cost of any

qualifying improvement" shall have the meaning prescribed in this article whenever those terms are referred to in bond resolutions of an authority; in bonds, notes, or other obligations of an authority; or in notices or proceedings to validate such bonds, notes, or other obligations of an authority.

History.
Code 1981, § 36-62-8.1, enacted by Ga. L. 2024, p. 434, § 5/HB 206, effective April 25, 2024.

Effective date.
This Code section became effective April 25, 2024.

36-62-8.2. Financing agreement; assessment agreement.

(a) A program shall establish a financing application and review process to evaluate such applications. The program shall prescribe the form and manner of the financing application. At a minimum:

(1) An applicant shall demonstrate that the qualifying improvement provides a benefit to the public in the form of energy or water resource conservation or improved resiliency;

(2) For an existing building:

(A) When energy or water efficiency improvements are proposed, an applicant shall provide:

(i) An energy or water efficiency analysis by a licensed engineering firm, engineer, or other qualified professional listed in the program guidebook; and

(ii) A statement by the author of the analysis that the proposed qualifying improvements will result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water; or

(B) When resiliency improvements are proposed, an applicant shall provide certification by a licensed engineering firm, engineer, or other qualified professional listed in the program guidebook stating that the proposed qualifying improvements will result in improved resilience;

(3) For new construction, an applicant shall provide certification by a licensed engineering firm, engineer, or other qualified professional listed in the program guidebook stating that the proposed qualifying improvements will enable the qualifying property to exceed the current building code requirements for:

(A) Energy efficiency;

(B) Water efficiency;

(C) Renewable energy; or

(D) Resilience;

(4) An applicant shall include a certification that the person requesting the proposed qualifying improvements is the owner of the qualifying property and that there are no delinquent taxes or assessments on the qualifying property; and

(5) An applicant shall demonstrate that the proposed assessment financing meets the following guidelines and any other guidelines adopted by the authority, which may be in addition to or more restrictive than the following guidelines:

(A) Unless a higher percentage is agreed to by the holder of a lien, mortgage, or security deed encumbering the qualifying property in the written consent required by subsection (b) of this Code section, an applicant must demonstrate that the amount of the proposed assessment financing and all other debt secured by the qualifying property upon execution of the assessment agreement will not exceed 80 percent of the fair market value of the qualifying property as determined by a qualified appraiser, which appraisal may take into account the expected increase in fair market value of the qualifying property resulting from the proposed qualifying improvements, as completed or as stabilized;

(B) An applicant must demonstrate that the amount of the proposed assessment financing will not exceed 25 percent of the fair market value of the qualifying property as determined by a qualified appraiser, which appraisal may take into account the expected increase in fair market value of the qualifying property resulting from the proposed qualifying improvements, as completed or as stabilized; and

(C) An applicant must demonstrate that the period or term of the assessment financing will not exceed the weighted average useful life expected for the proposed qualifying improvements. The applicant shall include a statement from a qualified professional indicating the weighted average useful life expected for the proposed qualifying improvements.

(b) For approved qualifying improvements, an authority may enter into an assessment agreement with the owner of the qualifying property to pay the cost of qualifying improvements. Prior to entering into an assessment agreement, an applicant shall provide written consent from any holder of a lien, mortgage, or security deed encumbering the qualifying property. Such written consent shall be signed in the sole and absolute discretion of the holder of a prior lien, mortgage, or security deed encumbering the qualifying property and, at a minimum, shall

state that the holder of such prior lien, mortgage, or security deed has reviewed the final terms of the financing and the assessment agreement; that the qualifying property may participate in the program; and that the assessment lien shall have the same priority status as a lien for ad valorem taxes of the participating local government.

(c) Each assessment agreement shall include:

(1) A description of the qualifying improvements;

(2) A statement describing the procedures for billing and collection of assessments to be imposed by the participating local government pursuant to an intergovernmental assessment agreement, which the owner of the qualifying property shall voluntarily request to be imposed and shall agree to pay either directly or through an escrow account that may be established or increased by a prior lien holder on the qualifying property;

(3) The total amount of the assessment;

(4) A schedule of assessment installments requested to be imposed by the participating local government;

(5) Any administrative fees to be paid to the authority or to the participating local government pursuant to the related intergovernmental assessment agreement;

(6) The number of years the assessment shall be imposed on the qualifying property; and

(7) The conditions under which the owner of the qualifying property may prepay and permanently satisfy the unpaid portion of the assessment and remove the assessment lien from the qualifying property, including a description of the terms of any prepayment penalty.

(d) An assessment agreement may authorize the owner of the qualifying property to contract directly, including through lease, power purchase agreement, or other service contract, for installing or modifying a qualifying improvement.

(e) Upon execution of an assessment agreement by an owner of the qualifying property and an authority, the authority shall cause the participating local government to execute and record a notice of assessment in the land record of the jurisdiction in which the qualifying property is located, in accordance with Article 2 of this chapter.

(f) No authority described in this article shall grant any capital provider the exclusive right to provide financing or refinancing on a program-wide basis. It is the intent of this subsection to enable owners of qualifying properties to recommend to authorities the capital provid-

ers to finance or refinance the qualifying improvements owned or to be owned by such qualifying property owners.

History.
Code 1981, § 36-62-8.2, enacted by Ga. L. 2024, p. 434, § 5/HB 206, effective April 25, 2024.

Effective date.
This Code section became effective April 25, 2024.

36-62-9. Purposes of chapter; issuance of bonds or bond anticipation notes; exceptions.

The purposes of this chapter are to develop and promote trade, commerce, industry, and employment opportunities for the public good and the general welfare and to promote the general welfare of the state. No bonds or bond anticipation notes, except refunding bonds, shall be issued by an authority under this chapter unless its board of directors adopts a resolution finding that the project for which such bonds or notes are to be issued will promote the foregoing objectives and will increase or maintain employment in the territorial area of such authority. Notwithstanding the foregoing requirement:

(1) Bonds or bond anticipation notes may be issued to finance projects for air and water pollution control facilities and for sewage and solid waste disposal facilities, as provided in this chapter, without a finding that the project will increase or maintain employment, so long as the appropriate certification described in this chapter has been secured from the federal, state, or local agency having jurisdiction in the premises; and

(2) Bonds or bond anticipation notes may also be issued by an authority to finance the acquisition or development of land as the site for an industrial park as provided in this chapter without a finding that the project will increase or maintain employment if its board of directors shall adopt a resolution finding that the tract of land to be included in the project is not intended for use by a single enterprise; will be suitable primarily for use as building sites for a group of enterprises engaged in industrial, distribution, or wholesale businesses; and that either:

(A) The control and administration of the tract is to be vested in the authority or in another county or joint county and municipal development authority (or in a corporation organized under Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code") having as one of its purposes the development of trade, commerce, industry, and employment opportunities; or

(B) The uses of such tract of land are to be regulated by protective restrictions to be approved by the authority and determined by the authority to be appropriate to encourage and facili-

tate use thereof by business enterprises engaged in industrial, distribution, or wholesale businesses.

History.
Ga. L. 1963, p. 531, § 9; Ga. L. 1969, p. 137, § 7; Ga. L. 1971, p. 177, § 2; Ga. L. 1976, p. 708, § 5; Ga. L. 1982, p. 1706, §§ 5, 10; Ga. L. 1983, p. 3, § 27; Ga. L. 1984, p. 22, § 36; Ga. L. 1987, p. 3, § 36.

Cross references.
Georgia Nonprofit Corporation Code, § 14-3-101 et seq.

JUDICIAL DECISIONS

General Assembly has not defined "projects" to include all trade and commerce in this state. Day v. Development Auth., 248 Ga. 488, 284 S.E.2d 275, 1981 Ga. LEXIS 1074 (1981), superseded by statute as stated in Long v. Development Authority of Fulton County, 352 Ga. App. 815, 835 S.E.2d 717, 2019 Ga. App. LEXIS 635 (2019).

Fact that all final blueprints and specifications were not incorporated into resolution does not require invalidation of the bonds. Alexander v. Macon-Bibb County Urban Dev. Auth. & Urban Properties #47, 257 Ga. 181, 357 S.E.2d 62, 1987 Ga. LEXIS 785 (1987).

Development authority not required to own or operate project to issue bonds. — Proposed bond transaction did not violate Ga. Const. 1983, Art. IX, Sec. VI, Para. I and O.C.G.A. § 36-82-66 of the Revenue Bond Law merely because the development authority would not own or operate the proposed stadium; the development authority could use bond proceeds for paying all or part of the cost of any project (O.C.G.A. § 36-62-6(a)(13)), not only those projects the authority developed, and the authority could pay the costs of another government entity's project pursuant to O.C.G.A. § 36-62-9. Cottrell v. Atlanta Dev. Auth., 297 Ga. 1, 770 S.E.2d 616, 2015 Ga. LEXIS 179 (2015).

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 274 et seq. 64 Am. Jur. 2d, Public Securities and Obligations, § 99 et seq.

C.J.S.
64A C.J.S., Municipal Corporations, §§ 2029 et seq., 2041 et seq.

36-62-10. Obligations of authority not indebtedness of state or political subdivisions.

No bonds or other obligations of and no indebtedness incurred by any authority shall constitute an indebtedness or obligation of the State of Georgia or of any county, municipal corporation, or political subdivision thereof, nor shall any act of any authority in any manner constitute or result in the creation of an indebtedness of this state or of any such county, municipal corporation, or political subdivision. All such bonds and obligations shall be payable solely from the revenues therein pledged to such payment, including pledged rentals, sales proceeds, insurance proceeds, and condemnation awards; and no holder or

holders of any such bonds or obligations shall ever have the right to compel any exercise of the taxing power of this state or of any county, municipal corporation, or political subdivision thereof, nor to enforce the payment thereof against any property of the state or of any such county, municipal corporation, or political subdivision.

History.
Ga. L. 1963, p. 531, § 12; Ga. L. 1969, p. 137, § 9.

OPINIONS OF THE ATTORNEY GENERAL

Development authority can issue promissory note for authorized purpose if note is payable solely from revenues pledged therein for such payment. 1974 Op. Att'y Gen. No. U74-112.

36-62-11. Construction of chapter generally; effect of conflict between chapter and other provisions of law; applicability of certain other provisions of law to proceedings under chapter.

This chapter shall be liberally construed to effect the purposes hereof, and insofar as this chapter may be inconsistent with the provisions of any other law, including the charter of any municipal corporation, this chapter shall be controlling. The sale or issuance of bonds by any authority shall not be subject to regulation under Chapter 5 of Title 10, the "Georgia Uniform Securities Act of 2008," or any other law. No proceeding or publication not required in this chapter shall be necessary to the performance of any act authorized in this chapter, nor shall any such act be subject to referendum.

History.
Ga. L. 1963, p. 531, § 11; Ga. L. 1969, p. 137, § 8; Ga. L. 2008, p. 381, § 11/SB 358.

JUDICIAL DECISIONS

O.C.G.A. Ch. 62, T. 36 is to be liberally construed; liberally, but not ultra-liberally. Day v. Development Auth., 248 Ga. 488, 284 S.E.2d 275, 1981 Ga. LEXIS 1074 (1981), superseded by statute as stated in Long v. Development Authority of Fulton County, 352 Ga. App. 815, 835 S.E.2d 717, 2019 Ga. App. LEXIS 635 (2019).

Section preempted by the War on Terrorism Local Assistance Act, O.C.G.A. § 36-75-11(c). — Superior court did not err in finding that a county development authority was within the category of authorities governed by the War on Terrorism Local Assistance Act, O.C.G.A. § 36-75-11(c), because § 36-75-11(c) was a general law that preempted by implication the exemption from referenda set forth in the Development Authorities Law, O.C.G.A. § 36-62-11, as to those development authorities that met the criteria of authorities defined in § 36-75-11(c). Dev. Auth. v. State, 286 Ga. 36, 684 S.E.2d 856, 2009 Ga. LEXIS 479 (2009).

36-62-12. Previously created authority not affected by chapter.

Any public corporation, industrial development authority, or payroll authority created prior to March 28, 1969, by legislative Act or constitutional amendment shall not be affected by this chapter but shall be entitled to continue in existence and exercise all powers heretofore or hereafter granted thereto.

History.
Ga. L. 1969, p. 137, § 12.

36-62-13. Disposition of property of certain authorities dissolved by operation of law.

The real and personal property of any development authority which was created for a county prior to July 1, 1983, by constitutional amendment and which was dissolved by operation of law pursuant to Article XI, Section I, Paragraph IV(c) of the Constitution shall by operation of law become the property of any development authority subsequently created by such county pursuant to this chapter or, in the absence thereof, shall become the property of the county.

History.
Code 1981, § 36-62-13, enacted by Ga. L. 1990, p. 383, § 1.

36-62-14. Perpetual existence of authority; dissolution.

(a) Except as otherwise provided in this Code section, an authority created pursuant to this chapter shall have perpetual existence.

(b) If an authority does not have any outstanding unpaid bonds or bond anticipation notes, the authority may be dissolved as provided in this subsection. If the authority was activated for a single county or municipal corporation as provided in Code Section 36-62-4, the authority may be dissolved by adoption of an appropriate resolution by the governing authority of such county or municipal corporation. If the authority was activated for two or more local governments as provided in Code Section 36-62-5.1, the authority may be dissolved by the adoption of appropriate concurrent resolutions by the governing authorities of all such local governments.

(c) If an authority previously activated for a single county or municipal corporation is so dissolved, all assets and debts and rights and obligations of the former authority shall devolve to the parent county or municipal corporation. If an authority previously activated for two or more local governments is so dissolved, all assets and debts and rights and obligations of the former authority shall devolve to the parent local governments in such proportions and manner as shall be specified in the concurrent resolutions dissolving the authority.

(d) Where an authority is dissolved as provided in this Code section, it shall cease to exist as of the effective date specified in the appropriate resolution or resolutions. The dissolution of an authority, however, shall not prevent the subsequent activation of a new authority under this chapter for the same local government or local governments, in the same manner as otherwise specified in this chapter.

History.
Code 1981, § 36-62-14, enacted by Ga. L. 2000, p. 1336, § 2.

ARTICLE 2

COMMERCIAL PROPERTY ASSESSED CONSERVATION, ENERGY, AND RESILIENCY COOPERATION

Effective date.
This article became effective April 25, 2024.

36-62-15. Short title.

This article shall be known and may be cited as the "Commercial Property Assessed Conservation, Energy, and Resiliency Cooperation Law."

History.
Code 1981, § 36-62-15, enacted by Ga. L. 2024, p. 434, § 6/HB 206, effective April 25, 2024.

36-62-16. Legislative findings.

The General Assembly finds that it is in the public interest and vital to the public welfare of the people of the State of Georgia, and it is declared to be the intent of this article, to authorize municipal corporations and counties to enact ordinances or resolutions to establish commercial property assessed conservation, energy, and resiliency programs and to enter into agreements with development authorities to carry out such programs, all for the purpose of developing trade, commerce, industry, and employment opportunities. It is found and declared that the assistance provided in this article for the purposes set forth in Article 1 of this chapter constitutes a public use and purpose and an essential governmental function for which public moneys consisting solely of assessments may be spent and that the provisions enacted in this article are necessary in the public interest.

History.
Code 1981, § 36-62-16, enacted by Ga. L. 2024, p. 434, § 6/HB 206, effective April 25, 2024.

36-62-17. Assessments for qualifying improvements.

(a) For the purpose of aiding and cooperating in the planning, undertaking, constructing, or carrying out of qualifying improvements located within the area in which it is authorized to act, any municipal corporation or county, upon such terms, with or without consideration, as it may determine, may:

(1) Enter into intergovernmental assessment agreements with an authority respecting action to be taken by such municipal corporation or county pursuant to any of the powers granted by this article, including the furnishing of funds or other assistance in connection with qualifying improvements, provided that the obligations of any such municipal corporation or county under any such intergovernmental assessment agreement shall be limited obligations payable solely from assessments and shall not be paid from any other public moneys;

(2) Do any and all things necessary or convenient to aid or cooperate in the planning, undertaking, constructing, and carrying out of qualifying improvements; and

(3) Grant or contribute assessments to an authority or agree to take such action.

(b) Any participating local government shall have the power to impose, bill, and collect assessments and to pledge and assign assessments to an authority to secure its obligations under an intergovernmental assessment agreement.

(c) Pursuant to Code Section 36-62-8.2, an authority may enter into an assessment agreement with an owner of qualifying property for qualifying improvements, under which such owner voluntarily agrees to the imposition of assessments under this article. After an assessment agreement is entered into, and upon notice from the authority, a participating local government shall have the power to execute and record a notice of assessment on the subject property in the real property records of the relevant county. Such notice of assessment shall contain:

(1) The principal amount of the assessment;

(2) The legal description of the property;

(3) The name of each property owner;

(4) A copy of the assessment agreement, including a schedule of assessments to be imposed by the participating local government; and

(5) A reference to subsection (d) of this Code section authorizing

the creation of an assessment lien to secure an assessment imposed under this article.

(d) An assessment imposed by a participating local government under this article:

(1) Is a lien against the property on which the assessment is imposed, from the date on which the notice of assessment is recorded until the assessment, interest, and penalties are paid in full; and

(2) Has the same priority status as a lien for ad valorem taxes levied by the participating local government.

(e) The assessment lien created under this article runs with the land and that portion of the assessment that is not yet due may not be accelerated or eliminated by foreclosure of a property tax lien or other lien.

(f) Assessments imposed under this article shall be billed and collected in installments in the same manner, by the same tax collector, and at the same times as ad valorem taxes levied by the participating local government are billed and collected. The tax collector may include any assessment installment as a separate line item on an ad valorem tax bill or may send a separate bill for any assessment installment. The participating local government may charge fees that shall reflect the reasonable costs of the tax collector for his or her actions under this subsection and that shall be added to the assessment. The tax collector shall be a party signatory to each intergovernmental assessment agreement entered into by a participating local government. All proceeds of assessment installments received by a participating local government, net of administrative fees of the participating local government, that are subject to a pledge created in an intergovernmental assessment agreement shall be remitted to the applicable authority pursuant to the terms of the intergovernmental assessment agreement.

(g) A delinquent assessment installment that is unpaid when due shall incur interest and penalties in the same manner as delinquent ad valorem taxes and shall be enforced by or on behalf of the participating local government in the same manner as its ad valorem tax liens. All proceeds from enforcing a delinquent assessment installment and related penalties and interest received by a participating local government that are subject to a pledge created in an intergovernmental assessment agreement shall be remitted to the applicable authority pursuant to the terms of the intergovernmental assessment agreement.

(h) Subject to an intergovernmental assessment agreement, a participating local government may charge fees that shall reflect the reasonable costs of the participating local government for its actions under this article and that shall be added to the assessment.

(i) Assessments shall not count against the tax limitations contained in paragraph (20) of Code Section 48-5-220 or Code Section 48-5-350.

History. Code 1981, § 36-62-17, enacted by Ga. L. 2024, p. 434, § 6/HB 206, effective April 25, 2024.

36-62-18. Limitation of liability.

(a) No obligations of any participating local government under any intergovernmental assessment agreement shall constitute a pledge of the full faith or credit of such participating local government.

(b) Any monetary obligation of any participating local government under any intergovernmental assessment agreement shall be payable solely from assessments pledged and proceeds from enforcing delinquent assessments pursuant to such intergovernmental assessment agreement.

(c) No party to or third-party beneficiary of any intergovernmental assessment agreement or any assignee of any rights under any intergovernmental assessment agreement shall have the right to compel:

(1) Any exercise of the taxing power of any participating local government, provided that such party, third-party beneficiary, or assignee may compel the imposition and enforcement of assessments agreed to be imposed and enforced pursuant to such intergovernmental assessment agreement; or

(2) The enforcement of any payment against any property or public moneys of any such participating local government other than assessments pledged or proceeds from enforcing delinquent assessments pursuant to such intergovernmental assessment agreement.

History. Code 1981, § 36-62-18, enacted by Ga. L. 2024, p. 434, § 6/HB 206, effective April 25, 2024.

36-62-19. Authorization by resolution.

The exercise by a participating local government of the powers granted by this article may be authorized by resolution of the governing body of such participating local government. The resolution shall be adopted by a majority of the members of the governing body present at a meeting of such governing body, which resolution may be adopted at the meeting at which such resolution is introduced. Such a resolution or resolutions shall take effect immediately and need not be laid over or published or posted.

History. Code 1981, § 36-62-19, enacted by Ga. L. 2024, p. 434, § 6/HB 206, effective April 25, 2024.

CHAPTER 62A

CONDUCT OF MEMBERS OF LOCAL AUTHORITIES

Article 1

General Provisions

Sec.
36-62A-1. Ethics; conflicts of interest.

Article 2

Development Authorities

36-62A-20. "Development authority" defined.
36-62A-21. Required training on development and redevelopment programs.
36-62A-22. Inapplicable to directors of downtown development authorities.

ARTICLE 1

GENERAL PROVISIONS

36-62A-1. Ethics; conflicts of interest.

(a)(1) All directors and members of any downtown development authority created pursuant to Chapter 42 of this title, known as the "Downtown Development Authorities Law," or of any authority created by or pursuant to a local constitutional amendment, whether for the purpose of promoting the development of trade, commerce, industry, and employment opportunities or for other purposes, to the extent that the Constitution of Georgia authorizes the General Assembly by law to define further and to enlarge or restrict the powers and duties of any such authority created by or pursuant to a local constitutional amendment shall comply with the provisions of Code Section 45-10-3, relating to a code of ethics of members of boards, commissions, and authorities and shall not engage in any transaction with the authority.

(2) The provisions of paragraph (9) of Code Section 45-10-3 and of paragraph (1) of this subsection shall be deemed to have been complied with and any such authority may purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any director or member or any organization or person with which any director or member of said authority is in any way interested or involved, provided (1) that any interest or involvement by such director or member is disclosed in advance to the directors or members of the authority and is recorded in the minutes of the authority, (2) that any interest or involvement by such director with a value in excess of $200.00 per calendar quarter is published by the authority one time in the legal organ in which notices of sheriffs' sales are published in each county affected by such interest, at least 30 days in advance of consummating such transaction, (3) that no

director having a substantial interest or involvement may be present at that portion of an authority meeting during which discussion of any matter is conducted involving any such organization or person, and (4) that no director having a substantial interest or involvement may participate in any decision of the authority relating to any matter involving such organization or person. As used in this subsection, a "substantial interest or involvement" means any interest or involvement which reasonably may be expected to result in a direct financial benefit to such director or member as determined by the authority, which determination shall be final and not subject to review.

(b) Nothing contained in subsection (a) of this Code section or in Code Section 45-10-3 shall be deemed to prohibit any director who is present at any decision of the authority from providing legal services in connection with any of the undertakings of the authority or from being paid for such services.

History.
Ga. L. 1982, p. 1726, § 1; Code 1981, § 36-62A-1, enacted by Ga. L. 1982, p. 1726, § 2; Ga. L. 1983, p. 1346, § 5; Ga. L. 1984, p. 22, § 36; Ga. L. 2010, p. 834, § 3/SB 456.

Law reviews.
For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Interest in bank providing loans. — Individual, who is a chairperson and stockholder in a local bank negotiating authority loans, may be a member of a downtown authority and an industrial authority provided that the provisions of O.C.G.A. §§ 36-62-5 and 36-62A-1 are met. 1983 Op. Att'y Gen. No. U83-30.

ARTICLE 2

DEVELOPMENT AUTHORITIES

36-62A-20. "Development authority" defined.

As used in this article, the term "development authority" means any authority created by law or by constitutional amendment for one or more counties or municipalities, or any combination thereof, for the purpose of promoting the development of trade, commerce, industry, and employment opportunities or for other purposes. Without limiting the generality of the foregoing, such term shall specifically include all authorities created pursuant to Chapter 62 of this title.

History.
Code 1981, § 36-62A-20, enacted by Ga. L. 2000, p. 1362, § 1.

36-62A-21. Required training on development and redevelopment programs.

(a) Except for a director who is also a member of the governing body of a municipal corporation or county, each director or member of the governing board or body of a development authority shall attend and complete at least eight hours of training on development and redevelopment programs within the first 12 months of the director's or member's appointment to the development authority.

(b) After July 1, 2025, directors or members required to complete the training provided for in subsection (a) of this Code section shall also attend and complete at least two hours of continuing training on development and redevelopment programs each year such director or member is a director or member of such authority. Such training can occur either in person or online.

(c) Any director who fails to undertake the continuing training required by subsection (b) of this Code section for two consecutive years shall have his or her voting rights on any authority suspended until the director completes the required continuing training.

History.
Code 1981, § 36-62A-21, enacted by Ga. L. 2000, p. 1362, § 1; Ga. L. 2024, p. 182, § 2/SB 171, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, designated the existing provisions of this Code section as subsection (a); deleted the last sentence of subsection (a), which read: "Directors and members in office on January 1, 2000, shall be exempt from this requirement unless reappointed for an additional term."; and added subsections (b) and (c).

36-62A-22. Inapplicable to directors of downtown development authorities.

This article shall not apply to directors of downtown development authorities created pursuant to Chapter 42 of this title, required training for such directors being as provided for in that chapter.

History.
Code 1981, § 36-62A-22, enacted by Ga. L. 2000, p. 1362, § 1.

CHAPTER 63

RESOURCE RECOVERY DEVELOPMENT AUTHORITIES

Sec.		Sec.	
36-63-1.	Short title.	36-63-9.	Obligations of authority; use of proceeds; status as revenue obligations; subsequent series of bonds or notes; bond anticipation notes; interest rates; issuance and validation.
36-63-2.	Purpose of chapter.		
36-63-3.	Constitutional authority for chapter; finding of public purposes; tax exemption.	36-63-10.	Obligations of authority not indebtedness of state or political subdivisions.
36-63-4.	Definitions.		
36-63-5.	Authorities created; adoption and filing of resolution or ordinance of need; joint authorities.	36-63-11.	Construction of chapter generally; applicability of certain other provisions of law to proceedings under chapter; effect of chapter with respect to other development authorities.
36-63-6.	Appointment and terms of members of board of directors; officers; compensation; adoption of bylaws and regulations; delegation of powers and duties.		
36-63-7.	Quorum of board; requirement of majority vote.		
36-63-8.	Powers of authority generally.		

Cross references.
Waste management generally, § 12-8-1 et seq.

36-63-1. Short title.

This chapter may be referred to as the "Resource Recovery Development Authorities Law."

History.
Code 1933, § 69-1501a, enacted by Ga. L. 1978, p. 1898, § 1.

36-63-2. Purpose of chapter.

(a) The recovery and utilization of resources contained in sewage sludge and solid waste and the generation of electrical and other forms of energy from water resources promotes trade, commerce, industry, and employment opportunities by creating a new industry to recover and utilize such resources and by creating a climate highly favorable to the location of new industrial facilities in areas where such resources are recovered or available by providing additional sources of energy and a method of processing and disposing of sewage and solid waste in an efficient and environmentally sound manner. It is therefore in the public interest and is vital to the public welfare of the people of the

State of Georgia, and it is declared to be the purpose of this chapter, to create resource recovery development authorities to recover and utilize resources contained in sewage sludge, solid waste, and water resources. It is likewise in the public interest and is vital to the public welfare of the people of the State of Georgia, and it is declared to be the intent of this chapter to preserve and do nothing to interfere with the practice of recycling solid waste for use again by industry and the public thereby preserving and reusing important natural and other resources, except as specifically provided for in this chapter.

(b) It is the clearly articulated and affirmatively expressed policy of the State of Georgia that any resource recovery development authority, other authority, municipal corporation, county, other governmental body or agency, or private party shall be authorized, with respect to any solid waste, sewage sludge, or resources contained therein which the owner or generator thereof makes available to such resource recovery development authority, other authority, municipal corporation, county, or other governmental body or agency or private party to enter into agreements or in the case of a county or municipal corporation to enact ordinances or resolutions in furtherance of a project granting, directing, or providing for an exclusive right or rights in any of the foregoing parties with respect to such solid waste, sewage sludge, or resources contained therein, including, but not limited to, the exclusive right to collect, acquire, receive, transport, store, treat, process, utilize, sell, or dispose of discarded solid waste, sewage sludge, or resources contained therein; provided, however, that excluded from such authorization shall be any rights to materials or substances contained in such solid waste, sewage sludge, or resources contained therein as may be separated for recycling at any time prior to pick up by or delivery to such resource recovery development authority, other authority, municipal corporation, county, or other governmental body or agency or private party of such discarded solid waste, sewage sludge, or resources contained therein.

History.

Code 1933, § 69-1502a, enacted by Ga. L. 1978, p. 1898, § 1; Ga. L. 1983, p. 515, § 1; Ga. L. 1984, p. 1694, § 1; Ga. L. 2025, p. 1029, § 36(23)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that" for "however" in subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d.

61B Am. Jur. 2d, Pollution Control, §§ 148, 170 et seq., 469, 525 et seq.

36-63-3. Constitutional authority for chapter; finding of public purposes; tax exemption.

This chapter is enacted pursuant to authority granted to the General Assembly by the Constitution of Georgia. Each authority created by this chapter is created for nonprofit and public purposes; and it is found, determined, and declared that the creation of each such authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of this state and that the authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this chapter. For such reasons, the state covenants from time to time with the holders of the bonds issued under this chapter that such authority shall be required to pay no taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others; or upon its activities in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise; and that the bonds of such authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The tax exemption provided in this Code section shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority.

History.

Code 1933, § 69-1511a, enacted by Ga. L. 1978, p. 1898, § 1.

Law reviews.

For article discussing tax-exempt financing in Georgia, see 18 Ga. St. B.J. 20 (1981).

JUDICIAL DECISIONS

De facto zoning ordinance. — If a regulation has the effect of establishing zones of property in a county in which various uses are permitted and prohibited, then it is a zoning ordinance. Mullis Tree Serv., Inc. v. Bibb County, 822 F. Supp. 738, 1993 U.S. Dist. LEXIS 7085 (M.D. Ga. 1993).

County regulation, in which each area zoned for residential use was to be surrounded by a buffer zone and in which the use of property as a putrescible waste landfill was prohibited, was actually a zoning ordinance, and adoption by an entity lacking power to zone was an ultra vires act. Therefore, this regulation was invalid under state law. Mullis Tree Serv., Inc. v. Bibb County, 822 F. Supp. 738, 1993 U.S. Dist. LEXIS 7085 (M.D. Ga. 1993).

36-63-4. Definitions.

As used in this chapter, the term:

(1) "Authority" means each public corporation created pursuant to this chapter.

(2) "Collection" means the aggregating of solid waste from its primary source and includes all activities up to such time as the waste is delivered to the place at which it is to be processed.

(3) "Cost of project" means all costs of site preparation and other start-up costs; all costs of construction; all costs of real and personal property required for the purposes of the project and facilities related thereto, including land and any rights or undivided interest therein, easements, franchises, fees, permits, approvals, licenses, and certificates and the securing of such permits, approvals, licenses, and certificates, and all machinery and equipment, including motor vehicles which are used for project functions; financing charges and interest prior to and during construction and during such additional period as the authority may reasonably determine to be necessary for the placing of the project in operation; costs of engineering, architectural, and legal services; cost of plans and specifications and all expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses; and such other expenses as may be necessary or incidental to the financing authorized in this chapter. The costs of any project may also include funds for the creation of a debt service reserve, a renewal and replacement reserve, and such other reserves as may be reasonably required by the authority for the operation of its projects and as may be authorized by any bond resolution or trust agreement or indenture pursuant to the provisions of which the issuance of any such bonds may be authorized. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds or notes issued under this chapter for such project.

(4) "County" means any county of this state or a governmental entity formed by the consolidation of a county and one or more municipal corporations.

(5) "Governing body" means the elected or duly appointed officials constituting the governing body of each municipal corporation and county in the state.

(6) "Municipal corporation" means each city and town in this state.

(7) "Project" means:

(A) The collection and transportation of solid waste and sewage sludge and it shall also mean any property, real or personal, used as or in connection with a facility for the extraction, collection, storage, treatment, processing, utilization, or final disposal of resources contained in sewage sludge or solid waste, including the conversion of sewage sludge, solid waste, or resources contained therein into steam, electricity, oil, charcoal, gas, or any other

product or energy source and the collection, storage, treatment, utilization, processing, or final disposal of sewage sludge and solid waste in connection with the foregoing; and

(B) Any property, real or personal, used as or in connection with a facility for the extraction, collection, storage, treatment, processing, or utilization of water resources and the conversion of such resources into any useful form of energy.

(8) "Resources" means any natural or synthetic substance contained in sewage sludge or solid waste which can be processed and reused in the same or a different form or which can be converted into usable energy and water resources which can be used as energy or converted into usable energy.

(9) "Sewage sludge" means all solid or dissolved materials in domestic or industrial sewage or other significant pollutants in water resources, such as salt, dissolved or suspended solids in waste-water effluents, human wastes, dissolved materials in irrigation return flows, and silt, after they are extracted from the medium in which they are contained.

(10) "Solid waste" means garbage, refuse, or other discarded solid materials, including solid waste materials resulting from industrial and agricultural operations and from community and domestic activities. As used in this paragraph, the term "garbage" shall include putrescible wastes, including animal and vegetable matters, animal offal and carcasses, and industrial by-products, and the term "refuse" shall include all nonputrescible wastes.

History.
Code 1933, § 69-1503a, enacted by Ga. L. 1978, p. 1898, § 1; Ga. L. 1983, p. 515, § 2; Ga. L. 1987, p. 3, § 36; Ga. L. 1992, p. 6, § 36; Ga. L. 2025, p. 1029, § 36(24)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "As used in" for "For purposes of" in paragraph (10).

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 1 et seq. 39A C.J.S., Health and Environment, § 76. 62 C.J.S., Municipal Corporations, § 1 et seq.

36-63-5. Authorities created; adoption and filing of resolution or ordinance of need; joint authorities.

(a) There is created in and for each county and municipal corporation in this state a public body corporate and politic, to be known as the "resource recovery development authority" of such county or municipal corporation. No authority shall transact any business or exercise any

powers under this chapter until the governing body of the county or municipal corporation, by proper ordinance or resolution, declares that there is a need for an authority to function in the county or municipal corporation.

(b) Any number of counties and municipal corporations, whether or not located in the same county or within a county participating in the formation of a joint authority, may jointly form an authority, to be known as the "joint resource recovery development authority" for such counties and municipal corporations. No authority shall transact any business or exercise any powers under this chapter until the governing authorities of the units of local government involved declare, by ordinance or resolution, that there is a need for an authority to function and until the governing authorities authorize the chief elected official of the unit of local government to enter into an agreement with the other units of local government for the activation of an authority and such agreement is executed.

(c) A copy of such ordinances, resolutions, and agreements shall be filed with the Secretary of State, who shall maintain a record of all authorities activated under this chapter.

History. Code 1933, § 69-1504a, enacted by Ga. L. 1978, p. 1898, § 1; Ga. L. 1984, p. 1694, § 2.

36-63-6. Appointment and terms of members of board of directors; officers; compensation; adoption of bylaws and regulations; delegation of powers and duties.

Control and management of the authority shall be vested in a board of five directors who shall be residents of the county or municipal corporation and shall serve at the pleasure of the governing authority of the county or municipal corporation. Directors shall be appointed, and may be reappointed, for terms of four years. In the case of a joint resource recovery development authority, each unit of local government participating in the authority shall appoint two members, with an additional member to be appointed by the directors themselves. The directors shall elect one of their members as chairman and another as vice-chairman and shall also elect a secretary and a treasurer or a secretary-treasurer, either of whom may but need not be a director. The directors shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties. The directors may make bylaws and regulations for the governing of the authority and may delegate to one or more of the officers, agents, and employees of the authority such powers and duties as may be deemed necessary and proper.

History.
Code 1933, § 69-1505a, enacted by Ga. L. 1978, p. 1898, § 1.

RESEARCH REFERENCES

C.J.S.
62 C.J.S., Municipal Corporations, § 549 et seq.

36-63-7. Quorum of board; requirement of majority vote.

A majority of the directors shall constitute a quorum for the transaction of business of the authority. However, any action with respect to any project of the authority must be approved by the affirmative vote of not less than a majority of the directors.

History.
Code 1933, § 69-1506a, enacted by Ga. L. 1978, p. 1898, § 1.

36-63-8. Powers of authority generally.

(a) Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the power:

(1) To bring and defend actions;

(2) To adopt and amend a corporate seal;

(3) To acquire, construct, improve, or modify, to place into operation, and to operate or cause to be placed into operation and operated, either as owner of all or of any part in common with others, a project or projects within the county in which the authority is activated and, subject to execution of agreements with the appropriate political subdivisions affected, within other counties, and to pay all or part of the cost of any such project or projects from the proceeds of revenue bonds of the authority or from any contribution or loans by persons, firms, or corporations or any other contribution, all of which the authority is authorized to receive, accept, and use;

(4) To acquire, in its own name, by purchase on such terms and conditions and in such manner as it may deem proper or by gift, grant, lease, or otherwise, real property or rights and easements therein and franchises and personal property necessary or convenient for its corporate purposes, which purposes shall include, but shall not be limited to, the constructing or acquiring of a project, the improving, extending, adding to, reconstructing, renovating, or remodeling of any project or part thereof already constructed or

acquired, or demolition to make room for such project or any part thereof, and to insure the same against any and all risks as such insurance may, from time to time, be available; the authority may also use such property and rent or lease the same to or from others or make contracts with respect to the use thereof or sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner which the authority deems to the best advantage of itself and its purposes; provided that the powers to acquire, use, and dispose of property as set forth in this paragraph shall include the power to acquire, use, and dispose of any interest in such property, whether divided or undivided, which acquisition may result in the ownership of such property or any part thereof in common with any other party or parties, public or private; and title to any such property of the authority, however, shall be held by the authority exclusively for the benefit of the public;

(5) To make contracts and leases and to execute all instruments necessary or convenient, including contracts for construction of projects and leases of projects or contracts with respect to the use of projects which it causes to be acquired or constructed; provided that all private persons, firms, and corporations, this state, and all political subdivisions, departments, instrumentalities, or agencies of the state or of local government are authorized to enter into contracts, leases, or agreements with the authority, upon such terms and for such purposes as they deem advisable; and without limiting the generality of the above, authority is specifically granted to municipal corporations and counties and to the authority to enter into contracts, lease agreements, or other undertakings relative to the furnishing of project activities and facilities or either of them by the authority to such municipal corporations and counties and by such municipal corporations and counties to the authority for a term not exceeding 50 years;

(6) To exercise any one or more of the powers, rights, and privileges conferred by this Code section either alone or jointly or in common with one or more other public or private parties or public and private parties; in any such exercise of such powers, rights, and privileges jointly or in common with others with respect to the construction, operation, and maintenance of project facilities, the authority may own an undivided interest in such facilities with any other party with which it may jointly or in common exercise the rights and privileges conferred by this chapter; the authority may enter into an agreement or agreements with respect to any such project facility with the other party or parties participating therein; any such agreement may contain such terms, conditions, and provisions, consistent with this chapter, as the parties thereto shall deem to be in their best interests; any such agreement may include, but need not be limited to,

provisions for the construction, operation, and maintenance of such project facility by any one or more party of the parties to such agreement, which party or parties shall be designated in or pursuant to such agreement as agent or agents on behalf of itself and one or more of the other parties thereto, or by such other means as may be determined by the parties thereto, and may include provisions for a method or methods of determining and allocating, among or between the parties, costs of construction, operation, maintenance, renewals, replacements, improvements, and disposals with respect to such facility; in carrying out its functions and activities as such agent with respect to construction, operation, and maintenance of such a facility, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating parties; provided, however, that, the agent shall act for the benefit of the public; notwithstanding anything contained in any other law to the contrary, pursuant to the terms of any such agreement, the authority may delegate its powers and duties with respect to the construction, operation, and maintenance of such facility to the party acting as agent; and all actions taken by such agent in accordance with the provisions of such agreement may be binding upon the authority without further action or approval of the authority;

(7) To extend credit or make loans to any person, firm, corporation, or other industrial entity for the planning, design, construction, acquisition, or carrying out of any project, which credit or loans shall be secured by loan agreements, mortgages, security agreements, contracts, and all other instruments or fees or charges, upon such terms and conditions as the authority shall determine reasonable in connection with such loans, including provision for the establishment and maintenance of reserves and insurance funds, and in the exercise of powers granted by this Code section in connection with a project for such person, firm, corporation, or other industrial entity, to require the inclusion in any contract, loan agreement, security agreement, or other instrument of such provisions for guaranty, insurance, construction, use, operation, maintenance, and financing of a project as the authority may deem necessary or desirable;

(8) To acquire, accept, or retain equitable interests, security interests, or other interest in any property, real or personal, by mortgage, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer, in order to secure the repayment of any moneys loaned or credit extended by the authority;

(9) To accept, receive, and administer gifts, grants, appropriations, and donations of money, materials, and property of any kind, including loans and grants from the United States of America or this state,

or a unit of local government, or any agency, department, authority, or instrumentality of either upon such terms and conditions as the United States of America, this state, a unit of local government, or such agency, department, authority, or instrumentality shall impose, to administer trusts, and to sell, lease, transfer, convey, appropriate, and pledge any and all of its property and assets;

(10) To invest any accumulation of its funds in any fund or reserve in any manner that public funds of this state or its political subdivisions may be invested;

(11) To do any and all things necessary or proper for the accomplishment of the objectives of this chapter and to exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the Constitution and laws of this state, including the power to employ professional and administrative staff and personnel and to retain legal, engineering, fiscal, accounting, and other professional services; the power to purchase all kinds of insurance, including, without limitation, insurance against tort liability and against risks of damage to property; the power to borrow money for any of the corporate purposes of the authority; the power to indemnify and hold harmless any parties contracting with the authority or its agents from damage to persons or property; and the power to act as self-insurer with respect to any loss or liability; provided, however, that obligations of the authority other than revenue bonds, for which provision is made in this chapter, shall be payable from the general funds of the authority and shall not be a charge against any special fund allocated to the payment of revenue bonds;

(12) To mortgage, convey, pledge, or assign any properties, revenues, income, tolls, charges, or fees owned or received by the authority;

(13) To borrow money and issue its revenue bonds and bond anticipation notes from time to time and to use the proceeds thereof for the purpose of paying all or part of the cost of any project, including the cost of extending, adding to, or improving such project, or for the purpose of refunding any such bonds of the authority theretofore issued; and to otherwise carry out the purposes of this chapter and to pay all other costs of the authority incident to, or necessary and appropriate to, such purposes, including the providing of funds to be paid into any fund or funds to secure such bonds and notes, provided that all such bonds and notes shall be issued in accordance with the procedures and subject to the limitations set forth in Code Section 36-63-9; and

(14) As security for repayment of authority obligations, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any

property, real or personal, of such authority and to execute any trust agreement, indenture, or security agreement containing any provisions not in conflict with law, which trust agreement, indenture, or security agreement may provide for foreclosure or forced sale of any property of the authority upon default on such obligations either in payment of principal or interest or in the performance of any term or condition contained in such agreement or indenture; this state, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein waives any right which it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority so mortgaged or encumbered, and any such mortgage or encumbrance may be foreclosed in accordance with law and the terms thereof.

(b) Notwithstanding any other provisions of this chapter, an authority is prohibited from bidding or paying compensation for solid wastes being privately processed or reused.

History.

Code 1933, § 69-1507a, enacted by Ga. L. 1978, p. 1898, § 1; Ga. L. 1979, p. 1006, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 2025, p. 1029, § 36(25)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that," for "however, that" in paragraph (a)(6).

RESEARCH REFERENCES

C.J.S.

62 C.J.S., Municipal Corporations, § 555 et seq. 63 C.J.S., Municipal Corporations, § 1113 et seq. 64A C.J.S., Municipal Corporations, § 2025 et seq.

ALR.

Disposition of revenues from operation of revenue-producing enterprise owned by municipal corporation, 165 A.L.R. 854.

36-63-9. Obligations of authority; use of proceeds; status as revenue obligations; subsequent series of bonds or notes; bond anticipation notes; interest rates; issuance and validation.

(a) Subject to the limitations and procedures provided by this Code section, the obligations of any authority evidenced by bonds, bond anticipation notes, trust indentures, deeds to secure obligations, security agreements, or mortgages executed in connection therewith may contain such provisions not inconsistent with law as shall be determined by the board of directors of the authority. The authority, in such instruments, may provide for the pledging of all or any part of its revenues, income, or charges and for the mortgaging, encumbering, or conveying of all or any part of its real or personal property; may covenant against pledging any or all of its revenues, income, or charges;

and may further provide for the disposition of proceeds realized from the sale of any bonds and bond anticipation notes, for the replacement of lost, destroyed, stolen, or mutilated bonds and notes, and for the payment and redemption of such bonds and notes. Similarly, subject to the limitations and procedures of this Code section, undertakings of an authority may prescribe the procedure by which bondholders and noteholders may enforce rights against the authority and provide for rights upon breach of any covenant, condition, or obligation of the authority. Bonds, resolutions, trust indentures, mortgages, or deeds to secure obligations executed by an authority and bond anticipation notes executed by an authority may contain such provisions not otherwise contrary to law as the authority shall deem necessary or desirable.

(b) The proceeds derived from the sale of all bonds and bond anticipation notes issued by an authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this chapter, all or part of the cost of any project, including the cost of extending, financing, adding to, or improving such project, or for the purpose of refunding any bond anticipation notes issued in accordance with this chapter or refunding any previously issued bonds of the authority.

(c) All bonds and bond anticipation notes issued by an authority shall be revenue obligations of such authority and may be made payable out of any revenues or other receipts, funds, or moneys of the authority, subject only to any agreements with the holders of other bonds or bond anticipation notes or to particular security agreements pledging any particular revenues, receipts, funds, or moneys.

(d) Issuance by an authority of one or more series of bonds or bond anticipation notes for one or more purposes shall not preclude it from issuing other bonds or notes in connection with the same project or with any other projects, but the proceeding wherein any subsequent bonds or bond anticipation notes shall be issued shall recognize and protect any prior pledge or mortgage made in any prior security agreement or made for any prior issue of bonds or bond anticipation notes, unless in the resolution authorizing such prior issue the right is expressly reserved to the authority to issue subsequent bonds or bond anticipation notes on a parity with such prior issue.

(e) An authority shall have the power and is authorized, whenever revenue bonds of the authority have been validated as provided in this chapter, to issue, from time to time, its notes in anticipation of the issuance of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. The notes may be authorized, sold, executed,

and delivered in the same manner as bonds. As with its bonds, the authority may sell such notes at public or private sale. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any such resolution or resolutions; and the authority may include in any notes any terms, covenants, or conditions which it is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of the notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued.

(f) The interest rate on or rates to be borne by any bonds, notes, or other obligations issued by the authority shall be fixed by the board of directors of the authority. Any limitations with respect to interest rates found in Article 3 of Chapter 82 of this title or in the usury laws of this state shall not apply to obligations issued under this chapter.

(g) All revenue bonds issued by an authority under this chapter shall be issued and validated under and in accordance with Article 3 of Chapter 82 of this title, except as provided in subsection (f) of this Code section and except as specifically set forth below in this subsection:

(1) Revenue bonds issued by an authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide;

(2) Revenue bonds shall bear a certificate of validation. The signature of the clerk of the superior court of the judicial circuit in which the issuing authority is located may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state;

(3) In lieu of specifying the rate or rates of interest which revenue bonds to be issued by an authority are to bear, the notice to the district attorney or the Attorney General and the notice to the public of the time, place, and date of the validation hearing may state that the bonds, when issued, will bear interest at a rate not exceeding a minimum per annum rate of interest specified in such notices or, in the event the bonds are to bear different rates of interest for different maturity dates, that none of such rates will exceed the maximum rate specified in the notices; provided, however, that nothing contained in this paragraph shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in so

doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices;

(4) The term "cost of project" shall have the meaning prescribed in paragraph (3) of Code Section 36-63-4 whenever referred to in bond resolutions of an authority, bonds and bond anticipation notes issued by an authority, or notices and proceedings to validate such bonds.

History.
Code 1933, § 69-1508a, enacted by Ga. L. 1978, p. 1898, § 1.

Cross references.
Revenue bonds generally, § 36-82-60 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 472 et seq. 64 Am. Jur. 2d, Public Securities and Obligations, § 178 et seq.

C.J.S.
64A C.J.S., Municipal Corporations, §§ 2025 et seq., 2092 et seq.

36-63-10. Obligations of authority not indebtedness of state or political subdivisions.

No bonds or other obligations of and no indebtedness incurred by any authority shall constitute an indebtedness or obligation of the State of Georgia or of any county, municipal corporation, or political subdivision thereof, nor shall any act of any authority in any manner constitute or result in the creation of an indebtedness of this state or of any such county, municipal corporation, or political subdivision. All such bonds and obligations shall be payable solely from the revenues therein pledged to such payment, including pledged rentals, sales proceeds, insurance proceeds, and condemnation awards; and no holder or holders of any such bonds or obligations shall ever have the right to compel any exercise of the taxing power of this state or of any county, municipal corporation, or political subdivision thereof, nor to enforce the payment thereof against any property of the state or of any such county, municipal corporation, or political subdivision.

History.
Code 1933, § 69-1510a, enacted by Ga. L. 1978, p. 1898, § 1.

RESEARCH REFERENCES

ALR.
Construction or improvement of sewers as a local or district improvement within provisions authorizing or requiring special assessments or other specified means of defraying expense, 134 A.L.R. 895.

36-63-11. Construction of chapter generally; applicability of certain other provisions of law to proceedings under chapter; effect of chapter with respect to other development authorities.

(a) This chapter shall be liberally construed to effect the purposes hereof. Sale or issuance of bonds by any authority shall not be subject to regulation under Chapter 5 of Title 10, the "Georgia Uniform Securities Act of 2008," or any other law. Any sale or disposition of any useful form of energy produced from a solid waste project financed by revenue bonds issued on or before August 8, 1985, and which is substantially constructed as of January 1, 1987, which sale or disposition is made in the county wherein the project is located shall not be subject to the provisions of Part 3 of Article 1 of Chapter 3 of Title 46, "The Georgia Cogeneration and Distributed Generation Act of 2001." In the event that the immediately preceding sentence of this subsection shall for any reason be held invalid, the remaining provisions of this subsection and this Code section shall remain in full force and effect. No proceeding or publication not required in this chapter shall be necessary to the performance of any act authorized in this chapter, nor shall any such act be subject to referendum.

(b) A municipal corporation, a county, or any number of counties and municipal corporations shall have the right to activate an authority under this chapter, notwithstanding the existence of any other development authority within the county or municipal corporation created pursuant to any general law or amendment to the Constitution of this state. However, nothing in this chapter shall be construed as repealing, amending, superseding, or altering the organization of or abridging the powers of such authorities as are now in existence.

History.

Code 1933, § 69-1509a, enacted by Ga. L. 1978, p. 1898, § 1; Ga. L. 1984, p. 22, § 36; Ga. L. 1984, p. 1694, § 3; Ga. L. 1987, p. 1021, § 1; Ga. L. 1993, p. 91, § 36; Ga. L. 2008, p. 381, § 11/SB 358; Ga. L. 2020, p. 493, § 36/SB 429.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1987, a comma was inserted following "invalid" in the fourth sentence of subsection (a).

CHAPTER 64

RECREATION SYSTEMS

Sec.		Sec.	
36-64-1.	"Governing body" defined.		governing authority's own motion; referendums on issue of special tax and millage increase.
36-64-2.	Authority to dedicate, set apart, acquire, or lease lands or buildings for recreation; appropriation for equipment and maintenance.	36-64-9.	Establishment of system with tax money following favorable vote.
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36-64-3.1.	Use of dam sites and adjacent land for producing hydroelectric power.	36-64-12.	Establishment, maintenance, and conduct of recreation system not mandatory.
36-64-4.	Joint recreation systems.	36-64-13.	Applicability of chapter generally.
36-64-5.	Establishment of recreation board; powers and responsibilities; members; terms; officers; vacancies.	36-64-14.	Applicability of chapter to recreation and playground commissions, boards, and systems created by special Acts of General Assembly.
36-64-6.	Acceptance of gifts for recreation purposes.	36-64-15.	Removal of minimum or maximum recreation tax by municipality or county.
36-64-7.	Issuance of bonds.		
36-64-8.	Petition for recreation system; provision of system on		

Cross references.

Powers and duties of Department of Natural Resources regarding promotion and organization of recreational systems or programs for municipalities, counties, and other governmental entities, § 12-3-1 et seq.

RESEARCH REFERENCES

Am. Jur. Proof of Facts.

Playground Accidents — Human Impact Tolerance, 21 POF2d 701.

Negligent Operation of Public Swimming Pool, 34 POF2d 63.

ALR.

Liability to one struck by golf ball, 53 A.L.R.4th 282.

Liability of local government entity for injury resulting from use of outdoor playground equipment at municipally owned park or recreation area, 73 A.L.R.4th 496.

36-64-1. "Governing body" defined.

As used in this chapter, the term "governing body" means the mayor and city council, the commissioner and commissioners, or either or both as the case may be, or the governing body, by whatever name called, of any municipality or county coming under this chapter.

History.
Ga. L. 1923, p. 106, § 1; Code 1933, § 69-601; Ga. L. 1946, p. 152, § 1.
Law reviews.
For article, "Cities and Towns in Georgia: A Distinction with a Difference?," see 14 Mercer L. Rev. 385 (1963).

JUDICIAL DECISIONS

Constitutionality. — This chapter does not impinge or offend the provisions of Ga. Const. 1877, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV). Wilson v. City Council, 165 Ga. 520, 141 S.E. 412, 1928 Ga. LEXIS 30 (1928).

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 274.

C.J.S.
62 C.J.S., Municipal Corporations, § 257.

36-64-2. Authority to dedicate, set apart, acquire, or lease lands or buildings for recreation; appropriation for equipment and maintenance.

The governing body of any municipality or county may dedicate and set apart for use as parks, playgrounds, and recreation centers and for other recreation purposes any lands or buildings or both, owned or leased by such municipality or county and not dedicated or devoted to another or inconsistent public use. Such municipality or county, in such manner as may now or hereafter be authorized or provided by law for the acquisition of lands or buildings for public purposes by the municipality or county, may acquire or lease lands or buildings or both, within or beyond the corporate limits of the municipality, for parks, playgrounds, recreation centers, and other recreational purposes. When the governing body of the municipality so dedicates, sets apart, acquires, or leases lands or buildings for such purposes, it may, on its own initiative, provide for their conduct, equipment, and maintenance, according to this chapter, by making an appropriation from the general municipal or county funds.

History.
Ga. L. 1923, p. 106, § 2; Code 1933, § 69-602; Ga. L. 1946, p. 152, § 2.

JUDICIAL DECISIONS

County may condemn private property for recreational park. — County is authorized by law to condemn private property for the public purpose of creating a recreational park. Williams Bros. Lumber Co. v. Gwinnett County, 258 Ga. 243, 368 S.E.2d 310, 1988 Ga. LEXIS 221 (1988).

Authority for contracts. — This section authorizes counties to enter into

contracts so as to provide recreational facilities within a county. Hancock County v. Williams, 230 Ga. 723, 198 S.E.2d 659, 1973 Ga. LEXIS 1045 (1973).

When a municipality dedicates property to a public use, the property may be put to all customary uses within the definition of the use. Any use which is inconsistent, or which substantially and materially interferes, with the use of the property for the particular purpose for which the property was dedicated will constitute a misuser or diversion. Norton v. City of Gainesville, 211 Ga. 387, 86 S.E.2d 234, 1955 Ga. LEXIS 333 (1955).

Municipal park is public utility, and portion thereof cannot be leased for term of years for private gain. Norton v. City of Gainesville, 211 Ga. 387, 86 S.E.2d 234, 1955 Ga. LEXIS 333 (1955); Harper v. City of Augusta, 212 Ga. 605, 94 S.E.2d 690, 1956 Ga. LEXIS 461 (1956).

Land may be dedicated for particular public use with reservation by proprietor of right to use the land for a specified purpose not inconsistent with the legal character of the dedication. City of Abbeville v. Jay, 205 Ga. 743, 55 S.E.2d 129, 1949 Ga. LEXIS 579 (1949).

General Assembly may vacate and dispose of park, owned by municipality, which has been dedicated to public use, or authority to do so may be delegated to the municipality, in the absence of constitutional prohibitions. Harper v. City of Augusta, 212 Ga. 605, 94 S.E.2d 690, 1956 Ga. LEXIS 461 (1956).

Distinction between land held in governmental and proprietary capacities. — There is a clear distinction between property purchased by a municipal corporation and held for use by the corporation as an entity, or in the municipality's proprietary capacity, and property purchased by the city for the public use and benefit of the city's citizens. As to property acquired for strictly corporate purposes and held in the city's proprietary capacity, the power to dispose is unquestioned, but as to the latter, in the absence of express legislative authority, it is only when the public use has been abandoned or the property has become unsuitable or inadequate for the purpose to which the property was dedicated that the city has power to dispose of such property. Harper v. City of Augusta, 212 Ga. 605, 94 S.E.2d 690, 1956 Ga. LEXIS 461 (1956).

City authorized to sell park land when held in fee and legislature grants authority. — When the city council owned the fee-simple title to a tract of land which had been dedicated to and used by the public as a park, and when the General Assembly expressly conferred upon the city authority to sell and dispose of that property upon conditions with which the city complied, the trial court did not err in holding that the city was authorized to make the sale. Harper v. City of Augusta, 212 Ga. 605, 94 S.E.2d 690, 1956 Ga. LEXIS 461 (1956).

When legislative power to authorize sale of park land cannot be questioned. — Legislative power to authorize the discontinuance of public parks and the sale of park lands cannot be questioned when the fee is in the city and when in so doing no private property is taken. Harper v. City of Augusta, 212 Ga. 605, 94 S.E.2d 690, 1956 Ga. LEXIS 461 (1956).

Dedicated land not liable to recall by original proprietor. — It is perfectly obvious that if a dedication of streets and squares was liable to be recalled at the will of the original proprietor, the most destructive hindrance would be thrown in the way of their improvement, and the rankest injustice would be visited upon individuals. City of Abbeville v. Jay, 205 Ga. 743, 55 S.E.2d 129, 1949 Ga. LEXIS 579 (1949).

Dedication of land to public use is in nature of estoppel in pais, and when an attempt is made by the proprietor to revoke the dedication by a sale of the land, the proprietor may be enjoined by any person interested in the use. City of Abbeville v. Jay, 205 Ga. 743, 55 S.E.2d 129, 1949 Ga. LEXIS 579 (1949).

RESEARCH REFERENCES

Am. Jur. 2d.
22B Am. Jur. 2d, Dedication, § 4 et seq. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 178. 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, §§ 6, 24.

C.J.S.
64 C.J.S., Municipal Corporations, § 1906 et seq.

ALR.
To what uses may park property be devoted, 18 A.L.R. 1246; 63 A.L.R. 484; 144 A.L.R. 486.

Power of municipal corporation to establish and maintain golf course, 36 A.L.R. 1301.

Statutes relating to establishment or administration of parks, as encroachment on right of local self-government, 88 A.L.R. 228.

Auditorium or stadium as public purpose for which public funds may be expended or taxing power exercised, 173 A.L.R. 415.

Validity and construction of statute or ordinance requiring land developer to dedicate portion of land for recreational purposes, or make payment in lieu thereof, 43 A.L.R.3d 862.

Public swimming pool as nuisance, 49 A.L.R.3d 652.

Construction of highway through park as violation of use to which park property may be devoted, 60 A.L.R.3d 581.

36-64-3. Establishment of system of supervised recreation; designation of board to provide and conduct recreational activities and facilities.

The governing body of any county or municipality may establish a system of supervised recreation. It may, by resolution or ordinance, vest the power to provide, maintain, and conduct parks, playgrounds, recreation centers, and other recreational activities and facilities in the board of education, park board, or other existing body or in a recreation board, as the governing body may determine. Any board so designated shall have the power to maintain and equip parks, playgrounds, recreation centers, and the buildings thereon; to develop, maintain, and operate all types of recreation facilities; and to operate and conduct facilities on properties controlled by other authorities. It may, for the purpose of carrying out the provisions of this chapter, employ playleaders, playground or community center directors, supervisors, recreation superintendents, or such other officers or employees as it deems are needed. The recreation authority is authorized to develop a program of recreational activities and services designated to meet the various leisure time interests of all people.

History.
Ga. L. 1923, p. 106, § 3; Code 1933, § 69-603; Ga. L. 1946, p. 152, § 3.

OPINIONS OF THE ATTORNEY GENERAL

City may derive revenue from operation of recreational programs and may even show a profit from a particular recreational activity. 1965-66 Op. Att'y Gen. No. 66-85.

City recreation department may

sponsor teenage dances and charge an admission fee to those wishing to attend the dances. 1965-66 Op. Att'y Gen. No. 66-85.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 178. 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 20.

C.J.S.

64 C.J.S., Municipal Corporations, § 1906 et seq.

ALR.

Liability of municipal corporation for injuries due to condition in park, 42 A.L.R. 263; 99 A.L.R. 686; 142 A.L.R. 1340.

Tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes, 37 A.L.R.3d 712.

Public swimming pool as nuisance, 49 A.L.R.3d 652.

36-64-3.1. Use of dam sites and adjacent land for producing hydroelectric power.

(a) As used in this Code section, the term "governing authority of any recreation system" shall mean the governing body of a municipality or county, a recreation board, or any other authority, board, or commission which is vested with the power to provide, establish, conduct, and maintain a supervised recreation system and facilities.

(b) The governing authority of any recreation system shall be empowered, for the purpose of producing hydroelectric power for ultimate sale to the public, to take all necessary or appropriate actions to permit the renovation, reconstruction, and operation of existing dam sites located on property which is owned by the governing authority, including land that has been dedicated for public recreational or park use, without regard to whether such public use has been previously abandoned.

(c) Without limiting the foregoing provisions of this Code section, the governing authority of any recreation system shall have the power, for the purposes specified in subsection (b) of this Code section, to grant or convey, and to grant an option to obtain, a leasehold interest, a fee simple title, or other property interest in any such dam site and in such immediately adjacent land as may be necessary to accommodate facilities for the generation of hydroelectric power, together with all easements, rights of way, and rights to flood adjacent lands as may be necessary or appropriate, to electric utilities or other entities organized for the purpose of generating or distributing electricity for public use.

(d) The governing authority of any recreation system also shall have the power, for the purposes specified in subsection (b) of this Code section, to enter into any contracts necessary or appropriate to determine the feasibility of renovating an existing dam for the generation of hydroelectric power; to enter into any contracts with electric utilities or

other entities organized for the purpose of generating or distributing electricity for public use which are necessary or appropriate for the construction, use, operation, and maintenance of a hydroelectric facility at an existing dam site located on property owned by the governing authority; and to take all actions necessary or appropriate to obtain, and to transfer its rights under, any governmental license or other approval or exemption required or desired for a hydroelectric project.

(e) All conveyances and other contracts, including those extending over a period of years, which are entered into by the governing authority of any recreation system for the purposes specified in subsection (b) of this Code section shall be binding upon such governing authority and its successors.

(f) Any net revenue derived by the governing authority of a recreation system from such conveyances and other contracts shall be used only for recreational purposes.

(g) This Code section shall apply to and control the activities of a governing authority of any recreation system in connection with the renovation, reconstruction, and operation of any dam site located on property owned by the governing authority, notwithstanding any provision to the contrary contained in this chapter or in Code Section 36-30-3 or in any other laws; provided, however, that nothing in this Code section shall be construed as impairing the obligation of any contract provision, whether by way of reversionary clause or otherwise.

History.

Ga. L. 1981, p. 1020, § 1; Ga. L. 1982, p. 3, § 36.

Cross references.

Dam safety, § 12-5-370 et seq.

Authority of persons constructing or operating electric generating plants to acquire rights of way or other easements to run power lines, maintain dams, and do other things, § 22-3-20.

Construction, operation of watershed projects and flood-control projects by counties, § 22-3-100 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Lease recommendation for hydroelectric power unauthorized. — Board of Natural Resources is not authorized by subsection (b) of O.C.G.A. § 36-64-3.1 to recommend by resolution to the State Properties Commission a lease for producing, on state owned lands which the Department of Natural Resources manages, hydroelectric power for use by the department and ultimate sale to the public. 1983 Op. Att'y Gen. No. 83-47.

36-64-4. Joint recreation systems.

Any two or more counties, any two or more municipalities, any county and municipality, any county or municipality, or combination thereof may jointly provide, establish, maintain, and conduct a recreation system and jointly acquire property for and establish and maintain playgrounds, recreation centers, parks, and other recreational facilities

and activities. Any school board may join with any municipality, county, or any other school board in conducting and maintaining a recreation system.

History. Ga. L. 1923, p. 106, § 5; Code 1933, § 69-605; Ga. L. 1946, p. 152, § 5; Ga. L. 1964, p. 319, § 1; Ga. L. 1971, p. 262, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Joint provision of recreation. — While county may not legally donate funds to assist a city in constructing a swimming pool, the county and city may jointly provide, establish, maintain, and conduct such system. 1952-53 Ga. Op. Att'y Gen. 289.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 189.

C.J.S.
63 C.J.S., Municipal Corporations, § 1121 et seq.

36-64-5. Establishment of recreation board; powers and responsibilities; members; terms; officers; vacancies.

If the governing body of any county or municipality determines that the power to provide, establish, conduct, and maintain a recreation system should be exercised by a park or recreation board, such governing body, by resolution or ordinance, shall establish a recreation board in such municipality or county which shall possess all the powers and be subject to all the responsibilities of local authorities under this chapter. The board, when established, shall consist of a minimum of five persons and a maximum of nine persons, serving without pay, to be appointed by the mayor or presiding officer of the county or municipality. The terms of office of the members of the board shall be for five years or until their successors are appointed and qualified, except that the appointing authority, in making initial appointments or in filling vacancies, is authorized and directed to vary the initial terms of members or the terms of persons appointed to fill vacancies in such a manner that thereafter the term of at least one member shall expire annually. Immediately after its appointment, the board shall meet and organize by electing one of its members president and such other officers as may be necessary. Vacancies in the board occurring otherwise than by expiration of term shall be filled by the mayor or presiding officer of the governing body only for the unexpired term, except as otherwise provided in this chapter.

History. Ga. L. 1923, p. 106, § 4; Code 1933, § 69-604; Ga. L. 1946, p. 152, § 4; Ga. L. 1971, p. 262, § 1.

JUDICIAL DECISIONS

Prohibition of dissolution of authority without paying creditors. — It would be unconscionable, perhaps even unconstitutional, for a governmental body to create a separate legal entity capable of incurring debts, to reap benefits from purchases made by the entity, and then to dissolve the entity with an express prohibition against paying any of the creditors, and therefore the trial court erred in granting summary judgment for the city in suit by a creditor to collect a bill for recreational supplies allegedly purchased by a municipal recreation authority prior to the authority's dissolution. Got-It Hdwe. & Gifts, Inc. v. City of Ashburn, 155 Ga. App. 214, 270 S.E.2d 380, 1980 Ga. App. LEXIS 2533 (1980).

RESEARCH REFERENCES

Am. Jur. 2d.
59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 12.

36-64-6. Acceptance of gifts for recreation purposes.

A park or recreation board or other authority in which is vested the power to provide, establish, maintain, and conduct a recreation program may accept any grant or devise of real estate or any gift or bequest of money or other personal property or any donation, the principal or income of which is to be applied for either temporary or permanent use for playgrounds or recreation purposes. If the acceptance thereof for such purposes will subject the county or municipality to additional expense for improvements, maintenance, or renewal, the acceptance of any grant or devise of real estate shall be subject to the approval of the governing body of the county or municipality. Money received for such purposes, unless otherwise provided by the terms of the gift or bequest, shall be deposited with the treasurer of the county or municipality to the account of the recreation board or commission or other body having charge of such work or shall be deposited directly with the recreation board; it shall be withdrawn and paid out by such body in the same manner as money appropriated for recreation purposes.

History.
Ga. L. 1923, p. 106, § 6; Code 1933, § 69-606; Ga. L. 1946, p. 152, § 6.

Cross references.
Further provisions regarding devises and gifts of property to municipalities for parks or other public purposes, § 36-37-1.

Acceptance of donations or gifts of property by municipal corporations generally, § 36-37-2.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 459 et seq.

36-64-7. Issuance of bonds.

The governing body of any municipality or county, pursuant to law, may provide that the bonds of the municipality or county may be issued, in the manner provided by law for the issuance of bonds for other purposes, for the purpose of acquiring lands or buildings for parks, playgrounds, recreation centers, and other recreational purposes and for the equipment thereof.

History.
Ga. L. 1923, p. 106, § 7; Code 1933, § 69-607; Ga. L. 1946, p. 152, § 7.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 535, 548. 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 12. 64 Am. Jur. 2d, Public Securities and Obligations, § 74 et seq.

C.J.S.
64A C.J.S., Municipal Corporations, § 2029 et seq.

ALR.
Assignment and transfer of government bonds, 22 A.L.R. 775.

36-64-8. Petition for recreation system; provision of system on governing authority's own motion; referendums on issue of special tax and millage increase.

(a) Whenever a petition signed by at least 10 percent of the qualified and registered voters in any municipality or county is filed in the office of the clerk of the municipality or county, requesting the governing body of the municipality or county to provide, establish, maintain, and conduct a supervised recreation system and to levy an annual tax on the taxable property within the municipality or county for the conduct and maintenance thereof, it shall be the duty of the governing body to appropriate funds for and to provide for the establishment, maintenance, and conduct of a supervised recreation system or, if the question of a special tax is raised by the petition, to cause the question of the establishment, maintenance, and conduct of such supervised recreation system to be submitted to the voters to be voted upon at the next general or special election of the municipality or county; provided, however, that such question shall not be voted upon at the next general or special election unless such petition has been filed at least 30 days prior to the date of such election.

(b) In addition to the method provided in subsection (a) of this Code section, the governing authority of any municipality or county, upon its own motion, may appropriate funds for and provide for the establishment, maintenance, and conduct of a supervised recreation system or, if a special tax is necessary, upon its own motion may cause the question

of the establishment, maintenance, and conduct of such supervised recreation system to be submitted to the voters to be voted upon at the next general or special election of the municipality or county, provided such motion has been made at least 30 days prior to the date of such election.

(c) Nothing in this chapter shall permit the levying of a tax in excess of any limitation contained in a municipal charter or, with reference to a county, in excess of the authority set out by the Constitution and laws of this state; provided, however, that any municipality is authorized to levy a tax in excess of any limitation contained in its municipal charter if a referendum is held and a majority of the qualified voters of the municipality voting in such election vote in favor of the millage increase.

History.
Ga. L. 1923, p. 106, § 8; Code 1933, § 69-608; Ga. L. 1946, p. 152, § 8; Ga. L. 1953, p. 30, § 1; Ga. L. 1963, p. 553, § 1; Ga. L. 1964, p. 213, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
42 Am. Jur. 2d, Initiative and Referendum, §§ 1, 6, 7, 37 et seq. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 500, 558. 70C Am. Jur. 2d, Special or Local Assessments, § 230. 71 Am. Jur. 2d, State and Local Taxation, § 93 et seq.
C.J.S.
64A C.J.S., Municipal Corporations, § 2142 et seq.

36-64-9. Establishment of system with tax money following favorable vote.

Upon the adoption of the proposition at an election conducted pursuant to Code Section 36-64-8, the governing body of the municipality or county, by resolution or ordinance, shall provide for the establishment, maintenance, and conduct of the supervised recreation system as they may deem it advisable and practicable to provide and maintain out of the tax money thus voted. The governing body, by appropriate resolution or ordinance, may designate the board or commission to be vested with the powers, duties, and obligations necessary for the establishment, maintenance, and conduct of such recreation system, as provided in this chapter.

History.
Ga. L. 1923, p. 106, § 9; Code 1933, § 69-609; Ga. L. 1946, p. 152, § 9.

RESEARCH REFERENCES

Am. Jur. 2d.
42 Am. Jur. 2d, Initiative and Referendum, § 49.

36-64-10. Levy and collection of recreation tax.

The governing body of any municipality or county or school district adopting the provisions of this chapter at an election shall thereafter annually levy and collect a tax sufficient to provide for an adequate recreation program for the area specified, of not less than the minimum nor more than the maximum amount set out in the petition for the election, which tax shall be designated as the "recreation tax" and shall be levied and collected in the same manner as the general tax of the municipality, county, or school district.

History.
Ga. L. 1923, p. 106, § 10; Code 1933, § 69-610; Ga. L. 1946, p. 152, § 10.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 500. 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, §§ 5, 6. 70C Am. Jur. 2d, Special or Local Assessments, §§ 25, 34. 71 Am. Jur. 2d, State and Local Taxation, §§ 47, 53.
C.J.S.
64A C.J.S., Municipal Corporations, §§ 2141 et seq., 2184 et seq., 2393 et seq.

36-64-11. Payment of costs and expenses of recreation system; control of recreation fund.

The cost and expense of the establishment, maintenance, and conduct of a supervised recreation system of parks, playgrounds, recreation centers, and other recreational facilities and activities shall be paid out of taxes or other money received for this purpose. The recreation board or commission or other authority in which is vested the power to provide, establish, conduct, and maintain a supervised recreation system and facilities shall have exclusive control of all moneys collected or donated to the credit of the "recreation fund."

History.
Ga. L. 1923, p. 106, § 11; Code 1933, § 69-611; Ga. L. 1946, p. 152, § 11.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 500.

C.J.S.
64A C.J.S., Municipal Corporations, § 2395 et seq.

36-64-12. Establishment, maintenance, and conduct of recreation system not mandatory.

Notwithstanding any other provision of this chapter, it shall not be mandatory that a municipality or county establish, maintain, or conduct a recreation system.

History.
Ga. L. 1963, p. 553, § 2.

36-64-13. Applicability of chapter generally.

This chapter shall apply to all counties and municipalities in this state.

History.
Ga. L. 1923, p. 106, § 1; Code 1933, § 69-601; Ga. L. 1946, p. 152, § 1.

JUDICIAL DECISIONS

Constitutionality. — This chapter does not impinge or offend the provisions of Ga. Const. 1877, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV). Wilson v. City Council, 165 Ga. 520, 141 S.E. 412, 1928 Ga. LEXIS 30 (1928).

RESEARCH REFERENCES

ALR.
Statutes relating to establishment or administration of parks, as encroachment on right of local self-government, 88 A.L.R. 228.

36-64-14. Applicability of chapter to recreation and playground commissions, boards, and systems created by special Acts of General Assembly.

This chapter shall not apply to recreation or playground commissions, boards, or systems which are created by special Acts of the General Assembly.

History.
Ga. L. 1923, p. 106, § 11a; Code 1933, § 69-612; Ga. L. 1946, p. 152, § 11A.

36-64-15. Removal of minimum or maximum recreation tax by municipality or county.

(a) If a municipality or county has adopted the provisions of this chapter at an election, thereby establishing a minimum recreation tax,

a maximum recreation tax, or a minimum and maximum recreation tax, then such minimum or maximum or both may be removed as provided in this Code section.

(b) In order to so remove the minimum or maximum or both, the governing body of the municipality or county shall adopt a resolution to that effect, subject to approval by a majority of the voters of the municipality or county at the next general or special election of the municipality or county which is held more than 45 days after the date of the adoption of the resolution by the governing body. Such resolution shall specify the ballot language to be used in presenting the question and the governing body shall provide a copy of the resolution to the appropriate election officials. If a majority of the voters voting on the question of removal vote in favor, the minimum or maximum or both shall be removed as presented to the voters.

(c) Where a minimum or maximum or both has or have been removed as authorized by this Code section, the amount of municipal or county funding for the recreation system of the municipality or county shall thereafter be determined by the governing body of the municipality or county in its discretion; and the municipal or county governing body shall assume budgetary control over the recreation fund and any moneys therein.

History.
Code 1981, § 36-64-15, enacted by Ga. L. 2008, p. 740, § 1/HB 1024.

CHAPTER 65

IMMUNITY FROM ANTITRUST LIABILITY

Sec.
36-65-1. Legislative declaration of policy.
36-65-2. Immunity of local governments from antitrust liability.

Editor's notes.

This chapter and Code Sections 36-65-1 and 36-65-2 were originally enacted as Chapter 19 of this title and Code Sections 36-19-1 [repealed] and 36-19-2, respectively, by Ga. L. 1984, p. 1337, § 1. The present chapter and Code section designations were made by Ga. L. 1985, p. 149, § 36.

Law reviews.

For article, "Antitrust," see 44 Mercer L. Rev. 1047 (1993).

For article, "President Trump's Antitrust Division: An Essay on the Same Old, Same Old," see 70 Mercer L. Rev. 671 (2019).

JUDICIAL DECISIONS

Immunity from federal antitrust liability. — City's anticompetitive operation of a waterworks is protected from federal antitrust liability by the state action immunity doctrine under Parker v. Brown, 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1943), and its progeny. McCallum v. City of Athens, 976 F.2d 649, 1992 U.S. App. LEXIS 28370 (11th Cir. 1992).

36-65-1. Legislative declaration of policy.

It is declared by the General Assembly of Georgia that in the exercise of powers specifically granted to them by law, local governing authorities of cities and counties are acting pursuant to state policy.

History.

Code 1981, § 36-19-1, enacted by Ga. L. 1984, p. 1337, § 1; Code 1981, § 36-65-1, as redesignated by Ga. L. 1985, p. 149, § 36.

JUDICIAL DECISIONS

Tying of water-utility service to natural gas service. — Claim of state-action immunity did not entitle a city to dismissal of a suit alleging the city violated the Sherman and Clayton Acts by tying its water-utility service to its natural gas service for some customers because Georgia's policy to displace federal antitrust law as to municipal anticompetitive conduct in providing water and sewage services does not have as an inherent, logical, or ordinary result that cities would use their water monopoly to increase their share of an unrelated market. Diverse Power, Inc. v. City of Lagrange, 934 F.3d 1270, 2019 U.S. App. LEXIS 24772 (11th Cir. 2019).

36-65-2. Immunity of local governments from antitrust liability.

This chapter is intended to articulate clearly and express affirmatively

the policy of the State of Georgia that in the exercise of such powers, such local governing authorities shall be immune from antitrust liability to the same degree and extent as enjoyed by the State of Georgia.

History.

Code 1981, § 36-19-2, enacted by Ga. L. 1984, p. 1337, § 1; Code 1981, § 36-65-2, as redesignated by Ga. L. 1985, p. 149, § 36.

JUDICIAL DECISIONS

Garbage collection services contracts. — County's alleged anti-competitive conduct in enacting an ordinance authorizing the county to enter into a contract with a private enterprise for garbage collection was expressly contemplated by the Georgia Comprehensive Solid Waste Management Act, O.C.G.A. § 12-8-20 et seq., and, thus, the county was immune from state and federal antitrust laws. Strykr v. Long County Bd. of Comm'rs, 277 Ga. 624, 593 S.E.2d 348, 2004 Ga. LEXIS 187 (2004).

Tying of water-utility service to natural gas service. — Claim of state-action immunity did not entitle a city to dismissal of a suit alleging the city violated the Sherman and Clayton Acts by tying its water-utility service to its natural gas service for some customers because Georgia's policy to displace federal antitrust law as to municipal anticompetitive conduct in providing water and sewage services does not have as an inherent, logical, or ordinary result that cities would use their water monopoly to increase their share of an unrelated market. Diverse Power, Inc. v. City of Lagrange, 934 F.3d 1270, 2019 U.S. App. LEXIS 24772 (11th Cir. 2019).

CHAPTER 66

ZONING PROCEDURES

Sec.	
36-66-1.	Short title.
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Code Commission notes.

Pursuant to Code Section 28-9-5, in 1985, Chapter 66, as enacted by Ga. L. 1985, p, 117, § 1, was redesignated as Chapter 67.

Law reviews.

For article, "Judicial Review of Georgia Zoning: Cyclones and Doldrums in the Windmills of the Mind," see 2 Ga. St. U.L. Rev. 97 (1986).

For note, "Constitutional Barriers to Statewide Land Use Regulation in Georgia: Do They Still Exist?," see 3 Ga. St. U.L. Rev. 249 (1987).

For article, "Iguanas, Toads and Toothbrushes: Land-use Regulation of Art as Signage," see 25 Ga. L. Rev. 437 (1991).

For annual survey on law of real property, see 43 Mercer L. Rev. 353 (1991).

For note on 1993 amendment of this chapter, see 10 Ga. St. U.L. Rev. 166 (1993).

For note on using inclusionary zoning techniques to promote affordable housing, see 44 Emory L.J. 359 (1995).

For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

RESEARCH REFERENCES

Am. Jur. Proof of Facts.

Unreasonableness of Zoning Restriction, 8 POF2d 53.

Special Damages Sufficient to Give Standing to Enjoin Zoning Violation, 1 POF3d 495.

Vested Right in Continuation of Zoning, 13 POF2d 373.

Zoning — Hardship Necessary for Zoning Variance, 23 POF3d 563.

Zoning — Invalidity of Single-Family Zoning Ordinance, 24 POF3d 543.

Zoning — Circumstances Warranting Relief from Zoning Enforcement, 25 POF3d 541.

Zoning — Circumstances Warranting Expansion of a Nonconforming Use, 26 POF3d 467.

Zoning: Proof of Unreasonableness of Aesthetic Regulation, 29 POF3d 491.

Zoning: Proof of Wrongful Land Use Pursuant to Section 1983, 30 POF3d 503.

Zoning: Proof of Inverse Condemnation from Excessive Land Use Regulation, 31 POF3d 563.

Zoning: Proof of Unreasonableness of Interim Zoning and Building Moratoria, 32 POF3d 485.

Zoning: Proof of Bias or Conflict of Interest in Zoning Decision, 32 POF3d 531.

Zoning: Validity of Home Occupation Accessory Use of Residential Property, 33 POF3d 459.

Zoning — Challenge to the Imposition of Development Exactions, 36 POF3d 417.

Zoning Action Not in Accordance With a Comprehensive Plan, 37 POF3d 383.

Challenge to Rezoning as Illegal Spot Zoning, 39 POF3d 433.

Change in Character of Neighborhood Necessary to Justify Rezoning, 41 POF3d 443.

Zoning: Circumstances Justifying Termination of Lawful Nonconforming Use, 44 POF3d 531.

Am. Jur. Trials. —

Landowner's Right to Maintain Nonconforming Use Under Zoning Ordinance, 62 Am. Jur. Trials 1.

ALR.

Zoning: what constitutes "incidental" or "accessory" use of property zoned, and primarily used, for residential purposes, 54 A.L.R.4th 1034.

Change in area or location of nonconforming use as violation of zoning ordinance, 56 A.L.R.4th 769.

Zoning: what constitutes "incidental" or "accessory" use of property zoned, and primarily used, for business or commercial purposes, 60 A.L.R.4th 907.

Addition of another activity to existing nonconforming use as violation of zoning ordinance, 61 A.L.R.4th 724.

Change in volume, intensity, or means of performing nonconforming use as violation of zoning ordinance, 61 A.L.R.4th 806.

Change in type of activity of nonconforming use as violation of zoning ordinance, 61 A.L.R.4th 902.

Alteration, extension, reconstruction, or repair of nonconforming structure or structure devoted to nonconforming use as violation of zoning ordinance, 63 A.L.R.4th 275.

Zoning regulation of intoxicating liquor as pre-empted by state law, 65 A.L.R.4th 555.

Zoning: construction and effect of statute requiring that zoning application be treated as approved if not acted on within specified period of time, 66 A.L.R.4th 1012.

Zoning: residential off-street parking requirements, 71 A.L.R.4th 529.

Laches as defense in suit by governmental entity to enjoin zoning violation, 73 A.L.R.4th 870.

Validity of zoning laws setting minimum lot size requirements, 1 A.L.R.5th 622.

Construction and application of zoning laws setting minimum lot size requirements, 2 A.L.R.5th 553.

Activities in preparation for building as establishing valid nonconforming use or vested right to engage in construction for intended use, 38 A.L.R.5th 737.

Zoning regulations prohibiting or limiting fences, hedges, or walls, 75 A.L.R.7th 2.

36-66-1. Short title.

This chapter shall be known and may be cited as the "Zoning Procedures Law."

History.

Code 1981, § 36-66-1, enacted by Ga. L. 1985, p. 1139, § 1; Ga. L. 2022, p. 825, § 1/HB 1405.

Editor's notes.

Ga. L. 2022, p. 825, § 2/HB 1405, not codified by the General Assembly, makes this Code section applicable to all zoning and quasi-judicial decisions occurring on and after July 1, 2022; however, no zoning or quasi-judicial decision prior to July 1, 2023, shall be rendered invalid or void because of a local government's failure to implement language in their ordinances accomplishing the provisions of Code Section 36-66-5.1.

Law reviews.

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For article, "Local Government Litigation: Some Pivotal Principles," see 55 Mercer L. Rev. 1 (2003).

For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003).

For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004).

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

For annual survey on zoning and land use law, see 70 Mercer L. Rev. 301 (2018).

For annual survey on local government law, see 71 Mercer L. Rev. 189 (2019).

For annual survey on zoning and land use law, see 71 Mercer L. Rev. 363 (2019).

For article, "HB 1405: Amendments to the Zoning Procedures Law," see 39 Ga. St. U.L. Rev. 125 (2022).

For annual survey on zoning and land use law, see 74 Mercer L. Rev. 313 (2022).

JUDICIAL DECISIONS

Failure to address constitutional issue on part of trial court. — Trial court erred by failing to address whether a 1993 county zoning ordinance was constitutional because the record established that the landfill permit applicant raised a constitutional challenge to the zoning ordinance before the trial court in its response to the challengers' motion for partial summary judgment and, in fact, in its transfer order to the appellate court, the trial court specifically stated that the court did not rule on the applicant's constitutional argument. Southern States-Bartow County, Inc. v. Riverwood Farm Prop. Owners Ass'n, Inc., 331 Ga. App. 878, 769 S.E.2d 823, 2015 Ga. App. LEXIS 190 (2015).

Zoning ordinance properly enacted. — Evidence was sufficient to establish that the enactment of a county's zoning ordinance complied with the Georgia Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., when the board of commissioners adopted the zoning ordinance after the ordinance was read, a public meeting was held, changes to the proposed ordinance were made, and another public hearing was held at which the zoning map was available, and amendments to the zoning ordinance were approved pursuant to the zoning administrator's recommendations, a public meeting was held on the amendments, and the board then adopted the amendments without change. Mid-Georgia Envtl. Mgmt. Group, L.L.L.P. v. Meriwether County, 277 Ga. 670, 594 S.E.2d 344, 2004 Ga. LEXIS 264 (2004).

Superseded portions of ordinances need not be kept. — There is nothing in the Georgia Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., or the cases interpreting that law, that conditions validity of a zoning ordinance on the retention of superseded portions of the ordinance. Mid-Georgia Envtl. Mgmt. Group, L.L.L.P. v. Meriwether County, 277 Ga. 670, 594 S.E.2d 344, 2004 Ga. LEXIS 264 (2004).

Claim was time-barred. — Owner's failure to appeal the rezoning of a neighbor's property precluded the owner from attacking the rezoning decision under Spalding County, Ga., Unified Development Ordinance § 418 and O.C.G.A. § 5-3-20; a claim that Spalding County, Ga., Unified Development Ordinance § 414 did not comply with the Georgia Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., was also time-barred as any challenge to the rezoning had to be raised within 30 days. Hollberg v. Spalding County, 281 Ga. App. 768, 637 S.E.2d 163, 2006 Ga. App. LEXIS 1247 (2006).

Failure to establish standing. — Dismissal of the appellants' petition for a writ of certiorari challenging the grant of a special use permit to the appellees was upheld because the appellants only alleged generally that the art farm would create noise, light, and traffic, and that it would decrease property values, without alleging how those effects would harm the appellants differently than other property owners in the area. Davis v. Rockdale Art Farm, Inc., 354 Ga. App. 82, 840 S.E.2d 160, 2020 Ga. App. LEXIS 125 (2020).

RESEARCH REFERENCES

ALR.
Validity of zoning regulations prohibiting or regulating removal or exploitation of oil and gas, including hydrofracking, 84 A.L.R.6th 133.

36-66-2. Legislative purpose; local government zoning powers.

(a) While recognizing and confirming the authority of local governments to exercise zoning power within their respective territorial boundaries, it is the intention of this chapter to establish as state policy minimum procedures governing the exercise and means of judicial review of the exercise of that power. The purpose of these minimum procedures is to assure that due process is afforded to the general public when local governments regulate the uses of property through the exercise of the zoning power. Nothing in this chapter shall be construed to invalidate any zoning decision made by a local government prior to July 1, 2023, or to require a local government to exercise its zoning power.

(b) Consistent with the minimum procedures required by this chapter, local governments may:

(1) Provide by ordinance or resolution for such administrative officers, boards, or agencies as may be expedient for the efficient exercise of delegated, quasi-judicial zoning powers and to establish procedures and notice requirements for hearings before such quasi-judicial boards or agencies that are consistent with the minimum procedures provided for in this chapter to assure due process is afforded the general public; and

(2) Provide by ordinance or resolution for procedures and requirements in addition to or supplemental to those required by this chapter and, where so adopted, thereby establish the minimum procedures for such local government's exercise of zoning powers.

History.
Code 1981, § 36-66-2, enacted by Ga. L. 1985, p. 1139, § 1; Ga. L. 2022, p. 825, § 1/HB 1405; Ga. L. 2025, p. 476, § 2-3/HB 155, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, substituted "quasi-judicial boards or agencies" for "quasi-judicial officers, boards, or agencies" in paragraph (b)(1). See Editor's notes for applicability.

Editor's notes.
Ga. L. 2022, p. 825, § 2/HB 1405, not codified by the General Assembly, makes this Code section applicable to all zoning and quasi-judicial decisions occurring on and after July 1, 2022; however, no zoning or quasi-judicial decision prior to July 1, 2023, shall be rendered invalid or void because of a local government's failure to implement language in their ordinances accomplishing the provisions of Code Section 36-66-5.1.

Ga. L. 2025, p. 476, § 3-1(b)/HB 155, not codified by the General Assembly, provides: "Part II of this Act shall become effective on July 1, 2025, and shall apply to all zoning and quasi-judicial decisions occurring on and after such date; provided, however, that no zoning or

quasi-judicial decision occurring prior to December 31, 2026, shall be rendered invalid or void if a local government fails to implement the provisions set out in Code Section 36-66-5.1."

Ga. L. 2025, p. 476, § 2-3/HB 155 purported to add a new paragraph to this Code section but only amended paragraph (1) of subsection (b).

Law reviews.

For article, "HB 1405: Amendments to the Zoning Procedures Law," see 39 Ga. St. U.L. Rev. 125 (2022).

JUDICIAL DECISIONS

Procedural requirements of this chapter are mandatory. — County's failure to comply with the notice provisions of O.C.G.A. § 36-66-4(a) invalidated the subject zoning action. McClure v. Davidson, 258 Ga. 706, 373 S.E.2d 617, 1988 Ga. LEXIS 494 (1988).

County's failure to comply with the mandatory language of O.C.G.A. Ch. 66, T. 36 in enacting a zoning ordinance rendered the ordinance void. Tilley Properties, Inc. v. Bartow County, 261 Ga. 153, 401 S.E.2d 527, 1991 Ga. LEXIS 130 (1991).

No requirement that zoning power be exercised. — While the Georgia Public Service Commission (PSC) had the authority to regulate the placement of electrical substations, no requirement existed that every complex construction project be subject to zoning-like restrictions as an agency was not required to exercise the agency's zoning power under O.C.G.A. § 36-66-2(a); the broad statutory delegations of authority to the PSC did not specifically mention siting and did not provide sufficient objective standards to control the PSC's discretion so a trial court improperly directed the PSC to consider the propriety of a power company's construction of a substation and apply specific standards to the case. Ga. PSC v. Turnage, 284 Ga. 610, 669 S.E.2d 138, 2008 Ga. LEXIS 863 (2008).

Appeals. — Without express statutory language, a local government does not have the authority to create direct appeals of rezoning decisions. Walton County v. Scenic Hills Estates, Inc., 261 Ga. 94, 401 S.E.2d 513, 1991 Ga. LEXIS 104 (1991).

36-66-3. Definitions.

As used in this chapter, the term:

(1) "Local government" means any county or municipality which exercises zoning power within its territorial boundaries.

(1.1) "Quasi-judicial boards or agencies" any board or agency designated by ordinance to make quasi-judicial decisions.

(1.2) "Quasi-judicial decision" means a final quasi-judicial action that is the exercise of quasi-judicial land use powers, including hearing appeals of administrative decisions and hearing and rendering decisions on applications for variances, administrative permits, or other similar permits not enumerated herein as a zoning decision, pursuant to standards for the exercise of such quasi-judicial authority adopted by a local government. Such term does not include permits issued or decisions made by administrative staff pursuant to the authority designated by ordinance which contains an express right to appeal to a local government board or authority which is subject to these provisions applicable to quasi-judicial decisions.

(2) "Territorial boundaries" means, in the case of counties, the

unincorporated areas thereof and any area defined in paragraph (5.1) of Code Section 36-70-2, and, in the case of municipalities, the area lying within the corporate limits thereof except any area defined in paragraph (5.1) of Code Section 36-70-2.

(3) "Zoning" means the power of local governments to provide within their respective territorial boundaries for the zoning or districting of property for various uses and the prohibition of other or different uses within such zones or districts and for the regulation of development and the improvement of real estate within such zones or districts in accordance with the uses of property for which such zones or districts were established.

(4) "Zoning decision" means final legislative action by a local government which results in:

(A) The adoption or repeal of a zoning ordinance;

(B) The adoption of an amendment to a zoning ordinance which changes the text of the zoning ordinance;

(C) The adoption or denial of an amendment to a zoning ordinance to rezone property from one zoning classification to another;

(D) The adoption or denial of an amendment to a zoning ordinance by a municipal local government to zone property to be annexed into the municipality;

(E) The grant or denial of an application for a special use of property; or

(F) The grant or denial of an application for a variance or the imposition or modification of conditions concurrent and in conjunction with a decision pursuant to subparagraph (C) or (E) of this paragraph, or a subsequent modification to such a variance or condition.

(5) "Zoning ordinance" means an ordinance or resolution of a local government establishing procedures and zones or districts within its respective territorial boundaries which regulate the uses and development standards of property within such zones or districts. Such term also includes the zoning map adopted in conjunction with a zoning ordinance which shows the zones and districts and zoning classifications of property therein.

History.

Code 1981, § 36-66-3, enacted by Ga. L. 1985, p. 1139, § 1; Ga. L. 1993, p. 806, § 1; Ga. L. 1996, p. 1009, § 1; Ga. L. 1997, p. 1567, § 2; Ga. L. 1998, p. 1391, § 1; Ga. L. 2022, p. 825, § 1/HB 1405; Ga. L. 2023, p. 730, § 7(9)/HB 475, effective July 1, 2023; Ga. L. 2025, p. 476, § 2-4/HB 155, effective July 1, 2025; Ga. L. 2025, p. 1029, § 36(26)/SB 153, effective July 1, 2025.

Amendments.

The 2023 amendment, effective July 1, 2023, part of an Act to revise, modern-

ize, and correct the Code, substituted "subparagraph" for "subparagraphs" in subparagraph (4)(F).

The first 2025 amendment, effective July 1, 2025, rewrote paragraph (1.1); added paragraph (1.2); substituted "an application for" for "a permit relating to" in subparagraph (4)(E); and substituted "denial of an application for a variance or the imposition or modification of conditions" for "denial of a variance or conditions" and added ", or a subsequent modification to such a variance or condition" after "paragraph" in subparagraph (4)(F). See Editor's notes for applicability.

The second 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "powers, including" for "powers including" in paragraph (1.2) and substituted "Such term" for "The term" in paragraph (5).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1985, the definitions were alphabetized.

Pursuant to Code Section 28-9-5, in 2022, "or" was added at the end of subdivision (4)(E).

Editor's notes.

Ga. L. 2022, p. 825, § 2/HB 1405, not codified by the General Assembly, makes this Code section applicable to all zoning and quasi-judicial decisions occurring on and after July 1, 2022; however, no zoning or quasi-judicial decision prior to July 1, 2023, shall be rendered invalid or void because of a local government's failure to implement language in their ordinances accomplishing the provisions of Code Section 36-66-5.1.

Ga. L. 2025, p. 476, § 3-1(b)/HB 155, not codified by the General Assembly, provides: "Part II of this Act shall become effective on July 1, 2025, and shall apply to all zoning and quasi-judicial decisions occurring on and after such date; provided, however, that no zoning or quasi-judicial decision occurring prior to December 31, 2026, shall be rendered invalid or void if a local government fails to implement the provisions set out in Code Section 36-66-5.1."

Law reviews.

For review of 1998 legislation relating to local government, see 15 Ga. St. U.L. Rev. 194 (1998).

For survey article on real property law, see 67 Mercer L. Rev. 193 (2015).

For annual survey on zoning and land use law, see 70 Mercer L. Rev. 301 (2018).

For article, "HB 1405: Amendments to the Zoning Procedures Law," see 39 Ga. St. U.L. Rev. 125 (2022).

JUDICIAL DECISIONS

"Zoning decision" construed. — Both passage and rescission of a text amendment change the text of the zoning ordinance. Both actions fit squarely within the statutory definition of a "zoning decision." Atlanta Bio-Med, Inc. v. DeKalb County, 261 Ga. 594, 408 S.E.2d 100, 1991 Ga. LEXIS 398 (1991).

Clause in a lease agreement between a city and the city's solid waste treatment provider which might require a future amendment to a zoning ordinance did not constitute a zoning decision. Grove v. Sugar Hill Inv. Assocs., 219 Ga. App. 781, 466 S.E.2d 901, 1995 Ga. App. LEXIS 1139 (1995), cert. denied, No. S96C0734, 1996 Ga. LEXIS 601 (Ga. Apr. 12, 1996).

Since a real estate developer had neither concluded the purchase of property or made substantial expenditures in reliance upon the probable issuance of a building permit until after the county amended its zoning ordinance to the detriment of the developer, the developer did not acquire a vested right to develop the property in question in conformity with the old ordinance; the county board of commissioner's letter to the developer amounted to an agreement to amend the ordinance and, thus, invoked the notice and hearing requirements under Georgia's Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq. Buckner v. Douglas County, 273 Ga. App. 765, 615 S.E.2d 850, 2005 Ga. App. LEXIS 615 (2005).

Letter from a county to a developer advising that proposals would be considered under an amended ordinance limiting the development of private sewer systems was not a "decision" of the county for purposes of triggering the 30-day period to appeal under O.C.G.A. § 5-3-20;

therefore, the developer's claim of inverse condemnation never ripened. Mortgage Alliance Corp. v. Pickens County, 294 Ga. 212, 751 S.E.2d 51, 2013 Ga. LEXIS 887 (2013).

"Zoning ordinance". — Commonly understood definition of "zoning ordinance" would encompass all those legislative acts that the Georgia's Zoning Procedures Law (ZPL), O.C.G.A. § 36-66-1 et seq., defines as "zoning decisions" under O.C.G.A. § 36-66-3(4); thus, the DeKalb County Organizational Act and the ZPL are consistent with one another because both distinguish between comprehensive zoning ordinances and all other zoning ordinances. Jester v. Red Alligator, LLC, 344 Ga. App. 15, 806 S.E.2d 920, 2017 Ga. App. LEXIS 540 (2017), cert. denied, No. S18C0584, 2018 Ga. LEXIS 479 (Ga. Aug. 2, 2018).

Zoning map properly incorporated by reference. — County zoning ordinance properly incorporated by reference an official zoning map as the board of commissioners had a zoning map before the commissioners when the commissioners considered the ordinance, the zoning map was in existence when a limited liability limited partnership (LLLP) bought the property and that map was kept in the zoning administrator's office, the new zoning administrator's uncertainty about which of two maps was the official map did not render the entire zoning ordinance invalid, and it was clear that the LLLP's land was not zoned for a landfill. Mid-Georgia Envtl. Mgmt. Group, L.L.L.P. v. Meriwether County, 277 Ga. 670, 594 S.E.2d 344, 2004 Ga. LEXIS 264 (2004).

Sign ordinances were subject to the Zoning Procedures Law (ZPL), O.C.G.A. § 36-66-1 et seq., when the ordinances were drafted in such a manner as to regulate the uses and development standards of property, i.e., signs, by means of zones or districts; if the city's sign ordinance was read as a whole, it was clear that the ordinance divided the city into districts and regulated the uses of signs relative to the districts in which the signs were located and, accordingly, was subject to the ZPL. City of Walnut Grove v. Questco, Ltd., 275 Ga. 266, 564 S.E.2d 445, 2002 Ga. LEXIS 487 (2002).

Failure to establish standing. — Dismissal of the appellants' petition for a writ of certiorari challenging the grant of a special use permit to the appellees was upheld because the appellants only alleged generally that the art farm would create noise, light, and traffic, and that it would decrease property values, without alleging how those effects would harm the appellants differently than other property owners in the area. Davis v. Rockdale Art Farm, Inc., 354 Ga. App. 82, 840 S.E.2d 160, 2020 Ga. App. LEXIS 125 (2020).

Adult ordinance was not a "zoning ordinance" even though the ordinance placed certain limitations on locations available to an adult business and established certain minimum lot sizes and road frontages; rather than regulating general uses of land, the adult ordinance regulated a particular type of activity — adult entertainment; as such, it was not a zoning ordinance and was not subject to the hearing requirements established under the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq. Artistic Entm't, Inc. v. City of Warner Robins, 331 F.3d 1196, 2003 U.S. App. LEXIS 10654 (11th Cir. 2003), cert. denied, 541 U.S. 988, 124 S. Ct. 2017, 158 L. Ed. 2d 491, 2004 U.S. LEXIS 2766 (2004).

Flood ordinances in question did not classify property into separate districts, instead, the ordinances applied to all property in the county subject to a specified physical phenomenon, specifically, periodic flooding; thus, the ordinances were not zoning ordinances subject to the notice requirements of the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., and were not invalid for failure to comply with that law. Union County v. CGP, Inc., 277 Ga. 349, 589 S.E.2d 240, 2003 Ga. LEXIS 994 (2003).

Overlay zoning ordinances. — With regard to the landowners' action against a town and the town's officials alleging the unconstitutionality and invalidity of an overlay zoning district, the trial court erred by denying the landowners' motion for partial summary judgment with regard to the landowners' claim that the

town did not have any legal authority to impose the requirements of the overlay zoning ordinance for right-of-way improvements on the state route abutting the property since the property at issue was outside the territorial boundaries of the town. Therefore, the requirements of the overlay zoning ordinance were invalid as to the property since the town had no zoning authority over the property. Century Ctr. at Braselton, LLC v. Town of Braselton, 285 Ga. 380, 677 S.E.2d 106, 2009 Ga. LEXIS 176 (2009).

Establishment of copy of zoning law. — Application of former O.C.G.A. § 24-8-1 (see now O.C.G.A. § 24-11-2) in a county's action to establish a copy of a zoning ordinance that had been lost did not violate the Zoning Procedures Law (ZPL), O.C.G.A. § 36-66-1 et seq., because the trial court's decree did not have the effect of either adopting or amending any zoning ordinance; because it did not constitute final legislative action by a local government resulting in such adoption or amendment, the decree was not a "zoning decision" to which the ZPL applied, O.C.G.A. § 36-66-3(4). East Georgia Land & Dev. Co. v. Baker, 286 Ga. 551, 690 S.E.2d 145, 2010 Ga. LEXIS 86 (2010).

Not a zoning ordinance. — Trial court did not err in determining that the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., did not apply to City of Forest Park, Ga., Ordinance § 9-8-45 because the ordinance regulated businesses selling merchandise in a certain manner, and that the ordinance regulated businesses and included a distance restriction in its regulation of merchandise display did not render it a "zoning ordinance;" the passage of the ordinance was not a "zoning decision" as defined by O.C.G.A. § 36-66-3(4), and the ordinance was not a "zoning ordinance" as defined by § 36-66-3(5). Braley v. City of Forest Park, 286 Ga. 760, 692 S.E.2d 595, 2010 Ga. LEXIS 268 (2010).

Notice requirement in seeking conditional use permit. — As a county's notice of the public hearing on a neighbor's request for a conditional use permit failed to comply with O.C.G.A. § 36-66-4(a) because the notice was published 46, not 45, days before the hearing, the county's approval of the neighbor's request was invalid. C & H Dev., LLC v. Franklin County, 294 Ga. App. 792, 670 S.E.2d 491, 2008 Ga. App. LEXIS 1315 (2008).

Reference to "legislative" action not determinative. — Because a decision denying a conditional use permit required the zoning board to determine the facts and apply the ordinance's legal standards to them, which was a decision-making process akin to a judicial act, the decision was reviewable by certiorari under O.C.G.A. § 5-4-1(a); the owner's failure to file a certiorari petition barred the owner's claims. O.C.G.A. § 36-66-3(4)(E)'s reference to "legislative" action was not determinative. Riverdale Land Group, LLC v. Clayton County, 354 Ga. App. 1, 840 S.E.2d 132, 2020 Ga. App. LEXIS 107 (2020).

Decision on special use permit as quasi-legislative or quasi-judicial. — Decision by a county board to grant a special use permit was a quasi-judicial decision because the process involved determining the facts and applying the county ordinance's legal standards to the permits, which was akin to a judicial act; the applicant therefore waived the applicant's challenge to two property owners' standing by failing to object before the board. O.C.G.A. § 36-66-3(4)(E) did not apply or compel the conclusion that the board of commissioner's decision was legislative. York v. Athens College of Ministry, Inc., 348 Ga. App. 58, 821 S.E.2d 120, 2018 Ga. App. LEXIS 632 (2018).

RESEARCH REFERENCES

ALR.

"Fairly Debatable" and "Substantial Relationship" Standards in Zoning Law, 75 A.L.R.7th 1.

"Fairly debatable" and "substantial relationship" standards in zoning law, 75 A.L.R.7th 1.

36-66-4. Hearings on proposed zoning decisions; notice of hearing; nongovernmental initiated actions; reconsideration of defeated actions; procedure on zoning.

(a) A local government taking action resulting in a zoning decision shall provide for a hearing on the proposed action. Where the proposed action includes any combination of zoning decisions under subparagraph (C), (E), or (F) of paragraph (4) of Code Section 36-66-3 for the same property, only one hearing shall be required under this Code section. At least 15 but not more than 45 days prior to the date of the hearing, the local government shall cause to be published within a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.

(b) If a zoning decision of a local government is for the rezoning of property and the rezoning is initiated by a party other than the local government, then:

(1) The notice, in addition to the requirements of subsection (a) of this Code section, shall include the location of the property, the present zoning classification of the property, and the proposed zoning classification of the property; and

(2) A sign containing information required by local ordinance or resolution shall be placed in a conspicuous location on the property not less than 15 days nor more than 45 days prior to the date of the hearing.

(c) If the zoning decision of a local government is for the rezoning of property and the amendment to the zoning ordinance to accomplish the rezoning is denied by the local government, then the same property may not again be considered for rezoning until the expiration of at least six months immediately following the denial of the rezoning by the local government or the conclusion of related judicial proceedings.

(d) If the zoning is for property to be annexed into a municipality, then:

(1) Such municipal local government shall complete the procedures required by this chapter for such zoning, except for the final vote of the municipal governing authority, prior to adoption of the annexation ordinance or resolution or the effective date of any local Act but no sooner than the date the notice of the proposed annexation is provided to the governing authority of the county as required under Code Section 36-36-6;

(2) The hearing required by subsection (a) of this Code section shall be conducted prior to the annexation of the subject property into the municipality;

(3) In addition to the other notice requirements of this Code section, the municipality shall cause to be published within a newspaper of general circulation within the territorial boundaries of the county wherein the property to be annexed is located a notice of the hearing as required under the provisions of subsection (a) or (b), as applicable, of this Code section and shall place a sign on the property when required by subsection (b) of this Code section; and

(4) The zoning classification approved by the municipality following the hearing required by this Code section shall become effective on the later of:

(A) The date the zoning is approved by the municipality;

(B) The date that the annexation becomes effective pursuant to Code Section 36-36-2; or

(C) Where a county has interposed an objection pursuant to Code Section 36-36-11, the date provided for in paragraph (8) of subsection (c) of said Code section.

(e) A qualified municipality into which property has been annexed may provide, by the adoption of a zoning ordinance, that all annexed property shall be zoned by the municipality, without further action, for the same use for which that property was zoned immediately prior to such annexation. A qualified county which includes property which has been deannexed by a municipality may provide, by the adoption of a zoning ordinance, that all deannexed property shall be zoned by the county, without further action, for the same use for which that property was zoned immediately prior to such deannexation. A municipality shall be a qualified municipality only if the municipality and the county in which is located the property annexed into such municipality have a common zoning ordinance with respect to zoning classifications. A county shall be a qualified county only if that county and the municipality in which was located the property deannexed have a common zoning ordinance with respect to zoning classifications. A zoning ordinance authorized by this subsection shall be adopted in compliance with the other provisions of this chapter. The operation of such ordinance to zone property which is annexed or deannexed shall not require any further action by the adopting municipality, adopting county, or owner of the property annexed or deannexed. Property which is zoned pursuant to this subsection may have such zoning classification changed upon compliance with the other provisions of this chapter.

(f) Reserved.

(g) A local government delegating decision-making power to a quasi-judicial board or agency shall provide for a hearing on each proposed action described in paragraph (1.2) of Code Section 36-66-3. Notice of

such hearing shall be provided at least 15 but not more than 45 days prior to the quasi-judicial hearing, with such notice being made as provided for in subsection (a) of this Code section and with additional notice being mailed to the owner of the property that is the subject of the proposed action.

(h)(1) Notwithstanding any other provisions of this chapter to the contrary, when a proposed zoning decision relates to an amendment of the zoning ordinance to revise one or more zoning classifications or definitions relating to single-family residential uses of property so as to authorize multifamily uses of property pursuant to such classification or definitions, or to grant permission, under certain or all circumstances, for property owners to deviate from the existing zoning requirements of a single-family residential zoning, such zoning decision shall be adopted in the following manner:

(A) The zoning decision shall be adopted at two regular meetings of the local government making the zoning decision, during a period of at least 15 but not more than 45 days apart; and

(B) Prior to the first meeting provided for in subparagraph (A) of this paragraph, at least two public hearings shall be held on the proposed action. Such public hearings shall be held at least three months and not more than nine months prior to the date of final action on the zoning decision. Furthermore, at least one of the public hearings shall be held between the hours of 5:00 P.M. and 8:00 P.M. The hearings required by this paragraph shall be in addition to any hearing required under subsection (a) of this Code section. The local government shall give notice of such hearing by:

(i) Posting notice on each affected premises in the manner prescribed by subsection (b) of this Code section; provided, however, that when more than 500 parcels are affected, in which case posting notice is required every 500 feet in the affected area; and

(ii) Publishing in a newspaper of general circulation within the territorial boundaries of the local government a notice of each hearing at least 15 days and not more than 45 days prior to the date of the hearing.

Both the posted notice and the published notice shall include a prominent statement that the proposed zoning decision relates to or will authorize multifamily uses or give permission to the property owner to deviate from the zoning requirements of a single-family residential zoning of property in classification previously relating to single-family residential uses. The published notice shall be at least nine column inches in size and shall not be located in the classified advertising section of the news-

paper. The notice shall state that a copy of the proposed amendment is on file in the office of the clerk or the recording officer of the local government and in the office of the clerk of the superior court of the county of the legal situs of the local government for the purpose of examination and inspection by the public. The local government shall furnish anyone, upon written request, a copy of the proposed amendment, at no cost.

(2) The provisions of paragraph (1) of this subsection shall also apply to any zoning decisions that provide for the abolition of all single-family residential zoning classifications within the territorial boundaries of a local government or zoning decisions that result in the rezoning of all property zoned for single-family residential uses within the territorial boundaries of a local government to multifamily residential uses of property.

(3) This subsection shall not apply to zoning decisions for the rezoning of property from a single-family residential use of property to a multifamily residential use of property when the rezoning is initiated by the owner or authorized agent of the owner of such property or when the local government adopts a zoning ordinance or zoning map applicable to the entire land area under the governance of the local government, as opposed to a subset of parcels of land under the governance of the local government.

History.

Code 1981, § 36-66-4, enacted by Ga. L. 1985, p. 1139, § 1; Ga. L. 1996, p. 1009, § 2; Ga. L. 1998, p. 856, § 3; Ga. L. 1998, p. 1392, § 1; Ga. L. 2004, p. 69, § 19; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2022, p. 825, § 1/HB 1405; Ga. L. 2023, p. 730, § 7(10)/HB 475, effective July 1, 2023; Ga. L. 2024, p. 784, § 2/HB 1073, effective May 6, 2024; Ga. L. 2024, p. 1052, § 6(27)/SB 448, effective July 1, 2024; Ga. L. 2025, p. 476, § 2-5/HB 155, effective July 1, 2025; Ga. L. 2025, p. 1029, § 36(27)/SB 153, effective July 1, 2025.

Amendments.

The 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, substituted "subparagraph" for "subparagraphs" in the second sentence in subsection (a).

The first 2024 amendment, effective May 6, 2024, in subsection (f), substituted "Reserved" for "When a proposed zoning decision relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency, a public hearing shall be held on the proposed action. Such public hearing shall be held at least six months and not more than nine months prior to the date of final action on the zoning decision. The hearing required by this subsection shall be in addition to any hearing required under subsection (a) of this Code section. The local government shall give notice of such hearing by:

"(1) Posting notice on the affected premises in the manner prescribed by subsection (b) of this Code section; and

"(2) Publishing in a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing at least 15 days and not more than 45 days prior to the date of the hearing.

"Both the posted notice and the published notice shall include a prominent statement that the proposed zoning decision relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency. The published notice shall be at least six column inches

in size and shall not be located in the classified advertising section of the newspaper."

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "shall" for "must" after "such zoning decision" in paragraph (h)(1) and in the third sentence of subparagraph (h)(1)(B).

The first 2025 amendment, effective July 1, 2025, inserted "nor more than 45 days" in paragraph (b)(2); in subsection (c), substituted "denied" for "defeated" and "denial" for "defeat" and added "or the conclusion of related judicial proceedings" at the end; in subsection (g), substituted "quasi-judicial board or agency" for "quasi-judicial officer, board, or agency" and "paragraph (1.2)" for "paragraph (1.1)" in the first sentence, and substituted "at least 15 but not more than 45 days" for "at least 30 days" in the last sentence; and, in subsection (h), deleted "blanket" following "or to grant" in paragraph (h)(1), substituted "at least 15 but not more than 45 days" for "not less than 21 days" in subparagraph (h)(1)(A), deleted "blanket" following "uses or give" in the undesignated paragraph following division (h)(1)(B)(ii), and added "or when the local government adopts a zoning ordinance or zoning map applicable to the entire land area under the governance of the local government, as opposed to a subset of parcels of land under the governance of the local government" at the end of paragraph (h)(3). See Editor's notes for applicability.

The second 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, revised capitalization in subsection (a).

Editor's notes.

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2022, p. 825, § 2/HB 1405, not codified by the General Assembly, makes this Code section applicable to all zoning and quasi-judicial decisions occurring on and after July 1, 2022; however, no zoning or quasi-judicial decision prior to July 1, 2023, shall be rendered invalid or void because of a local government's failure to implement language in their ordinances accomplishing the provisions of Code Section 36-66-5.1.

Ga. L. 2025, p. 476, § 3-1(b)/HB 155, not codified by the General Assembly, provides: "Part II of this Act shall become effective on July 1, 2025, and shall apply to all zoning and quasi-judicial decisions occurring on and after such date; provided, however, that no zoning or quasi-judicial decision occurring prior to December 31, 2026, shall be rendered invalid or void if a local government fails to implement the provisions set out in Code Section 36-66-5.1."

Law reviews.

For article surveying real property law in 1984-1985, see 37 Mercer L. Rev. 343 (1985).

For article on 2004 amendment of this Code section, see 21 Ga. St. U.L. Rev. 226 (2004).

For annual survey on zoning and land use law, see 61 Mercer L. Rev. 427 (2009).

For annual survey on real property, see 69 Mercer L. Rev. 251 (2017).

For annual survey on zoning and land use law, see 69 Mercer L. Rev. 371 (2017).

For article, "HB 1405: Amendments to the Zoning Procedures Law," see 39 Ga. St. U.L. Rev. 125 (2022).

JUDICIAL DECISIONS

Subsection (b) mandatory for text amendment of general application. — Procedures described in subsection (b) of O.C.G.A. § 36-66-4 must be followed when passing or rescinding a text amendment of general application. Atlanta Bio-Med, Inc. v. DeKalb County, 261 Ga. 594, 408 S.E.2d 100, 1991 Ga. LEXIS 398 (1991).

What constitutes "rezoning decision." — Text amendment having general application is not a "rezoning decision" for purposes of the procedures required under subsection (b) of O.C.G.A.

§ 36-66-4. Atlanta Bio-Med, Inc. v. DeKalb County, 261 Ga. 594, 408 S.E.2d 100, 1991 Ga. LEXIS 398 (1991).

Although O.C.G.A. § 36-66-4 requires only one hearing during the continuous course of a zoning matter before the local government, when a court found a first zoning decision unconstitutional and remanded the matter with direction to rezone, the zoning authority was required to hold a hearing. City of Cumming v. Realty Dev. Corp., 268 Ga. 461, 491 S.E.2d 60, 1997 Ga. LEXIS 632 (1997).

Adult ordinance was not a "zoning ordinance" even though the ordinance placed certain limitations on locations available to an adult business and established certain minimum lot sizes and road frontages; rather than regulating general uses of land, the adult ordinance regulated a particular type of activity — adult entertainment; as such, it was not a zoning ordinance and was not subject to the hearing requirements established under the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq. Artistic Entm't, Inc. v. City of Warner Robins, 331 F.3d 1196, 2003 U.S. App. LEXIS 10654 (11th Cir. 2003), cert. denied, 541 U.S. 988, 124 S. Ct. 2017, 158 L. Ed. 2d 491, 2004 U.S. LEXIS 2766 (2004).

Notice. — County's failure to comply with the notice provisions of subsection (a) of O.C.G.A. § 36-66-4 invalidated the subject zoning action. McClure v. Davidson, 258 Ga. 706, 373 S.E.2d 617, 1988 Ga. LEXIS 494 (1988).

Since a real estate developer had neither concluded the purchase of property or made substantial expenditures in reliance upon the probable issuance of a building permit until after the county amended the county's zoning ordinance to the detriment of the developer, the developer did not acquire a vested right to develop the property in question in conformity with the old ordinance; the county board of commissioner's letter to the developer amounted to an agreement to amend the ordinance and, thus, invoked the notice and hearing requirements under Georgia's Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq. Buckner v. Douglas County, 273 Ga. App. 765, 615 S.E.2d 850, 2005 Ga. App. LEXIS 615 (2005).

As a county's notice of the public hearing on a neighbor's request for a conditional use permit failed to comply with O.C.G.A. § 36-66-4(a) because the notice was published 46, not 45, days before the hearing, the county's approval of the neighbor's request was invalid. C & H Dev., LLC v. Franklin County, 294 Ga. App. 792, 670 S.E.2d 491, 2008 Ga. App. LEXIS 1315 (2008).

Hearing requirement not met. — Hearing before the Planning Commission did not satisfy the requirements of the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., because the only record of the hearing was a one-page memorandum disclosing that the Commission heard testimony from the applicant and considerable objections from the surrounding neighborhood, but the memorandum did not disclose the nature of the objections and, thus, did not inform the County Board of Commissioners in a meaningful way of what happened at the hearing. Hoechstetter v. Pickens County, 303 Ga. 786, 815 S.E.2d 50, 2018 Ga. LEXIS 402 (2018).

Annexation voided when procedures not followed. — Defendants attempt to annex certain properties into the corporate limits of the city and establish a new zoning district was voided because the procedural requirements of O.C.G.A § 36-36-21 and subsections (a) and (b) of O.C.G.A. § 36-66-4 were not met. City of Byron v. Betancourt, 242 Ga. App. 71, 528 S.E.2d 841, 2000 Ga. App. LEXIS 90 (2000).

Applicability to new permitted use. — Procedures described in subsection (b) of O.C.G.A. § 36-66-4 and former O.C.G.A. § 36-67-5 did not apply to the enactment of a zoning ordinance text amendment that allowed a new permitted use. Atlanta Bio-Med, Inc. v. DeKalb County, 261 Ga. 594, 408 S.E.2d 100, 1991 Ga. LEXIS 398 (1991).

Zoning map properly incorporated by reference. — County zoning ordinance properly incorporated by reference an official zoning map as the board of commissioners had a zoning map before the commissioners when the commissioners considered the ordinance,

the zoning map was in existence when a limited liability limited partnership (LLLP) bought the property and that map was kept in the zoning administrator's office, the new zoning administrator's uncertainty about which of two maps was the official map did not render the entire zoning ordinance invalid, and it was clear that the LLLP's land was not zoned for a landfill. Mid-Georgia Envtl. Mgmt. Group, L.L.L.P. v. Meriwether County, 277 Ga. 670, 594 S.E.2d 344, 2004 Ga. LEXIS 264 (2004).

Adequate state remedy for procedural irregularities in adoption of new zoning ordinances. — Trial court did not err in granting the city's motion for judgment on the pleadings on the plaintiffs' procedural due process claims as Georgia's Zoning Procedures Law (ZPL), O.C.G.A. § 36-66-1 et seq., provided the plaintiffs with an adequate state remedy for alleged procedural irregularities committed by the city in the adoption of a new zoning ordinance because the ZPL required local governments to provide property owners with a meaningful opportunity to be heard before enacting a zoning ordinance, not simply mere notice of a hearing, as the ZPL required that a local government conduct a public hearing on a proposed zoning ordinance before its adoption; and, if no public hearing was held, aggrieved property owners could sue to have the ordinance declared invalid. Schumacher v. City of Roswell, 344 Ga. App. 135, 809 S.E.2d 262, 2017 Ga. App. LEXIS 590 (2017).

OPINIONS OF THE ATTORNEY GENERAL

Reconsideration after tie vote. — Tie vote on consideration of a zoning proposal by a county board was not a "defeat" of the proposal so as to bar the proposal's reconsideration within six months. 1996 Op. Att'y Gen. No. U96-16.

36-66-5. Adoption of hearing policies and procedures and standards for exercise of zoning power.

(a) Local governments shall adopt policies and procedures which govern calling and conducting hearings required by Code Section 36-66-4, and printed copies of such policies and procedures shall be available for distribution to the general public. Such policies and procedures shall specify a minimum time period at hearings on proposed zoning decisions or quasi-judicial decisions for presentation of data, evidence, and opinion by proponents of each zoning decision and an equal minimum time period for presentation by opponents of each proposed zoning decision, such minimum time period to be no less than ten minutes per side.

(b) In addition to policies and procedures required by subsection (a) of this Code section, each local government rendering a zoning decision shall adopt standards governing the exercise of the zoning power, and such standards may include any factors which the local government finds relevant in balancing the interest in promoting the public health, safety, morality, or general welfare against the right to the unrestricted use of property. Such standards shall be printed and copies thereof shall be available for distribution to the general public.

(b.1) In addition to policies and procedures required by subsection (a) of this Code section, each local government providing for a quasi-

judicial board's or agency's grant, denial, or review of a quasi-judicial matter shall adopt specific standards and criteria governing the exercise of such quasi-judicial decision-making authority, and such standards shall include the factors by which the local government directs the evaluation of a quasi-judicial matter. Such standards shall be printed and copies thereof made available for distribution to the general public.

(c) The policies and procedures required by subsection (a) of this Code section and the adoption of standards required by subsections (b) and (b.1) of this Code section shall be included in and adopted as part of the zoning ordinance. Prior to the adoption of any zoning ordinance enacted on or after July 1, 2022, a local government shall conduct a public hearing on a proposed action which may be advertised and held concurrent with the hearing required by subsection (a) of Code Section 36-66-4 for the adoption of a zoning ordinance. The provisions of subsection (a) of Code Section 36-66-4 relating to notices of public hearings for the purposes of that subsection shall also apply to public hearings required by this subsection.

History.

Code 1981, § 36-66-5, enacted by Ga. L. 1985, p. 1139, § 1; Ga. L. 1993, p. 806, § 2; Ga. L. 1996, p. 317, § 1; Ga. L. 2022, p. 825, § 1/HB 1405; Ga. L. 2025, p. 476, § 2-6/HB 155, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, substituted "quasi-judicial board's or" for "quasi-judicial officer's, board's or" and "shall adopt" for "may adopt" in the first sentence in subsection (b.1); and, in subsection (c), substituted "required by subsections (b) and (b.1)" for "required by subsection (b) and permitted by subsection (b.1)" in the first sentence. See Editor's notes for applicability.

Editor's notes.

Ga. L. 2022, p. 825, § 2/HB 1405, not codified by the General Assembly, makes this Code section applicable to all zoning and quasi-judicial decisions occurring on and after July 1, 2022; however, no zoning or quasi-judicial decision prior to July 1, 2023, shall be rendered invalid or void because of a local government's failure to implement language in their ordinances accomplishing the provisions of Code Section 36-66-5.1.

Ga. L. 2025, p. 476, § 3-1(b)/HB 155, not codified by the General Assembly, provides: "Part II of this Act shall become effective on July 1, 2025, and shall apply to all zoning and quasi-judicial decisions occurring on and after such date; provided, however, that no zoning or quasi-judicial decision occurring prior to December 31, 2026, shall be rendered invalid or void if a local government fails to implement the provisions set out in Code Section 36-66-5.1."

Law reviews.

For comment, "Judicial Review of Zoning Ordinances in Georgia: The Court's Role in Land Use Planning," see 41 Mercer L. Rev. 1469 (1990).

For article, "HB 1405: Amendments to the Zoning Procedures Law," see 39 Ga. St. U.L. Rev. 125 (2022).

36-66-5.1. Judicial review; procedures.

(a) To ensure that the general public is afforded due process in an orderly way to petition the courts for review of a local government's exercise of zoning, administrative, or quasi-judicial powers as guaranteed by Article I, Section I, Paragraphs IX and XII of the Constitution,

the General Assembly, pursuant to its authority under Article VI, Section IV, Paragraph I of the Constitution, provides the following mechanism by which each of the powers described in this chapter may be reviewed by the superior court of the county wherein such property is located:

(1) Zoning decisions as described in this chapter, being legislative in nature, shall be subject to direct constitutional challenge regarding the validity of maintaining the existing zoning on the subject property or the validity of conditions or an interim zoning category other than what was requested in the superior court pursuant to its original jurisdiction over declaratory judgments pursuant to Chapter 4 of Title 9 and equity jurisdiction under Title 23. Such challenges shall be by way of a de novo review by the superior court wherein such review brings up the whole record from the local government and all competent evidence shall be admissible in the trial thereof, whether adduced in a local government process or not and employing the presumption that a governmental zoning decision is valid and can be overcome substantively by a petitioner showing by clear and convincing evidence that the zoning classification is a significant detriment to the petitioner and is insubstantially related to the public health, safety, morality, or general welfare; or

(2) Quasi-judicial decisions as described in this chapter shall be subject to appellate review by the superior court pursuant to its appellate jurisdiction from a lower judicatory body and shall be brought by way of a petition for such review as provided for in Title 5. Such matters shall be reviewed on the record which shall be brought to the superior court as provided in Title 5.

(b) All such challenges or appeals shall be brought within 30 days of the written decision of the challenged or appealed action.

(c) To ensure that the citizens of this state are not unnecessarily burdened by the review process as a mechanism of appeal, local governments shall designate by ordinance or resolution:

(1) The officer of the quasi-judicial board or agency who shall have authority, without additional board or agency action, to approve or issue any form or certificate necessary to perfect the petition described in Title 5 for review of lower judicatory bodies and upon whom service of such petition may be effected or accepted on behalf of the lower judicatory board or agency, during normal business hours, at the regular offices of the local government; and

(2) The elected official or his or designee who shall have authority to accept service and upon whom service of an appeal of a quasi-judicial decision may be effected or accepted on behalf of the local governing authority, during normal business hours, at the regular offices of the local government.

(d) An appeal or challenge by an opponent filed pursuant to this chapter shall stay all legal proceedings in furtherance of the action appealed from or challenged, unless the local government, officer, board, or agency from which or from whom the appeal or challenge is taken certifies that, by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. In such actions, the applicant for the zoning decision or the quasi-judicial decision shall be a necessary party and shall be named as a defendant in the action and served in accordance with the requirements of Title 5 or Title 9, as appropriate.

History.

Code 1981, § 36-66-5.1, enacted by Ga. L. 2022, p. 825, § 1/HB 1405; § 2-7; Ga. L. 2025, p.476, § 2-7, HB 155, effective July 1, 2025; § 2-7.

Amendments.

The 2025 amendment, effective July 1, 2025, deleted "and zoning decisions under subparagraph (E) of paragraph (4) of Code Section 36-66-3" following "in this chapter" in the first sentence in paragraph (a)(2). See Editor's notes for applicability.

Editor's notes.

Ga. L. 2022, p. 825, § 2/HB 1405, not codified by the General Assembly, makes this Code section applicable to all zoning and quasi-judicial decisions occurring on and after July 1, 2022; however, no zoning or quasi-judicial decision prior to July 1, 2023, shall be rendered invalid or void because of a local government's failure to implement language in their ordinances accomplishing the provisions of this Code Section 36-66-5.1.

Ga. L. 2025, p. 476, § 3-1(b)/HB 155, not codified by the General Assembly, provides: "Part II of this Act shall become effective on July 1, 2025, and shall apply to all zoning and quasi-judicial decisions occurring on and after such date; provided, however, that no zoning or quasi-judicial decision occurring prior to December 31, 2026, shall be rendered invalid or void if a local government fails to implement the provisions set out in Code Section 36-66-5.1."

Law reviews.

For article, "HB 1405: Amendments to the Zoning Procedures Law," see 39 Ga. St. U.L. Rev. 125 (2022).

36-66-6. Investigations and recommendations of planning department regarding land near military installation.

(a) In any local government which has established a planning department or other similar agency charged with the duty of reviewing zoning proposals, such planning department or other agency shall, with respect to each proposed zoning decision involving land that is adjacent to or within 3,000 feet of any military base or military installation or within the 3,000 foot Clear Zone and Accident Prevention Zones Numbers I and II as prescribed in the definition of an Air Installation Compatible Use Zone of a military airport, investigate and make a recommendation with respect to each of the matters enumerated in subsection (b) of this Code section, in addition to any other duties with which the planning department or agency is charged by the local government. The planning department or other agency shall request from the commander of such military base, military installation, or military airport a written recommendation and supporting facts relat-

ing to the use of the land being considered in the proposed zoning decision at least 30 days prior to the hearing required by subsection (a) of Code Section 36-66-4. If the base commander does not submit a response to such request by the date of the public hearing, there shall be a presumption that the proposed zoning decision will not have any adverse effect relative to the matters specified in subsection (b) of this Code section. Any such information provided shall become a part of the public record.

(b) The matters with which the planning department or agency shall be required to make such investigation and recommendation shall be:

(1) Whether the zoning proposal will permit a use that is suitable in view of the use of adjacent or nearby property within 3,000 feet of a military base, military installation, or military airport;

(2) Whether the zoning proposal will adversely affect the existing use or usability of nearby property within 3,000 feet of a military base, military installation, or military airport;

(3) Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;

(4) Whether the zoning proposal will result in a use which will or could cause a safety concern with respect to excessive or burdensome use of existing streets, transportation facilities, utilities, or schools due to the use of nearby property as a military base, military installation, or military airport;

(5) If the local government has an adopted land use plan, whether the zoning proposal is in conformity with the policy and intent of the land use plan; and

(6) Whether there are other existing or changing conditions affecting the use of the nearby property as a military base, military installation, or military airport which give supporting grounds for either approval or disapproval of the zoning proposal.

History.

Code 1981, § 36-66-6, enacted by Ga. L. 2003, p. 581, § 1; Ga. L. 2022, p. 825, § 1/HB 1405.

Editor's notes.

Ga. L. 2022, p. 825, § 2/HB 1405, not codified by the General Assembly, makes this Code section applicable to all zoning and quasi-judicial decisions occurring on and after July 1, 2022; however, no zoning or quasi-judicial decision prior to July 1, 2023, shall be rendered invalid or void because of a local government's failure to implement language in their ordinances accomplishing the provisions of Code Section 36-66-5.1.

36-66-7. Zoning regulations when replacing preexisting manufactured or mobile homes.

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

(1) "Manufactured home" has the same meaning as provided in Code Section 8-2-131.

(2) "Mobile home" has the same meaning as provided in Code Section 8-2-131.

(3) "New home" means a manufactured home or mobile home that is purchased from either the original manufacturer or a dealer in the ordinary course of such dealer's business and has never been titled or previously occupied.

(4) "Single-family dwelling" means a manufactured home or mobile home used as a single-family residence.

(b) Notwithstanding any other provision of this chapter, when there is a replacement of a preexisting manufactured home or mobile home with a new home within a manufactured home community or mobile home park, or on any other residential land, a local government shall not adopt or enforce any zoning decision or zoning ordinance, or any other regulation or restriction, or impose any conditions on the new home, the property upon which the home sits, or the owner's property that were not required of the preexisting home, home site, or property, that would prevent the continuance of the property owner's lawful nonconforming use that had existed relating to the preexisting home, the property upon which the home sat, or the owner's property.

(c) The provisions of subsection (b) of this Code section shall not apply if:

(1) A discontinuance is necessary for the safety of life or property;

(2) The nonconforming use has been discontinued for the period of time established by ordinance which shall not be less than 12 months, unless such discontinuance is caused by circumstances outside the control of the property owner;

(3) The replacement home would result in a change from the lawful nonconforming use as a single-family dwelling to any other type of dwelling; or

(4) The replacement home results in an obstruction to a shared driveway or shared sidewalk providing vehicular or pedestrian access to other homes and uses, unless the property owner makes modifications to such shared driveway or shared sidewalk that extinguishes such obstruction or the effects of such obstruction.

History.

Code 1981, § 36-66-7, enacted by Ga. L. 2023, p. 56, § 1/SB 213, effective July 1, 2023.

Effective date.

This Code section became effective July 1, 2023.

CHAPTER 66A

TRANSFER OF DEVELOPMENT RIGHTS

Sec.
36-66A-1. Definitions.
36-66A-2. Procedures, methods, and standards for transfer of development rights.

Law reviews.
For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

36-66A-1. Definitions.

As used in this chapter, the term:

(1) "Development rights" means the development that would be allowed on the sending property under any comprehensive or specific plan or local zoning ordinance of a municipality or county in effect on the date the municipality or county adopts an ordinance pursuant to this chapter. Development rights may be calculated and allocated in accordance with factors including dwelling units, area, floor area, floor area ratio, height limitations, traffic generation, or any other criteria that will quantify a value for the development rights in a manner that will carry out the objectives of this Code section.

(2) "Person" means any natural person, corporation, partnership, trust, foundation, nonprofit agency, or other legal entity.

(3) "Receiving area" means an area identified by an ordinance as an area authorized to receive development rights transferred from a sending area.

(4) "Receiving property" means a lot or parcel within which development rights are increased pursuant to a transfer of development rights. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property without substantial adverse environmental, economic, or social impact to the receiving property or to neighboring property.

(5) "Sending area" means an area identified by an ordinance as an area from which development rights are authorized to be transferred to a receiving area.

(6) "Sending property" means a lot or parcel with special characteristics, including farm land; woodland; desert land; mountain land; a flood plain; natural habitats; wetlands; ground-water recharge area; marsh hammocks; recreation areas or parkland, including golf course areas; or land that has unique esthetic, architectural, or

historic value that a municipality or county desires to protect from future development.

(7) "Transfer of development rights" means the process by which development rights from a sending property are affixed to one or more receiving properties.

(8) "Transfer ratio" means the ratio of the number of development rights that may be allocated to and transferred from a lot or parcel in a sending area to the number of development credits that may be allocated to and used upon a lot or parcel in a receiving area.

History.

Code 1981, § 36-66A-1, enacted by Ga. L. 1998, p. 1678, § 1; Ga. L. 2001, p. 1219, § 2; Ga. L. 2003, p. 859, § 1; Ga. L. 2008, p. 1029, § 1/HB 1160; Ga. L. 2012, p. 775, § 36/HB 942.

Editor's notes.

Ga. L. 2008, p. 1029, § 3/HB 1160, not codified by the General Assembly, provides that the amendment to this Code section shall apply to transfers of development rights executed on or after July 1, 2008.

Law reviews.

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 192 (2003).

36-66A-2. Procedures, methods, and standards for transfer of development rights.

(a) Pursuant to the provisions of this Code section, the governing body of any municipality or county by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer of development rights within its jurisdiction.

(b) Any proposed transfer of development rights shall be subject to the approval and consent of the property owners of both the sending and receiving property.

(c) Prior to any transfer of development rights, a municipality or county shall adopt an ordinance providing for:

(1) The issuance and recordation of the instruments necessary to sever development rights from the sending property and to affix development rights to the receiving property. These instruments shall be executed by the affected property owners and lienholders and recorded in the county superior court clerk's office and in a separate registry maintained by the municipal or county governing authority;

(2) The preservation of the character of the sending property and assurance that the prohibitions against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner;

(3) The severance of transferable development rights from the

sending property and the delayed transfer of development rights to a receiving property, which may include the transfer of development rights in accordance with any transfer ratio established by the local government for sending areas, receiving areas, or both;

(4) The purchase, sale, exchange, or other conveyance of transferable development rights prior to the rights being affixed to a receiving property;

(5) A system for monitoring the severance, ownership, assignment, and transfer of transferable development rights;

(6) The right of a municipality or county to purchase development rights and to hold them for conservation purposes or resale;

(7) The right of a person to purchase development rights and to hold them for conservation purposes or resale;

(8) Development rights made transferable pursuant to this Code section shall be interests in real property and shall be considered as such for purposes of conveyancing and taxation. Once a deed of transferable development rights created pursuant to this Code section has been sold, conveyed, or otherwise transferred by the owner of the parcel from which the development rights were derived, the transfer of development rights shall vest in the grantee and become freely alienable. For the purposes of ad valorem real property taxation, the value of a transferable development right shall be deemed appurtenant to the sending property until the transferable development right is registered as a distinct interest in real property with the appropriate tax assessor or the transferable development right is used at a receiving property and becomes appurtenant thereto;

(9) A map or other description of areas designated as sending and receiving areas for the transfer of development rights between properties; and

(10) Such other provisions as the municipality or county deems necessary to aid in the implementation of the provisions of this chapter.

(d)(1) Prior to the enactment of an ordinance as provided in subsection (c) of this Code section, the local governing authority shall provide for a hearing on the proposed ordinance. At least 15 but not more than 45 days prior to the date of the hearing, the local governing authority shall cause to be published in a newspaper of general circulation within the territorial boundaries of the political subdivision a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.

(2) Prior to any changes in an area designated in an ordinance as

a sending or receiving area, the local governing authority shall provide for notice and a hearing as provided in paragraph (1) of this subsection.

(e) Proposed transfers of development rights shall become effective upon the recording of the conveyance with the appropriate deed-recording authorities and the filing of a certified copy of such recording with the local governing authority of each political subdivision in which a sending or receiving area is located in whole or in part.

(f) Municipalities and counties which are jointly affected by development are authorized to enter into intergovernmental agreements for the purpose of enacting interdependent ordinances providing for the transfer of development rights between or among such jurisdictions, provided that such agreements otherwise comply with applicable laws. Any ordinances enacted pursuant to this subsection may provide for additional notice and hearing and signage requirements applicable to properties within the sending and receiving areas in each participating political subdivision.

History.

Code 1981, § 36-66A-2, enacted by Ga. L. 1998, p. 1678, § 1; Ga. L. 2001, p. 1219, § 3; Ga. L. 2003, p. 859, § 1; Ga. L. 2008, p. 1029, § 2/HB 1160; Ga. L. 2012, p. 775, § 36/HB 942.

Editor's notes.

Ga. L. 2008, p. 1029, § 3/HB 1160, not codified by the General Assembly, provides that the amendment to this Code section shall apply to transfers of development rights executed on or after July 1, 2008.

Law reviews.

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 192 (2003).

CHAPTER 66B

MOBILE BROADBAND INFRASTRUCTURE LEADS TO DEVELOPMENT

Sec.		Sec.	
36-66B-1.	Short title.		less facilities or support structure.
36-66B-2.	Legislative findings and intent.	36-66B-6.	Limitations on local regulations.
36-66B-3.	Definitions.		
36-66B-4.	Streamlined processing.	36-66B-7.	Limitations on local fees charged.
36-66B-5.	Time limitations for review of application for new wire-		

Law reviews.
For article on the 2014 amendment of this chapter, see 31 Ga. St. U.L. Rev. 149 (2014).

36-66B-1. Short title.

This chapter shall be known and may be cited as the "Mobile Broadband Infrastructure Leads to Development (BILD) Act."

History.
Code 1981, § 36-66B-1, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.

36-66B-2. Legislative findings and intent.

(a) The General Assembly finds that the enactment of this chapter is necessary to:

(1) Ensure the safe and efficient integration of facilities necessary for the provision of broadband and other advanced wireless communication services throughout this state;

(2) Ensure the ready availability of reliable wireless communication services to the public to support personal communications, economic development, and the general welfare;

(3) Encourage where feasible the modification or collocation of wireless facilities on existing wireless support structures over the construction of new wireless support structures in the deployment or expansion of commercial wireless networks; and

(4) Allow the deployment of critical wireless infrastructure to ensure that first responders can provide for the health and safety of all residents of Georgia.

(b) While recognizing and confirming the purview of local governments to exercise zoning, land use, and permitting authority within their territorial boundaries with regard to the location, construction,

and modification of wireless communication facilities, it is the intent of this chapter to establish procedural standards for the exercise of such authority so as to streamline and facilitate the construction, collocation, or modification of such facilities, including the placement of new or additional wireless facilities on existing wireless support structures. It is not the intent of this chapter to limit or preempt the scope of a local government's review of zoning, land use, or permitting applications for the siting of wireless facilities or wireless support structures or to require a local government to exercise its zoning power.

History. Code 1981, § 36-66B-2, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.

36-66B-3. Definitions.

As used in this chapter, the term:

(1) "Accessory equipment" means any equipment serving or being used in conjunction with a wireless facility or wireless support structure and includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets, and storage sheds, shelters, or similar structures.

(2) "Antenna" means communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communication services.

(3) "Application" means a formal request submitted to the local governing authority to construct, collocate, or modify a wireless support structure or a wireless facility.

(4) "Collocate" or "collocation" means the placement or installation of new wireless facilities on previously approved and constructed wireless support structures, including monopoles and towers, both self-supporting and guyed, in a manner that negates the need to construct a new freestanding wireless support structure. Such term includes the placement of accessory equipment within an existing equipment compound.

(5) "Complete application" means an application containing all documents, information, and fees specifically enumerated in or required by the local governing authority's regulations, ordinances, and forms pertaining to the location, construction, collocation, modification, or operation of wireless facilities.

(6) "Equipment compound" means an area surrounding or adjacent to the base of a wireless support structure within which accessory equipment is located.

(7) "Local governing authority" means a municipality or county that has adopted land use or zoning regulations for all or the majority

of land uses within its jurisdiction or has adopted separate regulations pertaining to the location, construction, collocation, modification, or operation of wireless facilities.

(8) "Modification" or "modify" means the improvement, upgrade, expansion, or replacement of existing wireless facilities on an existing wireless support structure or within an existing equipment compound, provided such improvement, upgrade, expansion, or replacement does not increase the height of the wireless support structure or increase the dimensions of the equipment compound.

(9) "Registry" means any official list, record, or register maintained by a local governing authority of wireless facilities, equipment compounds, or wireless support structures.

(10) "Utility" means any person, corporation, municipality, county, or other entity, or department thereof or entity related or subordinate thereto, providing retail or wholesale electric, data, cable, or telecommunications services.

(11) "Wireless facility" means the set of equipment and network components, exclusive of the underlying wireless support structure, including antennas, transmitters, receivers, base stations, power supplies, cabling, and accessory equipment, used to provide wireless data and wireless telecommunication services.

(12) "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing or alternative structure designed to support or capable of supporting wireless facilities. Such term shall not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

History. Code 1981, § 36-66B-3, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.

36-66B-4. Streamlined processing.

(a) Applications for collocation or modification of a wireless facility entitled to streamlined processing under this Code section shall be reviewed for conformance with applicable site plan and building permit requirements, including zoning and land use conformity, but shall not otherwise be subject to the issuance of additional zoning, land use, or special use permit approvals beyond the initial zoning, land use, or special permit approvals issued for such wireless support structure or wireless facility. The intent of this Code section is to allow previously approved wireless support structures and wireless facilities to be modified or collocations thereto to be accepted without additional zoning or land use review beyond that which is typically required by the

local governing authority for the issuance of building or electrical permits.

(b) The streamlined process set forth in subsection (a) of this Code section shall apply to applications for proposed modifications and to applications for proposed collocations that meet the following requirements:

(1) The proposed modification or collocation shall not increase the overall height or width of the wireless support structure to which the wireless facilities are to be attached;

(2) The proposed modification or collocation shall not increase the dimensions of the equipment compound initially approved by the local governing authority;

(3) The proposed modification or collocation shall comply with applicable conditions of approval, if any, applied to the initial wireless facilities and wireless support structure, as well as any subsequently adopted amendments to such conditions of approval; and

(4) The proposed modification or collocation shall not exceed the applicable weight limits for the wireless support structure, as demonstrated by a letter from a structural engineer licensed to practice in this state.

(c) A local governing authority's review of an application to modify or collocate wireless facilities on an existing wireless support structure shall not include an evaluation of the technical, business, or service characteristics of such proposed wireless facilities. A local governing authority shall not require an applicant to submit radio frequency analyses or any other documentation intended to demonstrate the proposed service characteristics of the proposed wireless facilities, to illustrate the need for such wireless facilities, or to justify the business decision to collocate such wireless facilities; provided, however, that the local governing authority may require the applicant to provide a letter from a radio frequency engineer certifying the applicant's proposed wireless facilities will not interfere with public safety emergency communications.

(d) Within 90 calendar days of the date an application for modification or collocation of wireless facilities is filed with the local governing authority, unless another date is specified in a written agreement between the local governing authority and the applicant, the local governing authority shall:

(1) Make its final decision to approve or disapprove the application; and

(2) Advise the applicant in writing of its final decision.

(e) Within 30 calendar days of the date an application for modification or collocation is filed with the local governing authority, the local governing authority shall determine if it is a complete application and, if it determines the application is not a complete application, notify the applicant in writing of any information required to complete such application. To the extent additional information is required to complete the application, the time required by the applicant to provide such information shall not be counted toward the 90 calendar day review period set forth in subsection (d) of this Code section. Information requested to complete the application may only include the documents, information, and fees specifically enumerated in the local governing authority's regulations, ordinances, and forms pertaining to the location, construction, collocation, modification, or operation of wireless facilities.

History. Code 1981, § 36-66B-4, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.

36-66B-5. Time limitations for review of application for new wireless facilities or support structure.

(a) Within 150 calendar days of the date an application for a new wireless support structure is filed with the local governing authority, unless another date is specified in a written agreement between the local governing authority and the applicant, the local governing authority shall:

(1) Make its final decision to approve or disapprove the application; and

(2) Advise the applicant in writing of its final decision.

(b) Within 30 calendar days of the date an application for a new wireless support structure is filed with the local governing authority, the local governing authority shall determine if it is a complete application and, if it determines the application is not a complete application, notify the applicant in writing of any information required to complete such application. To the extent additional information is required to complete the application, the time required by the applicant to provide such information shall not be counted toward the calendar day review period set forth in subsection (a) of this Code section. Information requested to complete the application may only include the documents, information, and fees specifically enumerated in the local governing authority's existing regulations, ordinances, and forms pertaining to the location, construction, collocation, modification, or operation of wireless facilities.

History.
Code 1981, § 36-66B-5, enacted by Ga. L. 2014, p. 413, § 1/HB 176.

36-66B-6. Limitations on local regulations.

In the regulation of the placement or construction of any new wireless facility or wireless support structure, a local governing authority shall not:

(1) Condition the approval of any application for a new wireless support structure on a requirement that a modification or collocation to such structure be subject to a review that is inconsistent with the requirements of Code Section 36-66B-4;

(2) Require the removal of existing wireless support structures or wireless facilities as a condition to approval of an application for a new wireless facility or wireless support structure unless such existing wireless support structure or wireless facility is abandoned and owned by the applicant; or

(3) Require the applicant to place an antenna or other wireless communications equipment on publicly owned land or on a publicly or privately owned water tank, building, or electric transmission tower as an alternative to the location proposed by the applicant.

History.
Code 1981, § 36-66B-6, enacted by Ga. L. 2014, p. 413, § 1/HB 176.

36-66B-7. Limitations on local fees charged.

A local governing authority shall not:

(1) Charge an applicant a zoning, permitting, or other fee for review or inspection of a new or existing wireless facility or wireless support structure in an amount greater than the amount authorized by subsection (a) of Code Section 48-13-9;

(2) Charge an applicant a zoning, permitting, or other fee for review or inspection of a collocation or modification in excess of $500.00;

(3) Seek reimbursement from the applicant for any application fees, consultation fees, registry fees, or audit fees with respect to a wireless facility or wireless support structure that are based on a contingency fee arrangement; or

(4) Charge a wireless service provider or wireless infrastructure provider any rental, license, or other fees in excess of the fair market value for rental or use of similarly situated property to renew or extend the term of a lease or other agreement for a wireless facility or wireless support structure on such local governing authority's property.

History.
Code 1981, § 36-66B-7, enacted by Ga. L. 2014, p. 413, § 1/HB 176.

CHAPTER 66C

STREAMLINING WIRELESS FACILITIES AND ANTENNAS

Sec.
36-66C-1. Short title.
36-66C-2. Definitions.
36-66C-3. Informing authority on deployment of small wireless facilities and poles; confidentiality and proprietary nature of information.
36-66C-4. Collocation of small wireless facilities and installation, modification, or replacement of associated poles or decorative poles.
36-66C-5. Fees and rates preceding collocation; annual increases; rate changes after changes in federal law; removal; penalty.
36-66C-6. Administrative review; public availability of accepted applications; requirements for application; exception to permitting requirements; changes to application information; exclusive arrangements prohibited; neutrality; location within right of way.
36-66C-7. Application review procedure; notification of time lapse; consolidated application; limitation on installation locations and permits; reconditioning work; time restrictions; imminent risk to public safety; repair of damage; delivery of notice or decision.
36-66C-8. Compliance with all applicable law.
36-66C-9. Due care during installation and maintenance; interference prohibited.
36-66C-10. Collocation within historic district; limitations.
36-66C-11. Alternate locations; certification.
36-66C-12. Requirements for use of decorative poles.
36-66C-13. Consolidated applications.
36-66C-14. Resolution of conflicting requests.
36-66C-15. Indemnification and liability.
36-66C-16. Extra services.
36-66C-17. Application if prior agreement in place.
36-66C-18. Limitations.
36-66C-19. Conflicting provisions.
36-66C-20. Wireline backhaul facilities not addressed; no communication services authorized; utilization of rights of ways.
36-66C-21. No relief of duties.

36-66C-1. Short title.

This chapter shall be known and may be cited as the "Streamlining Wireless Facilities and Antennas Act."

History.
Code 1981, § 36-66C-1, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-2. Definitions.

As used in this chapter, the term:

(1) "Administrative review" means review by an authority, including authority staff, of an application to determine whether the

issuance of a permit is in conformity with the applicable provisions of this chapter.

(2) "Antenna" means:

(A) Communications equipment that transmits, receives, or transmits and receives electromagnetic radio frequency signals used in the provision of wireless services or other wireless communications; or

(B) Communications equipment similar to equipment described in subparagraph (A) of this paragraph used for the transmission, reception, or transmission and reception of surface waves.

Such term shall not include television broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

(3) "Applicable codes" means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the state or an authority or are otherwise applicable in the jurisdiction in which the application is submitted.

(4) "Applicant" means any person that submits an application.

(5) "Application" means a written request submitted by an applicant to an authority for a permit to:

(A) Collocate a small wireless facility in a right of way; or

(B) Install, modify, or replace a pole or decorative pole in a right of way on which a small wireless facility is or will be collocated.

(6) "Authority" means any county, consolidated government, or municipality or any agency, district, subdivision, or instrumentality thereof. Such term shall not include an electric supplier.

(7) "Authority pole" means a pole owned, managed, or operated by or on behalf of an authority. Such term shall not include poles, support structures, electric transmission structures, or equipment of any type owned by an electric supplier.

(8) "Class I Authority" means any county which has 100,000 parcels or more of real property within the unincorporated area of such county, any consolidated government which has 100,000 parcels or more of real property within the consolidated area, or any municipality which has 100,000 parcels or more of real property within the municipality.

(9) "Class II Authority" means any county which has at least 10,000 parcels but less than 100,000 parcels of real property within

the unincorporated area of such county, any consolidated government which has at least 10,000 parcels but less than 100,000 parcels of real property within the consolidated area, or any municipality which has at least 10,000 parcels but less than 100,000 parcels of real property within the municipality.

(10) "Class III Authority" means any county which has less than 10,000 parcels of real property within the unincorporated area of such county, any consolidated government which has less than 10,000 parcels of real property within the consolidated area, or any municipality which has less than 10,000 parcels of real property within the municipality.

(11) "Collocate" or "collocation" means to install, mount, modify, or replace a small wireless facility on or adjacent to a pole, decorative pole, or support structure.

(12) "Communications facility" means the set of equipment and network components, including wires and cables and associated equipment and network components, used by a communications service provider to provide communications services.

(13) "Communications service provider" means a provider of communications services.

(14) "Communications services" means cable service as defined in 47 U.S.C. Section 522(6); telecommunications service as defined in 47 U.S.C. Section 153(53); information service as defined in 47 U.S.C. Section 153(24), as each such term existed on January 1, 2019; or wireless services.

(15) "Consolidated application" means an application for the collocation of multiple small wireless facilities on existing poles or support structures or for the installation, modification, or replacement of multiple poles and the collocation of associated small wireless facilities.

(16) "Decorative pole" means an authority pole that is specially designed and placed for aesthetic purposes.

(16.1) "Electric supplier" shall have the same meaning as provided in Code Section 46-3-3.

(17) "Eligible facilities request" means an eligible facilities request as set forth in 47 C.F.R. Section 1.40001(b)(3), as it existed on January 1, 2019.

(18) "FCC" means the Federal Communications Commission of the United States.

(19) "Fee" means a one-time, nonrecurring charge based on time and expense.

(20) "Historic district" means:

(A) Any district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the secretary of the interior of the United States in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified by 47 C.F.R. Part 1;

(B) Any area designated as a historic district under Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act"; or

(C) Any area designated as a historic district or property by law prior to April 26, 2019.

(21) "Law" means and includes any and all federal, state, or local laws, statutes, common laws, codes, rules, regulations, orders, or ordinances.

(22) "Metropolitan statistical area" means a standard metropolitan statistical area which is located within this state and recognized by the United States Department of Commerce, Bureau of the Census, according to the United States decennial census of 2010 or any future such census.

(23) "Micro wireless facility" means a small wireless facility not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height that has an exterior antenna, if any, no longer than 11 inches.

(24) "Permit" means a written authorization, in electronic or hard copy format, required to be issued by an authority to initiate, continue, or complete the collocation of a small wireless facility or the installation, modification, or replacement of a pole or decorative pole upon which a small wireless facility is collocated.

(25) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

(26) "Pole" means a vertical pole such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal, or other material that is lawfully located or to be located within a right of way, including without limitation a replacement pole and an authority pole. Such term shall not include a support structure, decorative pole, or electric transmission structure.

(27) "Rate" means a recurring charge.

(28) "Reconditioning work" means the activities associated with substantially painting, reconditioning, improving, or repairing authority poles.

(29) "Replace," "replacement," or "replacing" means to replace a pole or decorative pole with a new pole or a new decorative pole, similar in design, size, and scale to the existing pole or decorative pole consistent with 47 C.F.R. 1.40001(b)(7) as it existed on January 1, 2019, in order to address limitations of, or change requirements applicable to, the existing pole to structurally support the collocation of a small wireless facility.

(30) "Replacement work" means the activities associated with replacing an authority pole.

(31) "Right of way" has the same meaning as provided in paragraph (25) of Code Section 32-1-3; provided, however, that such term shall apply only to property or an interest therein that is under the ownership or control of an authority and shall not include property or any interest therein acquired for or devoted to an interstate highway or the public rights, structures, sidewalks, facilities, and appurtenances described in subparagraph (K) or (R) of paragraph (24) of Code Section 32-1-3.

(32) "Small wireless facility" means radio transceivers; surface wave couplers; antennas; coaxial, fiber optic, or other cabling; power supply; backup batteries; and comparable and associated equipment, regardless of technological configuration, at a fixed location or fixed locations that enable communication or surface wave communication between user equipment and a communications network and that meet both of the following qualifications:

(A) Each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and

(B) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume, measured based upon the exterior dimensions of height by width by depth of any enclosure that may be used. The following types of associated ancillary equipment are not included in the calculation of the volume of all other wireless equipment associated with any such facility:

(i) Electric meters;

(ii) Concealment elements;

(iii) Telecommunications demarcation boxes;

(iv) Grounding equipment;

(v) Power transfer switches;

(vi) Cut-off switches; and

(vii) Vertical cable runs for connection of power and other services.

Such term shall not include a pole, decorative pole, or support structure on, under, or within which the equipment is located or collocated or to which the equipment is attached and shall not include any wireline backhaul facilities or coaxial, fiber optic, or other cabling that is between small wireless facilities, poles, decorative poles, or support structures or that is not otherwise immediately adjacent to or directly associated with a particular antenna.

(33) "State" means the State of Georgia.

(34) "Support structure" means a building, billboard, water tank, or any other structure to which a small wireless facility is or may be attached. Such term shall not include a decorative pole, electric transmission structure, or pole.

(35) "Wireless infrastructure provider" means any person, including a person authorized to provide telecommunications services in this state, that builds, installs, or operates small wireless facilities, poles, decorative poles, or support structures on which small wireless facilities are or are intended to be used for collocation but that is not a wireless services provider.

(36) "Wireless provider" means a wireless infrastructure provider or a wireless services provider.

(37) "Wireless services" means any services provided to the public using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

(38) "Wireless services provider" means a person that provides wireless services.

(39) "Wireline backhaul facility" means an aboveground or underground wireline facility used to transport communications data from a telecommunications demarcation box associated with small wireless facility to a network.

History.
Code 1981, § 36-66C-2, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2019, "April 26, 2019" was substituted for "the effective date of this Code section" at the end of subparagraph (20)(C).

36-66C-3. Informing authority on deployment of small wireless facilities and poles; confidentiality and proprietary nature of information.

(a) An applicant that has not previously held a meeting with a Class I Authority that complies with this Code section shall meet with the Class I Authority at least 30 days before submitting applications under Code Section 36-66C-6 to inform such authority in good faith when such

applicant expects to commence deployment of small wireless facilities and poles within such authority pursuant to this chapter, the number of small wireless facilities and poles it expects to deploy during the 24 months after commencement, and the expected timing of such deployments.

(b) Upon request by any Class II Authority that is located within a metropolitan statistical area and with which the applicant has not previously held a meeting that complies with this Code section, an applicant shall meet with such authority at least 30 days before submitting applications under Code Section 36-66C-6 to inform such authority in good faith when such applicant expects to commence deployment of small wireless facilities and poles within such authority pursuant to this chapter, the number of small wireless facilities and poles it expects to deploy during the 24 months after commencement, and the expected timing of such deployments.

(c) All documents or other information provided by the applicant in the course of, or in association with, any meetings provided for in this Code section shall be presumed to be confidential and proprietary and a trade secret as such term is defined in Code Section 10-1-761, shall be subject to exemption from disclosure under state and federal law, and shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50.

History.
Code 1981, § 36-66C-3, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-4. Collocation of small wireless facilities and installation, modification, or replacement of associated poles or decorative poles.

A wireless provider may collocate small wireless facilities and install, modify, or replace associated poles or decorative poles under this chapter without an agreement with an authority and without an implementing ordinance. An authority may make available to wireless providers rates, fees, and other terms that comply with this chapter and that are adopted by ordinance, resolution, or another document by the authority after public notice. In the absence of an ordinance, a resolution, or another document that complies with this chapter, and until any such ordinance, a resolution, or other document is adopted, if at all, a wireless provider may collocate small wireless facilities and install, modify, or replace associated poles or decorative poles pursuant to the requirements of this chapter. An authority may not require a wireless provider to enter into an agreement to implement this chapter, but nothing in this chapter shall prohibit an authority and a wireless provider from voluntarily entering one or more such agreements, including such agreements with rates, fees, and other terms that differ

from those in this chapter; provided, however, that the authority shall make each such agreement available for public inspection and available for adoption upon the same terms and conditions to any requesting wireless provider.

History.
Code 1981, § 36-66C-4, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-5. Fees and rates preceding collocation; annual increases; rate changes after changes in federal law; removal; penalty.

(a) As a condition to the issuance of a permit to collocate a small wireless facility or to install, modify, or replace a pole or a decorative pole for collocation of a small wireless facility in a right of way, the applicant shall pay the following fees and rates:

(1) A fee for each application for the collocation of each small wireless facility on an existing pole assessed by the authority not to exceed $100.00 per small wireless facility;

(2) A fee for each application for each replacement pole with an associated small wireless facility assessed by the authority not to exceed $250.00;

(3) A fee for each application for each new pole with an associated small wireless facility assessed by the authority not to exceed $1,000.00 per pole with an associated small wireless facility;

(4) An annual right of way occupancy rate assessed by the authority for nonexclusive occupancy of the right of way by the applicant not to exceed:

(A) One hundred dollars per year for each small wireless facility collocated on any existing or replacement pole, including an existing or replacement authority pole; or

(B) Two hundred dollars per year for each new pole, other than a replacement pole, with an associated small wireless facility;

(5) An annual attachment rate for collocations on authority poles not to exceed $40.00 per year per small wireless facility, which shall be nondiscriminatory regardless of the services provided by the collocating wireless provider;

(6) A fee for make-ready work, as provided in subsection (n) of Code Section 36-66C-7; and

(7) Generally applicable nondiscriminatory fees for any permit required under generally applicable law; provided, however, that an

applicant shall not be required to obtain or pay any fees for a building permit, as the permit issued pursuant to this chapter serves as a building permit for the applicable poles and small wireless facilities.

(b) The monetary caps provided in paragraphs (1), (2), (3), (4), and (5) of subsection (a) of this Code section shall increase 2.5 percent annually beginning January 1, 2021.

(c) If, in a final adjudication not subject to further appeal or to review by the United States Supreme Court, a federal court reviewing Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, et al., Declaratory Ruling and Third Report and Order, WT Docket No. 17-79 and WC Docket No. 17-84, FCC 18-133 (released September 27, 2018), or a related FCC order, or a Georgia federal district court, the United States Court of Appeals for the Eleventh Circuit, or the United States Supreme Court interpreting 47 U.S.C. Section 253(c) as it existed on January 1, 2019, determines that fair and reasonable compensation includes not only cost based charges but also market based charges with respect to application fees or right of way occupancy rates for the installation of small wireless facilities or poles, or to authority pole attachment rates for small wireless facilities, then:

(1) Beginning on July 1 of the calendar year following the date that the final adjudication is no longer subject to further appeal or to review by the United States Supreme Court, the monetary caps provided in paragraphs (1), (2), (3), (4), and (5) of subsection (a) of this Code section for the fees or rates to which the determination applies, excluding any increases that have been made under subsection (b) of this Code section, shall double; and

(2) Beginning on July 1 of the second calendar year following the date that the final adjudication is no longer subject to further appeal or to review by the United States Supreme Court, the monetary caps in paragraphs (1), (2), (3), (4), and (5) of subsection (a) of this Code section for the fees or rates to which the determination applies shall terminate. In place of any monetary caps that terminate pursuant to this subsection, applicants shall pay fees or rates, as each may be applicable, that constitute the fair and reasonable compensation due to the authority under applicable law.

(d) An applicant shall not be subject to any fees or rates other than those expressly provided for by this Code section or as may be otherwise voluntarily negotiated between an applicant and the authority in accordance with Code Section 36-66C-4.

(e) The applicant, or the person that owns or operates the small wireless facility collocated in the right of way, may remove its small wireless facilities at any time from the right of way upon not less than

30 days' prior written notice to the authority and may cease paying to the authority any applicable fees and rates for such use, as of the date of the actual removal of the small wireless facilities. In the event of such removal, the right of way shall be, to the extent practicable in the reasonable judgment of the authority, restored to its condition prior to the removal. If the applicant fails to return the right of way, to the extent practicable in the reasonable judgment of the authority, to its condition prior to the removal within 90 days of the removal, the authority may, at the sole discretion of the authority, restore the right of way to such condition and charge the applicant the authority's reasonable, documented cost of removal and restoration, plus a penalty not to exceed $500.00. The authority may suspend the ability of the applicant to receive any new permits from the authority until the applicant has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the authority shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

History.
Code 1981, § 36-66C-5, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-6. Administrative review; public availability of accepted applications; requirements for application; exception to permitting requirements; changes to application information; exclusive arrangements prohibited; neutrality; location within right of way.

(a) A wireless provider may collocate small wireless facilities on authority poles and decorative poles in the right of way, subject to administrative review only and the issuance of a permit as set forth in this Code section. Subject to administrative review only and the issuance of a permit as set forth in this Code section, a wireless provider may occupy the right of way for the following uses, provided that such uses shall be in accordance with applicable provisions of this chapter, including without limitation, those set forth in Code Section 36-66C-9:

(1) Collocation of a small wireless facility on or adjacent to a pole or a support structure that does not exceed the limitations set forth in paragraph (3) of subsection (h) of Code Section 36-66C-7 or on or adjacent to a decorative pole in compliance with Code Section 36-66C-12; and

(2) Installation, modification, or replacement of a pole or a decorative pole for collocation of a small wireless facility that does not exceed the limitations set forth in paragraphs (1) and (2) of subsection (h) of Code Section 36-66C-7.

(b) No wireless provider shall collocate any small wireless facility in the right of way or install, modify, or replace a pole or decorative pole for collocation of a small wireless facility in the right of way without first filing an application and obtaining a permit therefor, except as otherwise expressly provided in subsection (e) of this Code section. Any failure to comply with this subsection by a wireless provider shall allow the applicable authority, at the sole discretion of the authority, to restore the right of way, to the extent practicable in the reasonable judgment of the authority, to its condition prior to the unpermitted collocation or installation and to charge the responsible wireless provider its reasonable, documented cost of doing so, plus a penalty not to exceed $1,000.00. The authority may suspend the ability of the wireless provider to receive any new permits from the authority until the wireless provider has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the authority shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

(c) The authority shall make accepted applications publicly available; provided, however, that an applicant may designate portions of its application materials that it reasonably believes contain trade secrets by following the procedures set forth in paragraph (34) of subsection (a) of Code Section 50-18-72.

(d) The application shall be made by the applicable wireless provider or its duly authorized representative and shall contain the following:

(1) The applicant's name, address, telephone number, and email address, including emergency contact information for the applicant;

(2) The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;

(3) A general description of the proposed work and the purposes and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the physical work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;

(4) Detailed construction drawings regarding the proposed use of the right of way;

(5) To the extent the proposed facility involves collocation on a pole, decorative pole, or support structure, a structural report performed by a duly licensed engineer evidencing that the pole, decorative pole, or support structure will structurally support the colloca-

tion, or that the pole, decorative pole, or support structure may and will be modified to meet structural requirements, in accordance with applicable codes;

(6) For any new aboveground facilities, visual depictions or representations if such are not included in the construction drawings;

(7) Information indicating the horizontal and approximate vertical location, relative to the boundaries of the right of way, of the small wireless facility for which the application is being submitted;

(8) If the application is for the installation of a pole or replacement of a decorative pole, a certification that complies with subsection (k) of this Code section;

(9) If the small wireless facility will be collocated on a pole or support structure owned by a third party, other than an authority pole or a decorative pole, a certification that the wireless provider has permission from the owner to collocate on the pole or support structure; and

(10) If the applicant is not a wireless services provider, a certification that a wireless services provider has requested in writing that the applicant collocate the small wireless facilities or install, modify, or replace the pole or decorative pole at the requested location.

(e) An application shall not be required for the following activities, provided that a wireless provider may be required to obtain permits for such activities, such as electrical permits or street opening permits, if otherwise required by generally applicable law:

(1) With respect to a pole or decorative pole on which a small wireless facility is collocated, inspections, testing, repairs, and modifications that maintain functional capacity and aesthetic and structural integrity, provided that modifications are limited by the structural load analysis supplied by the applicant in its prior application to the authority; and

(2) With respect to a small wireless facility, inspections, testing, or repairs that maintain functional capacity or the replacement or upgrade of antennas or other components of the small wireless facility such as a swap out or addition of antennas and radio equipment as required by the applicant, with antennas and other components that are substantially similar in color, aggregate size, and other aesthetics to that previously permitted by the authority and consistent with the height and volume limits for small wireless facilities under this chapter, so long as the pole, decorative pole, or support structure will structurally support, or prior to installation will be modified to support, the structural load in accordance with the structural load analysis supplied by the applicant in its prior application to the authority.

(f) An authority shall not require a wireless provider to obtain a permit or any other approval or require fees or rates for the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables that are strung between poles or support structures in the right of way in compliance with applicable codes; provided, however, that an authority may require a wireless provider to obtain permits for any additional activities such as electrical work, excavation, or closure of sidewalks or vehicular lanes within the right of way if otherwise required by generally applicable law. Such permits shall be issued on a nondiscriminatory basis upon terms and conditions applied to any other person's similar activities in the right of way.

(g) Any material change to information contained in an application shall be submitted in writing to the authority within 30 days after the events necessitating the change.

(h) Unless otherwise provided by applicable law, all applications pursuant to this chapter shall be accompanied by the fees required under Code Sections 36-66C-4 and 36-66C-5.

(i) An authority shall not enter into an exclusive arrangement with any person for use of the right of way for the collocation of small wireless facilities or the installation, operation, marketing, modification, maintenance, or replacement of poles or for the right to attach to authority poles. A person that purchases or otherwise acquires an authority pole is subject to the requirements of this subsection.

(j) The authority, in the exercise of its administration and regulation of the management of the right of way, shall be competitively neutral and nondiscriminatory with regard to other users of the right of way.

(k) A wireless provider shall not apply to install a pole or replace a decorative pole unless it has determined after diligent investigation that it cannot meet the service objectives of the permit by collocating on an existing pole or support structure on which:

(1) The wireless provider has the right to collocate subject to reasonable terms and conditions; and

(2) Such collocation would not impose technical limitations or significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and shall provide a written summary of the basis for such determination.

(l) Requests for installation, modification, or replacement of a support structure are not eligible for administrative review as set forth in this Code section.

(m) An application that is subject to administrative review shall be approved except as provided in subsection (j) of Code Section 36-66C-7.

(n) The provisions of this chapter concerning the collocation of small wireless facilities on poles and the installation, modification, and replacement of poles by wireless providers apply only to poles that are lawfully located or are to be lawfully located within the right of way. An authority has the burden of establishing that an existing pole's location within the right of way is not lawful.

History.
Code 1981, § 36-66C-6, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-7. Application review procedure; notification of time lapse; consolidated application; limitation on installation locations and permits; reconditioning work; time restrictions; imminent risk to public safety; repair of damage; delivery of notice or decision.

(a) The requirements of this Code section govern an authority's review of applications for uses that are subject to administrative review as described in subsection (a) of Code Section 36-66C-6.

(b) Within 20 days of receipt of a written application, the authority shall:

(1) Notify the applicant in writing of the commencement and completion dates of any widening, repair, reconstruction, or relocation of the applicable right of way that is scheduled to commence, or is anticipated in good faith to commence, within 24 months after the application is filed;

(2) Notify the applicant, based on the authority's good faith preliminary review of the information provided in the application, of any aspect of the application that appears to be grounds for the authority's denial of the application pursuant to subsection (j) of this Code section; and

(3) Determine whether the application is complete and inform the applicant of its determination in writing. If the authority determines that an application is incomplete, it shall specifically identify to the applicant in writing all missing information within such 20 day period; otherwise the application is deemed complete. If the authority identifies missing information to the applicant as provided in this paragraph, the applicant may submit such missing information to the authority within 20 days of receipt of notification in writing from the authority that the application is incomplete without paying any additional application fee, and any subsequent review of the appli-

cation by the authority for completeness shall be limited to the previously identified missing information. If the authority determines that an application remains incomplete, or if the authority determines that the applicant has made material changes to the application other than to address the missing information identified by the authority, the authority shall notify the applicant of such determination in writing within ten days of receipt of the resubmission of the written application, and absent an agreement to the contrary between the authority and the applicant that is confirmed by email or other writing, such notice shall constitute a denial of the application. If the authority does not provide such written notification to the applicant within this ten-day period, the application shall be deemed complete.

(c) The authority shall make its final decision to approve or deny the application within 30 days of the written determination that the application is complete or when the application is deemed complete under paragraph (3) of subsection (b) of this Code section, whichever is earlier, for a collocation, and within 70 days of the written determination that the application is complete or when the application is deemed complete under paragraph (3) of subsection (b) of this Code section, whichever is earlier, for the installation, modification, or replacement of a pole or decorative pole.

(d) A decision to deny an application pursuant to this Code section shall be in writing, shall identify all reasons for the denial, and shall identify the provisions of applicable codes or other standards applicable pursuant to this chapter on which the denial was based. The decision to deny shall be sent to the applicant contemporaneously. The review period shall run until the written decision is delivered to the applicant in accordance with subsection (s) of this Code section.

(e) If the authority fails to act on an application within the review period provided for in subsection (d) of this Code section, the applicant may provide the authority written notice that the time period for acting has lapsed, and the authority shall then have 20 days after receipt of such notice to render its written decision. The application shall be deemed approved by passage of time and operation of law if the authority does not render its written decision within such 20 days.

(f) An applicant may, at the applicant's discretion and subject to the consolidated application requirements and processes under Code Section 36-66C-13, file a consolidated application.

(g) Notwithstanding any other provision of this chapter and to the extent that an application constitutes an eligible facilities request, the authority shall not deny the application and shall approve the application within 60 days according to the procedures established under 47 C.F.R. 1.40001(c).

(h) Small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities may be placed in the right of way as a permitted use in accordance with Code Section 36-66C-6, subject to applicable codes and the following requirements:

(1) Each such new, modified, or replacement pole installed in the right of way in a historic district and in an area zoned primarily for residential use shall not exceed 50 feet above ground level;

(2) Each such new, modified, or replacement pole installed in the right of way not in historic district or in an area zoned primarily for residential use shall not exceed the greater of:

(A) Fifty feet above ground level; or

(B) Ten feet greater in height above ground level than the tallest existing pole in the same authority right of way in place as of January 1, 2019, and located within 500 feet of the new proposed pole; and

(3) New small wireless facilities in the right of way shall not exceed:

(A) For a collocation on an existing pole or support structure, more than ten feet above the existing pole or support structure; or

(B) For a collocation on a new, modified, or replacement pole under paragraph (1) or (2) of this subsection, the height limit provided in such paragraphs.

(i)(1) A wireless provider shall comply with reasonable and nondiscriminatory requirements that prohibit communications service providers and electric service providers from installing poles in a right of way in an area designated solely for underground or buried facilities of communications service providers and electric service providers where the authority:

(A) Has required all such facilities other than light poles and attachments to be placed underground and all such undergrounding has been completed prior to the submission of the application, or, for rights of way where such facilities other than light poles and attachments have not been deployed, has in effect a reasonable and nondiscriminatory zoning or development ordinance or regulation that requires such facilities other than light poles and attachments to be placed underground;

(B) Does not prohibit the replacement of light poles or the collocation of small wireless facilities in the designated area; and

(C) Permits wireless providers to seek a waiver of the underground requirements for the placement of a new pole to support

small wireless facilities, which waivers shall be addressed in a nondiscriminatory manner and consistent with applicable law.

(2) An authority that adopts undergrounding requirements shall:

(A) Allow a wireless provider to maintain in place any previously collocated small wireless facilities subject to any applicable pole attachment agreement; or

(B) Either allow the wireless provider to replace the pole associated with previously collocated small wireless facilities at the same location or propose an alternate location within 50 feet of the prior location, which the wireless provider shall use unless such alternate location imposes technical limits or significant additional costs.

(j) An authority shall approve an application for permitted uses described in subsection (a) of Code Section 36-66C-6 unless the requested collocation of a small wireless facility or the requested installation, modification, or replacement of a pole or decorative pole:

(1) Interferes with the operation of traffic control equipment;

(2) Interferes with sight lines or clear zones for transportation or pedestrians;

(3) Fails to comply with the federal Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., or similar laws of general applicability regarding pedestrian access or movement;

(4) Requests that ground-mounted small wireless facility equipment be located more than 7.5 feet in radial circumference from the base of the pole, decorative pole, or support structure to which the small wireless facility antenna would be attached, provided that the authority shall not deny the application if a greater distance from the base of the pole, decorative pole, or support structure is necessary to avoid interfering with sight lines or clear zones for transportation or pedestrians or to otherwise protect public safety;

(5) Fails to comply with applicable codes;

(6) Fails to comply with the maximum limitations set forth in subsection (h) of this Code section or the requirements of subsection (i) of this Code section;

(7) With respect to an application to install a pole or decorative pole, interferes with the widening, repair, reconstruction, or relocation of a public road or highway by an authority or the Department of Transportation that has been advertised for bid and scheduled for completion within six months after the application is filed;

(8) With respect to an application to install a pole or decorative pole, interferes with a public works construction project governed by

Chapter 91 of this title and scheduled for completion within six months after the application is filed;

(9) Fails to comply with Code Section 36-66C-10, 36-66C-11, or 36-66C-12;

(10) Fails to comply with laws of general applicability that address pedestrian and vehicular traffic and safety requirements; or

(11) Fails to comply with laws of general applicability that address the occupancy or management of the right of way and that are not otherwise inconsistent with this chapter.

(k)(1) A permit from the authority authorizes an applicant to undertake only certain activities in accordance with this chapter and shall not create a property right or grant authorization or license to the applicant to impinge upon the rights of other persons that may already have an interest in the right of way.

(2) Collocation, installation, modification, or replacement for which a permit is issued under this chapter shall be completed within six months after issuance, provided that an extension shall be granted for up to an additional six months upon written request made to the authority before the end of the initial six-month period if a delay results from circumstances beyond the reasonable control of the applicant. Issuance of a permit authorizes the applicant to:

(A) Undertake the collocation, installation, modification, or replacement approved by the permit; and

(B) Operate and maintain the small wireless facilities and any associated pole covered by the permit for a period of not less than ten years, which shall be renewed for equivalent durations so long as the applicant is in compliance with the criteria set forth in subsection (j) of this Code section, subject to the relocation requirements described in subsection (l) of this Code section and the applicant's right to terminate at any time.

(l) If, in the reasonable exercise of police powers, an authority requires widening, repair, reconstruction, or relocation of a public road or highway, or relocation of poles, support structures, or small wireless facilities is required as a result of a public project, a wireless provider shall relocate poles and support structures that such wireless provider has installed in the right of way for the collocation of small wireless facilities pursuant to this chapter at no cost to the authority in the event that such poles and support structures are found by the authority to unreasonably interfere with the widening, repair, reconstruction, or relocation project or the public project. If widening, repair, reconstruction, or relocation is required as a condition or result of a project by a person other than an authority, such person shall bear the cost of

relocating such poles or support structures and any communications facilities on such poles or support structures. The wireless provider shall relocate the poles or support structures:

(1) By the date designated in a written notice from the authority that contains a good faith estimate by the authority of the date by which the authority intends to commence work, whenever the authority has determined that such removal, relocation, change, or alteration is reasonably necessary for the construction, repair, maintenance, or installation of any authority improvement or operations in or upon the right of way so long as the same time frames are applied to all utilities in the right of way; provided, however, that the date designated for relocation shall be at least 45 days after the authority provides the written notice to the wireless provider; or

(2) Within the time frame that the wireless provider estimates in good faith is reasonably needed to complete the relocation, so long as the wireless provider provides the authority written notice of its good faith estimate within 30 days following receipt of the written notice provided by the authority pursuant to paragraph (1) of this subsection and explains in detail why such wireless provider cannot reasonably complete the relocation by the date designated in the authority's written notice.

(m)(1) The wireless provider shall reasonably cooperate with the authority to carry out reconditioning work activities in a manner that minimizes interference with the wireless provider's approved use of the facility.

(2) The authority shall use reasonable efforts to provide the wireless provider with written notice of reconditioning work at least 120 days before such reconditioning work begins. Upon receiving such notice, it shall be the wireless provider's sole responsibility to provide adequate measures to cover, remove, or otherwise protect the wireless provider's communications facility from the consequences of the reconditioning work, including but not limited to paint and debris fallout. The authority reserves the right to require the wireless provider to remove all of the wireless provider's communications facilities from the authority pole and surrounding premises during reconditioning work, provided that the requirement to remove such is contained in the written notice required by this Code section. All costs associated with the protection measures, including temporary removal, shall be the sole responsibility of the wireless provider. If the authority fails in good faith to give notice within at least 120 days, it shall not affect the authority's rights under this subsection. In all cases, as much notice as possible shall be provided, but less than 30 days' notice shall be prohibited. The authority shall provide the wireless provider with a date by which its equipment must be protected or removed.

(3) The wireless provider may request a modification of the authority procedures for carrying out reconditioning work in order to reduce interference with the wireless provider's operation of its communications facility. If the authority agrees to the modification, the wireless provider shall be responsible for all reasonable incremental costs related to the modification.

(4) The authority shall provide the wireless provider with at least 120 days' written notice of any replacement work before the authority may remove the wireless provider's communications facilities. The authority shall also promptly notify the wireless provider when the authority poles have been replaced and the wireless provider can reinstall its equipment. During the replacement work, the wireless provider may maintain a temporary communications facility on the property, or after approval by an authority on any land owned or controlled by an authority in the vicinity of the property. If the property will not accommodate the wireless provider's temporary communications facility or if the parties cannot agree on a temporary location, the wireless provider, at its sole discretion, shall have the right to suspend the applicable permit until the replacement pole is installed, upon 30 days' written notice to the authority.

(n) For any collocation on authority poles in the right of way, the authority shall provide a good faith estimate for any make-ready work necessary to enable the authority pole to support the proposed facility, including replacement of the pole if necessary, within 60 days after receipt of a completed application requesting attachment to the authority pole. Alternatively, the authority may require the wireless provider to perform the make-ready work and notify the wireless provider of such within the 60 day period. If the wireless provider or its contractor performs the make-ready work, the wireless provider shall indemnify the authority for any negligence by the wireless provider or its contractor in the performance of such make-ready work, the work shall not be deemed to violate Chapter 91 of this title, and the work shall otherwise comply with applicable law. If the authority opts to perform the make-ready work itself, the authority shall complete the work, including any pole replacement, within 90 days of receipt of written acceptance of the good faith estimate by the wireless provider. Such acceptance shall be signified by payment via check or other commercially reasonable and customary means specified by the authority. The authority may require that the replacement authority pole have the same functionality as the pole being replaced. If the authority pole is replaced, the authority shall operate authority fixtures on the pole, and, absent an agreement to the contrary between the authority and the wireless provider that is confirmed in writing, the authority shall take ownership of the new pole.

(o) If the wireless provider fails to relocate a support structure or

pole or fails to provide a written good faith estimate of the time needed to relocate a support structure or pole within the time period prescribed in subsection (l) of this Code section, the authority shall have the right and privilege, ten days or more after the wireless provider receives written notice from the authority, to cut power to or move any support structure or pole located within the right of way, as the authority may determine to be necessary, appropriate, or useful in order to commence work on the public project.

(p)(1) If a wireless provider decides to abandon any small wireless facility, support structure, or pole, it shall notify the authority in writing as soon as practicable, but no later than 30 days prior to the abandonment. Following receipt of such notice, the authority shall instruct the wireless provider in writing to remove all or any portion of the small wireless facility, support structure, or pole if the authority determines that such removal will be in the best interest of public safety and welfare. If the wireless provider fails to remove the abandoned small wireless facility, support structure, or pole within 90 days after such notice, the authority may do so and recover the actual and reasonable expenses of doing so from the wireless provider, its successors, or its assigns, plus a penalty not to exceed $500.00. The authority may suspend the ability of the wireless provider, its successors, or its assigns, as applicable, to receive any new permits from the authority until the wireless provider, its successors, or its assigns, as applicable, have paid the amount assessed for such removal costs and the penalty assessed, if any; provided, however, that the authority shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction. Nothing in this chapter precludes an authority from adopting reasonable and nondiscriminatory requirements that are not inconsistent with this subsection with respect to the removal of abandoned small wireless facilities, support structures, or poles.

(2) A small wireless facility that is not operated or a support structure or pole that is not utilized for a continuous period of 12 months shall be considered abandoned, and the owner of such small wireless facility, support structure, or pole shall remove such within 90 days after receipt of written notice from the authority notifying such owner of such small wireless facility, support structure, or pole of the abandonment. The authority shall send the notice by certified or registered mail, return receipt requested, to such owner at the last known address of such owner of the small wireless facility, support structure, or pole. If the owner does not provide written notice that the small wireless facility has not been out of operation or the support structure or pole has in fact been utilized for a continuous period of 12

months or does not remove such small wireless facility, support structure, or pole within the 90 day period, the authority may remove or cause the removal of such small wireless facility, support structure, or pole pursuant to the terms of its support structure or pole attachment agreement for authority poles or through actions provided for abatement of nuisances or by other law for removal and cost recovery.

(q) If the authority determines that a wireless provider's activity in a right of way pursuant to this chapter creates an imminent risk to public safety, the authority may provide written notice to the wireless provider and demand that the wireless provider address such risk. If the wireless provider fails to reasonably address the risk within 24 hours of the written notice, the authority may take or cause to be taken action to reasonably address such risk and charge the wireless provider the reasonable documented cost of such actions.

(r) The authority may require a wireless provider to repair all damage to a right of way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining small wireless facilities, poles, or support structures, in such right of way and to restore the right of way to its condition before the damage occurred pursuant to the competitively neutral and reasonable requirements and specifications of the authority. If the wireless provider fails to return the right of way, to the extent practicable in the reasonable judgment of the authority, to its condition prior to the damage within 90 days of receipt of written notice from the authority, the authority may, at the sole discretion of the authority, restore the right of way to such condition and charge the wireless provider its reasonable, documented cost of doing so, plus a penalty not to exceed $500.00. The authority may suspend the ability of the wireless provider to receive any new permits from the authority until the wireless provider has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the authority shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

(s) An authority shall send any notice or decision required by this Code section by registered or certified mail, statutory overnight delivery, hand delivery, or email transmission. The decision or notice shall be deemed delivered upon email transmission, deposit into overnight mail or regular mail receptacle with adequate postage paid, or actual receipt if delivered by hand.

History.
Code 1981, § 36-66C-7, enacted by Ga. L. 2019, p. 236, § 1/SB 66; Ga. L. 2025, p. 1029, § 36(28)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "this title" for "Title 36" in paragraph (j)(8) and substituted "120 days' written notice" for "120 days written notice" in paragraph (m)(4).

36-66C-8. Compliance with all applicable law.

Applications for any other uses that are not expressly set forth or referenced in subsection (a) of Code Section 36-66C-6 or that are not otherwise addressed by this chapter shall require compliance with, and issuance of a permit under, applicable law. Without limiting the foregoing, any modification, maintenance, repair, or replacement that is not set forth in subsections (e) and (f) of Code Section 36-66C-6 or that is not eligible for administrative review under Code Section 36-66C-7 shall require compliance with, and issuance of a permit under, applicable law.

History.
Code 1981, § 36-66C-8, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-9. Due care during installation and maintenance; interference prohibited.

(a) An applicant in the right of way shall employ due care during the installation and maintenance process and shall comply with all safety and right of way protection requirements of general applicability set forth in applicable law.

(b) An applicant in the right of way shall not place any small wireless facilities, support structures, poles, or decorative poles where they will interfere with any existing infrastructure or equipment and shall locate its lines and equipment in such a manner as not to interfere unnecessarily with the usual vehicular or pedestrian traffic patterns or with the rights or reasonable convenience of owners of property that abuts any right of way.

History.
Code 1981, § 36-66C-9, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-10. Collocation within historic district; limitations.

Notwithstanding any provision of this chapter to the contrary, within a historic district, an applicant may collocate a small wireless facility and may place or replace a pole, only upon satisfaction of the following:

(1) The issuance of a permit under subsection (a) of Code Section 36-66C-6; and

(2)(A) Compliance with any objective, reasonable, and nondiscriminatory aesthetic and structural requirements that have been made publicly available in writing by the authority at least 30 days prior to submission of the application; provided, however, that any such requirements may not have the effect of materially inhibiting any wireless provider's technology or service, and compliance with any such requirements shall not be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility; or

(B) In the absence of any such requirements, a replacement pole shall be substantially similar in height and appearance to the pole being replaced.

History.
Code 1981, § 36-66C-10, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-11. Alternate locations; certification.

For applications for new poles in the right of way in areas zoned for residential use, the authority may propose an alternate location in the right of way within 100 feet of the location set forth in the application, and the wireless provider shall use the authority's proposed alternate location unless the location imposes technical limits or significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and it shall provide a written summary of the basis for such determination.

History.
Code 1981, § 36-66C-11, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-12. Requirements for use of decorative poles.

Notwithstanding any provision of this chapter to the contrary, an applicant may collocate a small wireless facility on a decorative pole, or may replace a decorative pole with a new decorative pole, in the event the existing decorative pole will not structurally support the attachment, only upon satisfaction of the following:

(1) The issuance of a permit under subsection (a) of Code Section 36-66C-6; and

(2)(A) Compliance with any objective and reasonable aesthetic and structural requirements that have been made publicly available in writing by the authority at least 30 days prior to submission of the application; provided, however, that any such requirements shall not have the effect of materially inhibiting any wireless provider's

technology or service, and compliance with any such requirements shall not be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility; or

(B) In the absence of any such requirements, a replacement decorative pole shall be substantially similar in height and appearance to the decorative pole being replaced.

The authority shall operate authority fixtures on the replaced decorative pole, and, absent an agreement to the contrary between the authority and the wireless provider that is confirmed by email or other writing, the authority shall take ownership of the new decorative pole.

History.
Code 1981, § 36-66C-12, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-13. Consolidated applications.

(a) An applicant may submit a single consolidated application, provided that such a consolidated application shall be for a geographic area no more than two miles in diameter and shall comply with this Code section. The denial of one or more small wireless facilities or poles in a consolidated application shall not delay the processing of any other small wireless facilities or poles in the same application. An authority may issue a single permit or multiple permits for the small wireless facilities and poles in a consolidated application.

(b) In a Class I Authority:

(1) A consolidated application for the placement of new poles and the collocation of one or more small wireless facilities on such new poles may include no more than ten poles and any associated small wireless facilities. While an applicant has applications, including consolidated applications, pending before the Class I Authority for review of 25 or more new poles and the collocation of associated small wireless facilities, the Class I Authority may, but shall not be required to, toll the processing requirements under Code Section 36-66C-7 for any application subsequently submitted by the same applicant for the placement of new poles and the collocation of associated small wireless facilities. The number of new poles with collocated small wireless facilities pending for review before the Class I Authority that may toll the processing requirements for subsequent applications pursuant to this paragraph shall increase to 30, effective July 1, 2020; to 35, effective July 1, 2021; to 40, effective July 1, 2022; to 45, effective July 1, 2023; and to 50, effective July 1, 2024; and

(2) A consolidated application for the collocation of small wireless facilities on existing poles or support structures may include no more

than 20 sites. While an applicant has applications, including consolidated applications, pending before the Class I Authority for review of 70 or more sites for the collocation of small wireless facilities on existing poles or support structures, the Class I Authority may, but shall not be required to, toll the processing requirements under Code Section 36-66C-7 for any application subsequently submitted by the same applicant for the collocation of small wireless facilities on existing poles or support structures. The number of sites for the collocation of small wireless facilities pending for review before the Class I Authority that may toll the processing requirements for subsequent applications pursuant to this subparagraph shall increase to 80, effective July 1, 2020; to 90, effective July 1, 2021; to 100, effective July 1, 2022; to 110, effective July 1, 2023; and to 120, effective July 1, 2024.

(c) In a Class II Authority:

(1) A consolidated application for the placement of new poles and the collocation of one or more small wireless facilities on such new poles may include no more than five poles and any associated small wireless facilities. While an applicant has applications, including consolidated applications, pending before the Class II Authority for review of 15 or more new poles and the collocation of associated small wireless facilities, the Class II Authority may, but shall not be required to, toll the processing requirements under Code Section 36-66C-7 for any application subsequently submitted by the same applicant for the placement of new poles and the collocation of associated small wireless facilities; and

(2) A consolidated application for the collocation of small wireless facilities on existing poles or support structures may include no more than 15 sites. While an applicant has applications, including consolidated applications, pending before the Class II Authority for review of 45 or more sites for the collocation of small wireless facilities on existing poles or support structures, the Class II Authority may toll the processing requirements under Code Section 36-66C-7 for any application subsequently submitted by the same applicant for the collocation of small wireless facilities on existing poles or support structures.

(d) In a Class III Authority:

(1) A consolidated application for the placement of new poles and the collocation of one or more small wireless facilities on such new poles may include no more than two poles and any associated small wireless facilities. While an applicant has applications, including consolidated applications, pending before the Class III Authority for review of eight or more new poles and the collocation of associated

small wireless facilities, the Class III Authority may, but shall not be required to, toll the processing requirements under Code Section 36-66C-7 for any application subsequently submitted by the same applicant for the placement of new poles and the collocation of associated small wireless facilities; and

(2) A consolidated application for the collocation of small wireless facilities on existing poles or support structures may include no more than six sites. While an applicant has applications, including consolidated applications, pending before the Class III Authority for review of 24 or more sites for the collocation of small wireless facilities on existing poles or support structures, the Class III Authority may, but shall not be required to, toll the processing requirements under Code Section 36-66C-7 for any application subsequently submitted by the same applicant for the collocation of small wireless facilities on existing poles or support structures.

(e) For purposes of subsections (b), (c), and (d) of this Code section:

(1) Small wireless facilities and poles that a wireless services provider applicant has requested a third party to deploy and that are included in a pending application by the third party shall be counted as pending requests by the wireless services provider applicant; and

(2) When the processing of an application is tolled pursuant to subsection (b), (c), or (d) of this Code section, the application is no longer counted as pending. As processing of applications is completed, the authority shall begin processing previously tolled applications in the order in which they were submitted, unless the applicant specifies a different order.

History.
Code 1981, § 36-66C-13, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2019, "of this Code section" was inserted in the first sentence of paragraph (e)(2).

36-66C-14. Resolution of conflicting requests.

If multiple applications are received by the authority to install two or more poles or decorative poles at the same location or to collocate two or more small wireless facilities on the same pole, decorative pole, or support structure, the authority shall resolve conflicting requests in an appropriate, reasonable, and nondiscriminatory manner.

History.
Code 1981, § 36-66C-14, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-15. Indemnification and liability.

(a) An authority shall not require a wireless provider to indemnify and hold the authority and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees arising from the wireless provider's activities in the public right of way under this chapter, except when a court of competent jurisdiction has found that the negligence of the wireless provider while conducting such activities caused the harm that resulted in such claims, lawsuits, judgments, costs, liens, losses, expenses, or fees or to require a wireless provider to obtain insurance naming the authority or its officers and employees an additional insured against any of the foregoing.

(b) In no event shall any authority or any officer, employee, or agent affiliated therewith, while in the performance of its or his or her official duties, be liable for any claim related to the siting, installation, maintenance, repair, replacement, relocation, permitting, or location of wireless equipment, facilities, poles, or infrastructure, including, but not limited to, any claim for destruction, damage, business interruption, or signal interference with other communications service providers wherein such siting, installation, maintenance, repair, replacement, relocation, permitting, or location was undertaken in substantial compliance with this chapter.

History.
Code 1981, § 36-66C-15, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-16. Extra services.

Absent an agreement to the contrary that is made public and that is available for adoption upon the same terms and conditions to any requesting wireless provider, an authority shall not require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or space on a utility pole or a wireless support structure for the authority, and such authority may not require an applicant to transfer small wireless facilities, poles, decorative poles, or support structures to the authority, provided that the authority may require transfer of an authority pole replaced by the applicant to accommodate its collocation.

History.
Code 1981, § 36-66C-16, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-17. Application if prior agreement in place.

If an authority and a wireless provider entered into an agreement addressing the subject matter of this chapter prior to October 1, 2019:

(1) This chapter shall not apply until such agreement expires or is terminated pursuant to its terms with regard to poles, decorative poles, support structures, replacement poles, and small wireless facilities installed pursuant to such agreement prior to October 1, 2019; and

(2) Otherwise, the provisions of this chapter shall apply to poles, decorative poles, support structures, replacement poles, and small wireless facilities installed on or after October 1, 2019.

History.
Code 1981, § 36-66C-17, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-18. Limitations.

Except to the extent authorized by current or future federal law, nothing in this chapter shall authorize this state or any political subdivision thereof, including, but not limited to, an authority, to require small wireless facility deployment or to regulate wireless services.

History.
Code 1981, § 36-66C-18, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-19. Conflicting provisions.

In the event of any conflict between the provisions of this chapter and the provisions of Chapter 66B of this title, this chapter shall control as to the collocation of small wireless facilities and the construction, installation, maintenance, modification, operation, and replacement of poles or support structures by wireless providers in the right of way.

History.
Code 1981, § 36-66C-19, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-20. Wireline backhaul facilities not addressed; no communication services authorized; utilization of rights of ways.

(a) The construction, installation, maintenance, modification, operation, and replacement of wireline backhaul facilities in the right of way are not addressed by this chapter, and any such activity shall comply

with Code Section 46-5-1, Chapter 76 of this title, and other applicable law.

(b) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this chapter shall not authorize the provision of any communications services.

(c) Except as provided in this chapter or otherwise expressly authorized by state or federal law, an authority shall not adopt or enforce any ordinances, regulations, or requirements as to the placement or operation of communications facilities in a right of way by a communications services provider authorized by state or local law to operate in a right of way, regulate any communications services, or impose or collect any tax, fee, or charge for the provision of communications services over the communications services provider's communications facilities in a right of way.

(d) This chapter shall not apply to an authority to the extent that such authority uses communications facilities to provide free Wi-Fi services to the public.

History.
Code 1981, § 36-66C-20, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

36-66C-21. No relief of duties.

Nothing in this chapter relieves any person of any duties set forth in Chapter 9 of Title 25.

History.
Code 1981, § 36-66C-21, enacted by Ga. L. 2019, p. 236, § 1/SB 66.

CHAPTER 67

ZONING PROPOSAL REVIEW PROCEDURES

Sec.
36-67-1 through 36-67-6. [Reserved].

36-67-1 through 36-67-6. [Reserved]

History.
Ga. L. 1985, p. 1178, § 1; Ga. L. 1992, p. 2202, § 1; Ga. L. 1992, p. 3017, § 1; Ga. L. 2002, p. 1473, § 1; repealed by Ga. L. 2012, p. 351, § 1/HB 1089, effective April 19, 2012.

Editor's notes.
Ga. L. 2012, p. 351, § 1/HB 1089 repealed and reserved this chapter, effective April 19, 2012.

CHAPTER 67A

CONFLICT OF INTEREST IN ZONING ACTIONS

Sec.
36-67A-1. Definitions.
36-67A-2. Disclosure of financial interests.
36-67A-3. Disclosure of campaign contributions.
36-67A-4. Penalties.
36-67A-5. Appointment of disinterested special master if governing authority unable to attain a quorum.
36-67A-6. First time adoption of ordinance or revision of ordinance initiated pursuant to a comprehensive plan.

Cross references.

Ethics and Efficiency in Government Act, § 28-11-1 et seq.

Codes of ethics and conflicts of interest, § 45-10-1 et seq.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1986, Chapter 85, as enacted by Ga. L. 1986, p. 1269, § 1, was redesignated as Chapter 67A.

Law reviews.

For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

For annual survey of law of real property, see 38 Mercer L. Rev. 319 (1986).

For note on 1991 amendments to this chapter, see 8 Ga. St. U.L. Rev. 114 (1992).

36-67A-1. Definitions.

As used in this chapter, the term:

(1) "Applicant" means any person who applies for a rezoning action and any attorney or other person representing or acting on behalf of a person who applies for a rezoning action.

(2) "Business entity" means any corporation, partnership, limited partnership, firm, enterprise, franchise, association, or trust.

(2.1) "Campaign contribution" means a "contribution" as defined in paragraph (7) of Code Section 21-5-3.

(3) "Financial interest" means all direct ownership interests of the total assets or capital stock of a business entity where such ownership interest is 10 percent or more.

(4) "Local government" means any county or municipality of this state.

(5) "Local government official" means any member of the governing authority of a local government or any member of a planning or zoning commission.

(6) "Member of the family" means the spouse, mother, father, brother, sister, son, or daughter of a local government official.

(6.1) "Opponent" means any person who opposes a rezoning action

or any attorney or other person representing or acting on behalf of a person who opposes a rezoning action.

(6.2) "Oppose" means to appear before, discuss with, or contact, either orally or in writing, any local government or local government official and argue against a rezoning action.

(6.3) "Person" means an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

(7) "Property interest" means the direct ownership of real property and includes any percentage of ownership less than total ownership.

(8) "Real property" means any tract or parcel of land and, if developed, any buildings or structures located on the land.

(9) "Rezoning action" means action by local government adopting an amendment to a zoning ordinance which has the effect of rezoning real property from one zoning classification to another.

History.
Code 1981, § 36-67A-1, enacted by Ga. L. 1986, p. 1269, § 1; Ga. L. 1991, p. 1365, § 1; Ga. L. 2005, p. 859, § 24/HB 48.

Editor's notes.
Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Law reviews.
For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).
For article on the 2005 amendment of this Code section, see 22 Ga. St. U.L. Rev. 119 (2005).

RESEARCH REFERENCES

ALR.
Bias or interest of administrative officer sitting in zoning proceeding as necessitating disqualification of officer or affecting validity of zoning decision, 4 A.L.R.6th 263.

36-67A-2. Disclosure of financial interests.

A local government official who knew or reasonably should have known he or she:

(1) Has a property interest in any real property affected by a rezoning action which that official's local government will have the duty to consider;

(2) Has a financial interest in any business entity which has a property interest in any real property affected by a rezoning action which that official's local government will have the duty to consider; or

(3) Has a member of the family having any interest described in paragraph (1) or (2) of this Code section

shall immediately disclose the nature and extent of such interest, in

writing, to the governing authority of the local government in which the local government official is a member. The local government official who has an interest as defined in paragraph (1) or (2) of this Code section shall disqualify himself from voting on the rezoning action. The disqualified local government official shall not take any other action on behalf of himself or any other person to influence action on the application for rezoning. The disclosures provided for in this Code section shall be a public record and available for public inspection at any time during normal working hours.

History.
Code 1981, § 36-67A-2, enacted by Ga. L. 1986, p. 1269, § 1; Ga. L. 1991, p. 1365, § 1.

RESEARCH REFERENCES

ALR.
Bias or interest of administrative officer sitting in zoning proceeding as necessitating disqualification of officer or affecting validity of zoning decision, 4 A.L.R.6th 263.

JUDICIAL DECISIONS

Statute of limitations. — Because the tolling exception to the statute of limitation applied to the failure to disclose a financial interest charge, and the prosecution for that charge was timely commenced after the crime was discovered, the trial court did not err by denying the defendant's plea in bar based on the expiration of the statute of limitation. Kenerly v. State, 325 Ga. App. 412, 750 S.E.2d 822, 2013 Ga. App. LEXIS 988 (2013).

36-67A-3. Disclosure of campaign contributions.

(a) When any applicant for rezoning action has made, within two years immediately preceding the filing of that applicant's application for the rezoning action, campaign contributions aggregating $250.00 or more to a local government official who will consider the application, it shall be the duty of the applicant to file a disclosure report with the governing authority of the respective local government showing:

(1) The name and official position of the local government official to whom the campaign contribution was made; and

(2) The dollar amount and description of each campaign contribution made by the applicant to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.

(b) The disclosures required by subsection (a) of this Code section shall be filed within ten days after the application for the rezoning action is first filed.

(c) When any opponent of a rezoning action has made, within two years immediately preceding the filing of the rezoning action being

opposed, campaign contributions aggregating $250.00 or more to a local government official of the local government which will consider the application, it shall be the duty of the opponent to file a disclosure with the governing authority of the respective local government showing:

(1) The name and official position of the local government official to whom the campaign contribution was made; and

(2) The dollar amount and description of each campaign contribution made by the opponent to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.

(d) The disclosure required by subsection (c) of this Code section shall be filed at least five calendar days prior to the first hearing by the local government or any of its agencies on the rezoning application.

History. Code 1981, § 36-67A-3, enacted by Ga. L. 1986, p. 1269, § 1; Ga. L. 1991, p. 1365, § 1; Ga. L. 1993, p. 91, § 36.

36-67A-4. Penalties.

Any person knowingly failing to comply with the requirements of this chapter or violating the provisions of this chapter shall be guilty of a misdemeanor.

History. Code 1981, § 36-67A-4, enacted by Ga. L. 1986, p. 1269, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1991, p. 1365, § 1.

JUDICIAL DECISIONS

Statute of limitations. — Because the tolling exception to the statute of limitation applied to the failure to disclose a financial interest charge, and the prosecution for that charge was timely commenced after the crime was discovered, the trial court did not err by denying the defendant's plea in bar based on the expiration of the statute of limitation. Kenerly v. State, 325 Ga. App. 412, 750 S.E.2d 822, 2013 Ga. App. LEXIS 988 (2013).

36-67A-5. Appointment of disinterested special master if governing authority unable to attain a quorum.

(a) Where one or more disqualifications required by this chapter result in the inability of the governing authority of the county or municipality to attain a quorum for the purpose of making a final decision when considering a rezoning action, the governing authority immediately shall petition the superior court wherein the property which is the subject of the rezoning is located for appointment of a disinterested special master for the purpose of hearing evidence regarding the proposed rezoning action and making a recommendation to the petitioning governing authority. The court, in its order appointing the special master, shall give such directions for notice and the service

thereof as well as for the time in which a hearing must be held and recommendations issued as are just and appropriate under the circumstances and as are consistent with this chapter.

(b) The disinterested special master provided for in this Code section shall be appointed by the judge or judges of the superior courts of each judicial circuit and shall discharge the duties provided for in this Code section. The special master so appointed must be a competent attorney at law, be of good standing in his profession, and have at least three years' experience in the practice of law. He shall hold office at the pleasure of the judge and shall be removable at any time with or without cause. The court, in its order appointing the special master, shall designate the person or entity responsible for compensating the special master at a rate not less than $50.00 per day nor more than $250.00 per day for the time actually devoted to the hearing and consideration of the matter.

(c) The special master shall consider any factors relevant in balancing the interest in promoting the public health, safety, morality, or general welfare against the right to the unrestricted use of property.

(d) The hearing provided for in this Code section and all records pertinent thereto shall be open and available to the public.

(e) Nothing contained in this Code section shall be construed as a delegation of the final decision-making powers of the governing authority to the special master and the recommendation of the special master is not a final decision as to the rezoning action. Where a special master has been appointed and has made a recommendation, the disqualification requirement of Code Section 36-67A-2 shall be waived.

History.
Code 1981, § 36-67A-5, enacted by Ga. L. 1991, p. 1365, § 1.

Law reviews.
For article, "The New Special Master Rule — Uniform Superior Court Rule 46: Life Jackets for the Courts in the Perfect Storm," see 15 (No. 4) Ga. St. B.J. 20 (2009).

36-67A-6. First time adoption of ordinance or revision of ordinance initiated pursuant to a comprehensive plan.

Nothing in this chapter shall be construed to prohibit a local government official from voting on a zoning decision when the local government is adopting a zoning ordinance for the first time or when a local government is voting upon a revision of the zoning ordinance initiated by the local government pursuant to a comprehensive plan as defined in Chapter 70 of this title.

History.
Code 1981, § 36-67A-6, enacted by Ga. L. 1991, p. 1365, § 1.

CHAPTER 68

MERGER OF MUNICIPAL GOVERNMENT WITH COUNTY

Sec.
36-68-1. Constitutional authority; purpose.
36-68-2. Optional features of enabling local law.
36-68-3. Mandatory features of enabling local law.
36-68-4. Conditions under which county containing no municipality deemed to constitute a consolidated government; election; consolidated government to constitute a municipal corporation as well as a county for certain purposes.

Law reviews.
For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

36-68-1. Constitutional authority; purpose.

This chapter is enacted pursuant to the authority of Article IX, Section III, Paragraph II, subparagraph (b) of the Constitution. It is the purpose of this chapter to grant authority to the General Assembly to provide by local law for a form of governmental reorganization whereby the charter of a municipality is repealed in order for the county in which the municipality is located to succeed to the corporate powers, functions, rights, assets, and liabilities of the municipality. This chapter shall be liberally construed to carry out effectively such purpose.

History.
Code 1981, § 36-68-1, enacted by Ga. L. 1986, p. 1080, § 1.

36-68-2. Optional features of enabling local law.

(a) Subject to the requirements of Code Section 36-68-3, when the charter of a municipality is repealed by local law as a part of achieving a governmental reorganization described in Code Section 36-68-1, the General Assembly may also provide by local law for any of the following matters:

(1) The form of government of the county which is the successor to the corporate powers, functions, rights, properties, and obligations of the municipality;

(2) The county to constitute a municipality as well as a county for the purposes of the application of the general laws and Constitution of this state;

(3) The exercise by the county of the powers vested in the former

municipality and in municipalities generally as well as the powers vested in the county and counties generally;

(4) The county to receive any grants or other types of funds or revenues which the former municipality was entitled to receive as well as grants or other types of funds or revenues which the county is entitled to receive;

(5) The status of the county relative to any municipalities, other than the municipality having its charter repealed, located wholly or partially within such county;

(6) The transfer of all assets and properties of the municipality to the county;

(7) The assumption by the county of all contractual and other obligations of the municipality;

(8) The transfer of employees of the municipality to the county and for the preservation of any rights of such employees and their beneficiaries existing under any retirement or pension system of the municipality; and

(9) Any other matters reasonably necessary or convenient to achieve and implement effectively a governmental reorganization described by Code Section 36-68-1.

(b) A local law enacted pursuant to the authority of subsection (a) of this Code section may provide for such procedures, requirements, and limitations as may be reasonably necessary to control the subjects included within such local law, and the provisions of said subsection (a) shall not be construed to limit the manner in which the General Assembly may by local law control the subjects described by said subsection (a).

History.
Code 1981, § 36-68-2, enacted by Ga. L. 1986, p. 1080, § 1; Ga. L. 1987, p. 3, § 36.

OPINIONS OF THE ATTORNEY GENERAL

County lines. — Cities located in more than one county may be consolidated with a county government, however, in the absence of a change in county lines or some additional general legislation to provide for consolidating governments of a city and more than one county, the city would have to give up some of the city's territory. 1998 Op. Att'y Gen. No. U98-10.

36-68-3. Mandatory features of enabling local law.

(a) Local laws enacted pursuant to the authority of this chapter shall be subject to the following requirements:

(1) A local law enacted pursuant to the authority of Code Section 36-68-2 shall provide for the creation of a special tax district consisting of the territory lying within the corporate boundaries of the municipality for the purpose of the successor county government levying a tax therein sufficient to retire the bonded indebtedness of the municipality which was outstanding on the effective date of the repeal of the charter of the municipality;

(2) The effectiveness of local laws described in paragraphs (3) and (4) of this subsection shall be contingent upon their approval by the governing authorities of the affected municipality and county prior to the referendums provided for in paragraphs (3) and (4) of this subsection;

(3) The effectiveness of a local law repealing the charter of a municipality shall be contingent upon its approval by a majority of the voters voting within the municipality and upon the parallel local law described by paragraph (4) of this subsection becoming effective; and

(4) The effectiveness of a local law enacted pursuant to the authority of Code Section 36-68-2 shall be contingent upon its approval by a majority of the voters voting throughout the territorial boundaries of the applicable county and upon the parallel local law described by paragraph (3) of this subsection becoming effective.

(b) The requirement for a referendum to repeal a municipal charter under paragraph (3) of subsection (a) of this Code section shall apply to the repeal of a municipal charter only when such repeal is a part of a governmental reorganization described by Code Section 36-68-1.

History. Code 1981, § 36-68-3, enacted by Ga. L. 1986, p. 1080, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1993, p. 91, § 36.

36-68-4. Conditions under which county containing no municipality deemed to constitute a consolidated government; election; consolidated government to constitute a municipal corporation as well as a county for certain purposes.

(a) If as of July 1, 2007, or at any time thereafter there exists in this state a county in which no part of any municipal corporation is located, then the governing authority of that county may elect that the county shall thenceforth be deemed to be and constituted as a consolidated government for purposes of the laws of this state. In order to be effective under this Code section, the election by the county governing authority must comply with all of the following conditions:

(1) The election shall be carried out by the adoption of an appro-

priate resolution by the county governing authority which must be adopted by unanimous vote of the members of the governing authority voting thereon and ratified by a majority of the electors of the county voting in a referendum;

(2) The election must be made by the county governing authority within one calendar year after July 1, 2007, or such later date as this Code section becomes applicable to the county;

(3) The county must at the time of election be providing at least three of the services specified in subsection (b) of Code Section 36-30-7.1; and

(4) Within 30 days after the adoption of the resolution and ratification by the electors of the county a certification of election must be filed by the county with the Department of Community Affairs in such form and manner as may be specified by the department.

(b) A county which is constituted as a consolidated government under this Code section shall constitute a municipal corporation as well as a county for the purpose of the application of the general laws and Constitution of this state. Such a county may exercise the powers vested in municipalities generally as well as the powers vested in the county by general or local law. When similar but not identical laws apply to counties and municipalities and a determination must be made as to which law applies, the county which is constituted as a consolidated government may elect which law to proceed under.

(c) When a county has become subject to this Code section, no municipal corporation may thereafter be created in or extend into the county.

History.

Code 1981, § 36-68-4, enacted by Ga. L. 2007, p. 588, § 1/HB 109.

Law reviews.

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

CHAPTER 69

MUTUAL AID

Sec.		Sec.	
36-69-1.	Short title.	36-69-5.	Responsibility for expenses and compensation of employees.
36-69-2.	"Local emergency" defined.	36-69-6.	Applicability of privileges, immunities, exemptions, and benefits.
36-69-3.	Extraterritorial cooperation and assistance to local law enforcement agencies or fire departments; commander of operations.	36-69-7.	Liability for acts or omissions of responding agency employees.
36-69-3.1.	Out-of-state contracts and mutual aid agreements.	36-69-8.	Construction of chapter.
36-69-4.	Powers and duties of political subdivision, University System of Georgia, and Technical System of Georgia employees when rendering aid.	36-69-9.	Cumulative authority of chapter.
		36-69-10.	Emergencies to which chapter not applicable.

36-69-1. Short title.

This chapter shall be known and may be cited as the "Georgia Mutual Aid Act."

History.
Code 1981, § 36-69-1, enacted by Ga. L. 1988, p. 887, § 1.

36-69-2. "Local emergency" defined.

As used in this chapter, the term "local emergency" means the existence of conditions of extreme peril to the safety of persons and property within the territorial limits of a political subdivision of the state or on a campus of an institution within the University System of Georgia or the Technical College System of Georgia caused by natural disasters, riots, civil disturbances, or other situations presenting major law enforcement and other public safety problems, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision of the state and which require the combined forces of other political subdivisions of the state to combat.

History.
Code 1981, § 36-69-2, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 1; Ga. L. 2018, p. 550, § 5-4/SB 407.
Editor's notes.
Ga. L. 2018, p. 550, § 5-4/SB 407, which amended this Code section, purported to amend Code Section 36-36-2 but actually amended Code Section 36-69-2.

36-69-3. Extraterritorial cooperation and assistance to local law enforcement agencies or fire departments; commander of operations.

(a)(1) Upon the request of a local law enforcement agency for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, the chief of police or public safety director of any municipality or chief of police or public safety director of any county police force may, with the approval of the governing authority of any such officer's political subdivision, and the sheriff of any county may cooperate with and render assistance extraterritorially to such local law enforcement agency requesting the same.

(2)(A) Upon the request of a local law enforcement agency for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, the public safety director or chief of police of any institution within the University System of Georgia or the Technical College System of Georgia may, with the approval of the president of such institution, cooperate with and render assistance extraterritorially to such law enforcement agency requesting the same.

(B) Upon the request for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, which request is made by a public safety director or chief of police of any institution within the University System of Georgia or the Technical College System of Georgia after approval by the president of such institution, the chief of police or public safety director of any municipality or any county police force may, with the approval of the governing authority of any such officer's political subdivision and the sheriff of the county, cooperate with and render assistance extraterritorially to such law enforcement agency of the institution requesting the same.

(b) Upon the request of any local fire department for assistance in a local emergency, in preventing or suppressing a fire, or in protecting life and property, the fire chief or public safety director of any local political subdivision may, with the approval of the governing authority of such political subdivision, cooperate with and render assistance extraterritorially to such local fire department requesting the same.

(c) Upon the request of any local law enforcement agency or local director of emergency medical services for assistance in a local emer-

gency or in transporting wounded, injured, or sick persons to a place where medical or hospital care is furnished, emergency medical technicians employed by a political subdivision may, with the approval of the governing authority of such political subdivision, cooperate with and render assistance extraterritorially to such local law enforcement agency or local director of emergency services.

(d) Authorization for furnishing assistance extraterritorially may be granted by the sheriff of any county or the governing authority of a local political subdivision or the president of an institution within the University System of Georgia or the Technical College System of Georgia to any of its agencies or employees covered by this Code section prior to any occurrence resulting in the need for such assistance; provided, however, that any prior authorization granted by the president of an institution within the University System of Georgia or the Technical College System of Georgia for the furnishing of assistance extraterritorially must be submitted to and approved by the board of regents or the State Board of the Technical College System of Georgia, respectively, before it becomes effective. Such authorization may provide limitations and restrictions on such assistance furnished extraterritorially, provided that such limitations and restrictions do not conflict with the provisions of Code Sections 36-69-4 through 36-69-6.

(e) The senior officer of the public safety agency of a political subdivision or institution within the University System of Georgia or the Technical College System of Georgia which requests assistance in a local emergency as provided in this Code section shall be in command of the local emergency as to strategy, tactics, and overall direction of the operations with respect to the public safety officers and employees rendering assistance extraterritorially at the request of such public safety agency. All orders or directions regarding the operations of the public safety officers and employees rendering assistance extraterritorially shall be relayed to the senior officer in command of the public safety agency rendering assistance extraterritorially.

History.
Code 1981, § 36-69-3, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 2; Ga. L. 2018, p. 550, § 5-3/SB 407.

Law reviews.
For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018).

36-69-3.1. Out-of-state contracts and mutual aid agreements.

Any county or municipality in this state shall be authorized to enter into contracts and mutual aid agreements with counties or municipalities of any other state or with any agency of the United States for the provision of law enforcement services in a local emergency to the extent that the laws of such other state or the United States permit such joint contracts or agreements to furnish one another assistance in law enforcement. Any such contract or mutual aid agreement shall have

incorporated therein the provisions of Code Sections 36-69-4 through 36-69-8. Any such contract or mutual aid agreement entered into by a county shall not become effective until approved by the sheriff of such county.

History.
Code 1981, § 36-69-3.1, enacted by Ga. L. 1991, p. 1311, § 1.

36-69-4. Powers and duties of political subdivision, University System of Georgia, and Technical System of Georgia employees when rendering aid.

Whenever the employees of any political subdivision or institution within the University System of Georgia or the Technical College System of Georgia are rendering aid outside their political subdivision or campus, respectively, and pursuant to the authority contained in this chapter, such employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivision or on the campus of the institution in which they are normally employed.

History.
Code 1981, § 36-69-4, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 3; Ga. L. 2018, p. 550, § 5-4/SB 407.
Editor's notes.
Ga. L. 2018, p. 550, § 5-4/SB 407, which amended this Code section, purported to amend Code Section 36-36-4 but actually amended Code Section 36-69-4.

36-69-5. Responsibility for expenses and compensation of employees.

Unless otherwise provided by contract, the political subdivision or institution within the University System of Georgia or the Technical College System of Georgia which furnishes any equipment pursuant to this chapter shall bear the loss or damage to such equipment and shall pay any expense incurred in the operation and maintenance thereof. Unless otherwise provided by contract, the political subdivision or institution within the University System of Georgia or the Technical College System of Georgia furnishing aid pursuant to this chapter shall compensate its employees during the time of rendering of such aid and shall defray the actual travel and maintenance expenses of such employees while they are rendering such aid. Such compensation shall include any amounts paid or due for compensation due to personal injury or death while such employees are engaged in rendering such aid.

History.
Code 1981, § 36-69-5, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 4; Ga. L. 2018, p. 550, § 5-4/SB 407.

Editor's notes.
Ga. L. 2018, p. 550, § 5-4/SB 407, which amended this Code section, purported to amend Code Section 36-36-5 but actually amended Code Section 36-69-5.

36-69-6. Applicability of privileges, immunities, exemptions, and benefits.

All of the privileges and immunities from liability; exemption from laws, ordinances, and rules; and all pension, insurance, relief, disability, workers' compensation, salary, death, and other benefits which apply to the activity of such officers, agents, or employees of any such political subdivision or institution within the University System of Georgia or the Technical College System of Georgia when performing their respective functions within the territorial limits of their respective political subdivisions or campuses shall apply to such officers, agents, or employees to the same degree, manner, and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this chapter relating to mutual aid. The provisions of this Code section shall apply with equal effect to paid, volunteer, and auxiliary employees.

History.
Code 1981, § 36-69-6, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 5; Ga. L. 2018, p. 550, § 5-4/SB 407.
Editor's notes.
Ga. L. 2018, p. 550, § 5-4/SB 407, which amended this Code section, purported to amend Code Section 36-36-6 but actually amended Code Section 36-69-6.

36-69-7. Liability for acts or omissions of responding agency employees.

Neither a public safety agency which requests assistance pursuant to Code Section 36-69-3 nor the political subdivision or institution of the University System of Georgia or the Technical College System of Georgia in which the public safety agency is located shall be liable for any acts or omissions of employees of a responding public safety agency rendering assistance extraterritorially under the provisions of this chapter.

History.
Code 1981, § 36-69-7, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 6; Ga. L. 2018, p. 550, § 5-4/SB 407.
Editor's notes.
Ga. L. 2018, p. 550, § 5-4/SB 407, which amended this Code section, purported to amend Code Section 36-36-7 but actually amended Code Section 36-69-7.

36-69-8. Construction of chapter.

(a) The provisions of this chapter shall not be construed as creating a duty on the part of any public safety agency of a local political

subdivision or institution within the University System of Georgia or the Technical College System of Georgia to respond to a request from any public safety agency of another local political subdivision or institution of the University System of Georgia or the Technical College System of Georgia as authorized in Code Section 36-69-3.

(b) Notwithstanding the provisions of subsection (e) of Code Section 36-69-3, the provisions of this chapter shall not be construed as creating a duty on the part of a public safety agency rendering assistance extraterritorially to stay at the scene of a local emergency for any length of time. Such responding public safety agency may depart the scene of a local emergency at any time at the discretion of the officer in command of the public safety agency rendering assistance extraterritorially at the scene of the local emergency.

History.
Code 1981, § 36-69-8, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 7; Ga. L. 2018, p. 550, § 5-4/SB 407.
Editor's notes.
Ga. L. 2018, p. 550, § 5-4/SB 407, which amended this Code section, purported to amend Code Section 36-36-8 but actually amended Code Section 36-69-8.

36-69-9. Cumulative authority of chapter.

(a) The authority of this chapter shall be cumulative to and in addition to mutual aid resource pacts authorized under Chapter 6 of Title 25 or contracts between political subdivisions for the provision of services authorized under Section II of Article IX of the Constitution.

(b) The authority of this chapter shall be cumulative to and in addition to any rights, powers, or authority exercised by the sheriffs of this state as of July 1, 1988.

History.
Code 1981, § 36-69-9, enacted by Ga. L. 1988, p. 887, § 1.

36-69-10. Emergencies to which chapter not applicable.

The provisions of this chapter shall not apply to any emergency in which the chief executive of a political subdivision assigns or makes available for duty the employees, property, or equipment of the subdivision relating to fire fighting, engineering, rescue, health, medical and related services, and to police, transportation, construction, and similar items or services for emergency management purposes outside of the physical limits of the subdivision as provided in Code Section 38-3-27.

History.
Code 1981, § 36-69-10, enacted by Ga. L. 1988, p. 887, § 1.

CHAPTER 69A

INTERLOCAL COOPERATION

Sec.		Sec.	
36-69A-1.	Short title.		to and approval by officers or agencies with applicable powers of control.
36-69A-2.	Purpose.	36-69A-7.	Powers of counties or municipalities in carrying out agreements.
36-69A-3.	Definitions.	36-69A-8.	Contracts with agencies of other states for the performance of governmental services, activities, or undertakings.
36-69A-4.	Joint exercise of powers, privileges, or authority; agreements with public agencies of other states; required information and provisions; limitations on contracts.	36-69A-9.	Cumulative authority.
36-69A-5.	Preservation of sovereign immunity.		
36-69A-6.	Submission of agreements		

36-69A-1. Short title.

This chapter shall be known and may be cited as the "Interlocal Cooperation Act."

History.
Code 1981, § 36-69A-1, enacted by Ga. L. 2005, p. 686, § 1/HB 570.

36-69A-2. Purpose.

It is the purpose of this chapter to permit counties and municipalities in this state the most efficient use of their powers by enabling them to cooperate with localities in other states on a basis of mutual advantage and provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

History.
Code 1981, § 36-69A-2, enacted by Ga. L. 2005, p. 686, § 1/HB 570.

36-69A-3. Definitions.

As used in this chapter, the term:

(1) "Public agency" means:

(A) Any political subdivision of this state other than a county school district or independent school district;

(B) Any volunteer fire department;

(C) Any volunteer rescue squad;

(D) Any agency of the state government or of the United States; and

(E) Any political subdivision of another state.

(2) "State" means a state of the United States.

History.
Code 1981, § 36-69A-3, enacted by Ga. L. 2005, p. 686, § 1/HB 570.

36-69A-4. Joint exercise of powers, privileges, or authority; agreements with public agencies of other states; required information and provisions; limitations on contracts.

(a) Any power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. The authority for joint or cooperative action of political subdivisions shall apply to powers, privileges, or authority vested in, funded by, or under the control of their governing bodies.

(b) Any public agency in this state may enter into agreements with a public agency in another state for joint or cooperative action pursuant to the provisions of this chapter to effectuate the purposes of this chapter. Appropriate action of the governing bodies of the participating public agencies by resolution or otherwise pursuant to law shall be necessary before any such agreement may enter into force. Any such agreement shall be subject to the requirements provided by the Constitution and general laws of this state with respect to intergovernmental contracts.

(c) Any such agreement shall specify the following:

(1) The precise organization, composition, and nature of any separate legal or administrative entity or entities created thereby, which may include, but is not limited to, a corporation not for profit, together with the powers delegated to such a corporation;

(2) Its purpose or purposes;

(3) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget for such undertaking;

(4) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and

(5) Any other necessary and proper matters.

(d) In the event that the agreement does not establish a separate legal entity or entities to conduct the joint or cooperative undertaking, the agreement shall, in addition to the requirements of subsection (c) of this Code section contain the following:

(1) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented; and

(2) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(e)(1) No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law, except that, to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity or entities created by an agreement made hereunder, those performances may be offered in satisfaction of the obligation or responsibility.

(2)(A) A separate legal or administrative entity, created by interlocal agreement under this chapter, is not empowered to:

(i) Assess, levy, or collect ad valorem taxes;

(ii) Issue general obligation bonds; or

(iii) Exercise the power of eminent domain.

(B) However, to the extent that the participating political subdivisions possess such powers, the political subdivisions may exercise such powers on behalf and for the benefit of the separate legal or administrative entity.

(f)(1) Any agreement under this chapter shall contain provisions for the following:

(A) The contract shall terminate absolutely and without further obligation on the part of the county or municipality at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed as provided in this Code section;

(B) The contract may provide for automatic renewal unless positive action is taken by the county or municipality to terminate such contract, and the nature of such action shall be determined by the county or municipality and specified in the contract;

(C) The contract shall state the total obligation of the county or municipality for the calendar year of execution and shall further

state the total obligation which will be incurred in each calendar year renewal term, if renewed; and

(D) The contract shall provide that title to any supplies, materials, equipment, or other personal property shall remain in the vendor until fully paid for by the county or municipality.

(2) In addition to the provisions enumerated in paragraph (1) of this subsection, any contract authorized by this chapter may include:

(A) A provision which requires that the contract will terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the county or municipality under the contract; or

(B) Any other provision reasonably necessary to protect the interests of the county or municipality.

(3) Any contract developed under this chapter containing the provisions enumerated in paragraph (1) of this subsection shall be deemed to obligate the county or municipality only for those sums payable during the calendar year of execution or, in the event of a renewal by the county or municipality, for those sums payable in the individual calendar year renewal term.

(4) No contract developed and executed pursuant to this chapter shall be deemed to create a debt of the county or municipality for the payment of any sum beyond the calendar year of execution or, in the event of a renewal, beyond the calendar year of such renewal.

(5) No contract developed and executed pursuant to this chapter may be delivered if the principal portion of such contract, when added to the amount of debt incurred by any county or municipality pursuant to Article IX, Section V, Paragraph I of the Constitution of Georgia, exceeds 10 percent of the assessed value of all taxable property within such county or municipality.

History.
Code 1981, § 36-69A-4, enacted by Ga. L. 2005, p. 686, § 1/HB 570.

36-69A-5. Preservation of sovereign immunity.

An agreement entered into pursuant to this chapter between or among one or more counties or municipalities of this state and one or more public agencies of another state or of the United States shall not constitute a waiver of sovereign immunity. All of the privileges and immunities from liability; exemption from laws, ordinances, and rules; and all pension, insurance, relief, disability, workers' compensation, salary, death, and other benefits which apply to the activity of such officers, agents, or employees of any such political subdivision or

institution within the University System of Georgia when performing their respective functions within the territorial limits of their respective political subdivisions or campuses shall apply to such officers, agents, or employees to the same degree, manner, and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this chapter relating to mutual aid. The provisions of this Code section shall apply with equal effect to paid, volunteer, and auxiliary employees. In any case or controversy involving performance or interpretation thereof or liability thereunder, no action may be brought except in the state or superior court of the county in this state which executed the agreement or the county in this state in which a city in this state is located which executed the agreement.

History.
Code 1981, § 36-69A-5, enacted by Ga. L. 2005, p. 686, § 1/HB 570.

Law reviews.
For comment, "Keeping the Arms in Touch: Taking Political Accountability Seriously in the Eleventh Amendment Arm of the State Doctrine," see 64 Emory L.J. 819 (2015).

36-69A-6. Submission of agreements to and approval by officers or agencies with applicable powers of control.

In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by such state officer or agency as to all matters within such officer's or agency's jurisdiction.

History.
Code 1981, § 36-69A-6, enacted by Ga. L. 2005, p. 686, § 1/HB 570.

36-69A-7. Powers of counties or municipalities in carrying out agreements.

Any county or municipality entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

History.
Code 1981, § 36-69A-7, enacted by Ga. L. 2005, p. 686, § 1/HB 570.

36-69A-8. Contracts with agencies of other states for the performance of governmental services, activities, or undertakings.

Any one or more counties or municipalities in this state may contract with any one or more public agencies of another state to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; provided, however, that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

History.
Code 1981, § 36-69A-8, enacted by Ga. L. 2005, p. 686, § 1/HB 570.

36-69A-9. Cumulative authority.

The authority of this chapter shall be cumulative to and in addition to any rights, powers, or authority otherwise authorized under the Constitution or general laws of this state.

History.
Code 1981, § 36-69A-9, enacted by Ga. L. 2005, p. 686, § 1/HB 570.

CHAPTER 70

COORDINATED AND COMPREHENSIVE PLANNING AND SERVICE DELIVERY BY COUNTIES AND MUNICIPALITIES

Article 1

Planning

Sec.

36-70-1. Legislative intent and purpose.

36-70-2. Definitions.

36-70-3. Powers of municipalities and counties.

36-70-4. Municipality and county as members of regional commissions; membership dues; participation in compiling Department of Community Affairs data base.

36-70-5. Effect of chapter on county and municipal zoning powers.

36-70-6. Promotion of deployment of broadband services by broadband services providers.

Article 2

(Effective until January 1, 2026.) Service Delivery

36-70-20. (Effective until January 1, 2026.) Legislative intent.

36-70-21. (Effective until January 1, 2026.) Deadline date for implementation agreement.

36-70-22. (Effective until January 1, 2026.) Date for process initiation.

36-70-23. (Effective until January 1, 2026.) Required components.

36-70-24. (Effective until January 1, 2026.) Criteria for service delivery strategy.

36-70-25. (Effective until January 1, 2026.) Approval; extension of deadline date.

36-70-25.1. (Effective until January 1, 2026.) Dispute resolution procedures.

36-70-26. (Effective until January 1, 2026.) Required filing; verification of components.

36-70-27. (Effective until January 1, 2026.) Limitation of funding for projects inconsistent with strategy.

36-70-28. (Effective until January 1, 2026.) Review and revision of approved strategy.

Article 2

[Effective January 1, 2026] Service Delivery

36-70-20. (Effective January 1, 2026.) Legislative intent.

36-70-21. Implementation agreements.

36-70-22. Date for process initiation; notice to municipalities and counties impacted.

36-70-22.1. Response proposals.

36-70-23. (Effective January 1, 2026.) Required components.

36-70-23.1. (Effective January 1, 2026.) State-wide mapping standards.

36-70-24. (Effective January 1, 2026.) Criteria for service delivery strategy.

36-70-25. (Effective January 1, 2026.) Development and approval of local government service delivery strategy.

36-70-25.1. (Effective January 1, 2026.) Mediation process.

36-70-25.2. Nonbinding arbitration process.

36-70-25.3. Judicial resolution of certain disputes.

36-70-26. (Effective January 1, 2026.) Required filing; verification of components; failure to file; rules and regulations.

36-70-27. (Effective January 1, 2026.) Limitation of funding; sanctions.

Sec.
36-70-28. (Effective January 1, 2026.) Review and revision of approved strategy.

Sec.
36-70-29. (Effective January 1, 2026.) Restrictions on rules and regulations.

Administrative rules and regulations.

Grants of the OneGeorgia Authority, Official Compilation of the Rules and Regulations of the State of Georgia, Rule 413-1-.01 et seq.

The Life Sciences Facilities Fund Loan Program Description, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Affairs, Rule 110-25-1-.01 et seq.

ARTICLE 1

PLANNING

36-70-1. Legislative intent and purpose.

The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments. In addition, the natural resources, environment, and vital areas of the state are of vital importance to the state and its citizens. The state has an essential public interest in protecting and preserving the natural resources, the environment, and the vital areas of the state. The purpose of this article is to provide for local governments to serve these essential public interests of the state by authorizing and promoting the establishment, implementation, and performance of coordinated and comprehensive planning by municipal governments and county governments, and this article shall be construed liberally to achieve that end. This article is enacted pursuant to the authority granted the General Assembly in the Constitution of the State of Georgia, including, but not limited to, the authority provided in Article III, Section VI, Paragraphs I and II(a)(1) and Article IX, Section II, Paragraphs III and IV.

History.

Code 1981, § 36-70-1, enacted by Ga. L. 1989, p. 1317, § 4.1; Ga. L. 1997, p. 1567, § 1.

Law reviews.

For article, "Georgia Wetlands: Values, Trends, and Legal Status," see 41 Mercer L. Rev. 791 (1990).

For annual survey on local government law, see 69 Mercer L. Rev. 205 (2017).

36-70-2. Definitions.

As used in this chapter, the term:

(1) "Comprehensive plan" means any plan by a county or municipality covering such county or municipality proposed or prepared pursuant to the minimum standards and procedures for preparation

of comprehensive plans and for implementation of comprehensive plans established by the department.

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

(3) "County" means any county of this state.

(4) "Department" means the Department of Community Affairs.

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

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

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

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

(C) The holding of a municipal election.

(5.2) "Local government" means any county as defined in paragraph (3) of this Code section or any municipality as defined in paragraph (7) of this Code section. Such term does not include any school district of this state nor any sheriff, clerk of the superior court, judge of the probate court, or tax commissioner or the office, personnel, or services provided by such elected officials.

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

(6) "Minimum standards and procedures" means the minimum standards and procedures for preparation of comprehensive plans, for implementation of comprehensive plans, and for participation in the coordinated and comprehensive planning process, as established by the department, in accordance with Article 1 of Chapter 8 of Title 50. Minimum standards and procedures shall include any standards and procedures for such purposes prescribed by a regional commission for counties and municipalities within its region and approved in advance by the department.

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

(8) "Region" means the territorial area within the boundaries of operation for any regional commission, as such boundaries shall be established from time to time by the board of the department.

(9) "Regional commission" means a regional commission established under Article 2 of Chapter 8 of Title 50.

History.
Code 1981, § 36-70-2, enacted by Ga. L. 1989, p. 1317, § 4.1; Ga. L. 1992, p. 2056, § 1; Ga. L. 1993, p. 91, § 36; Ga. L. 1997, p. 1567, § 1; Ga. L. 2004, p. 585, § 1; Ga. L. 2008, p. 181, § 16/HB 1216; Ga. L. 2025, p. 1029, § 36(29)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, deleted "of the State of Georgia created pursuant to Article 1 of Chapter 8 of Title 50" at the end of paragraph (4) and substituted "Such term" for "The term" in paragraph (5.2).

36-70-3. Powers of municipalities and counties.

The governing bodies of municipalities and counties are authorized:

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

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

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

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

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

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

History.
Code 1981, § 36-70-3, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 2008, p. 181, § 16/HB 1216.

36-70-4. Municipality and county as members of regional commissions; membership dues; participation in compiling Department of Community Affairs data base.

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

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

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

History. Code 1981, § 36-70-4, enacted by Ga. L. 1989, p. 1317, § 4.1; Ga. L. 1997, p. 1567, § 1; Ga. L. 2008, p. 181, § 16/HB 1216.

36-70-5. Effect of chapter on county and municipal zoning powers.

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

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

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

History.
Code 1981, § 36-70-5, enacted by Ga. L. 1989, p. 1317, § 4.1; Ga. L. 1992, p. 2056, § 2; Ga. L. 1993, p. 91, § 36; Ga. L. 1997, p. 1567, § 1.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1992, "April 17, 1992" was substituted for "the effective date of this subsection" in three places in subsection (b).

36-70-6. Promotion of deployment of broadband services by broadband services providers.

(a) As used in this Code section, the terms "broadband services" and "broadband services provider" shall have the same meanings as provided in Code Section 50-40-1.

(b) The governing bodies of municipalities and counties shall provide in any comprehensive plan for the promotion of the deployment of broadband services by broadband services providers.

History.
Code 1981, § 36-70-6, enacted by Ga. L. 2018, p. 629, § 3-1/SB 402.

Cross references.
Competitive Emerging Communications Technologies Act of 2006, § 46-5-220 et seq.

Coordination and Deployment of Broadband Services, § 50-39-1 et seq.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2018, "Code Section 50-40-1" was substituted for "Code Section 50-39-1" at the end of subsection (a).

Editor's notes.
Ga. L. 2018, p. 629, § 1/SB 402, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Achieving Connectivity Everywhere (ACE) Act.'"

ARTICLE 2

(EFFECTIVE UNTIL JANUARY 1, 2026.) SERVICE DELIVERY

Delayed effective date.
This article is set out twice in this Code. This version is effective until January 1, 2026. For version of this article effective January 1, 2026, see the following version.

36-70-20. (Effective until January 1, 2026.) Legislative intent.

The intent of this article is to provide a flexible framework within which local governments in each county can develop a service delivery system that is both efficient and responsive to citizens in their county. The General Assembly recognizes that the unique characteristics of each county throughout the state preclude a mandated legislative outcome for the delivery of services in every county. The process provided by this article is intended to minimize inefficiencies resulting from duplication of services and competition between local governments and to provide a mechanism to resolve disputes over local government service delivery, funding equity, and land use. The local government service delivery process should result in the minimization of noncompatible municipal

and county land use plans and in a simple, concise agreement describing which local governments will provide which service in specified areas within a county and how provision of such services will be funded.

History.

Code 1981, § 36-70-20, enacted by Ga. L. 1997, p. 1567, § 1.

Editor's notes.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Law reviews.

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669, 2012 U.S. App. LEXIS 23812 (11th Cir. 2012).

Scope of trial court's authority. — Trial court's ruling that sovereign immunity did not bar claims under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., specifically O.C.G.A. § 36-70-25.1(d)(2), was affirmed because sovereign immunity was waived only to the extent of the statute, which extends no further than the remedies specifically authorized by the Act and the trial court could not exceed the scope of § 36-70-25.1(d)(2) by granting relief not provided therein for claims brought under the Act. City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

Trial court properly found city's water rates for customers beyond municipal boundaries amounted to impermissible tax as O.C.G.A. § 36-70-24(2)(A) specifically provided that water or sewer fees charged to customers located outside geographic boundaries of service provider shall not be arbitrarily higher than fees charged to customers receiving such service which are located within geographic boundaries. City of Winder v. Barrow County, 365 Ga. App. 832, 880 S.E.2d 323, 2022 Ga. App. LEXIS 509 (2022), rev'd, 318 Ga. 550, 899 S.E.2d 157, 2024 Ga. LEXIS 67 (2024), vacated, 373 Ga. App. 831, 910 S.E.2d 258, 2024 Ga. App. LEXIS 491 (2024).

Declaratory and injunctive relief effectively denied. — Because the strategies by a county and the municipalities within the county under the Service Delivery Strategic Act, O.C.G.A. § 36-70-20 et seq., had nothing to do with a developer's actions, given that it was not the decision of the developer, or any individual property owner, to control the property owner's supplier of water, the developer was properly granted summary judgment in a city's action for declaratory and injunctive relief. Also, the city's quest to overturn the May 2005 service delivery strategy was rendered moot by the enactment of later strategy. City of Demorest v. Town of Mt. Airy, 282 Ga. 653, 653 S.E.2d 43, 2007 Ga. LEXIS 835 (2007).

Effect on existing utility authorities. — Water authority's claims for declaratory relief and to enjoin a county and a city from encroaching on its territory were rejected as a service agreement between the parties under the Service Delivery Act, O.C.G.A. § 36-70-20 et seq., lawfully limited the authority's territory, which had been granted in the

authority's creating legislation. Alcovy Shores Water & Sewerage Auth. v. Jasper County, 277 Ga. App. 341, 626 S.E.2d 560, 2006 Ga. App. LEXIS 81 (2006).

36-70-21. (Effective until January 1, 2026.) Deadline date for implementation agreement.

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

History.
Code 1981, § 36-70-21, enacted by Ga. L. 1997, p. 1567, § 1.
Editor's notes.
This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

36-70-22. (Effective until January 1, 2026.) Date for process initiation.

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

History.
Code 1981, § 36-70-22, enacted by Ga. L. 1997, p. 1567, § 1.
Editor's notes.
This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

36-70-23. (Effective until January 1, 2026.) Required components.

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

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

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

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

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

History.
Code 1981, § 36-70-23, enacted by Ga. L. 1997, p. 1567, § 1.

Editor's notes.
This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669, 2012 U.S. App. LEXIS 23812 (11th Cir. 2012); City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

County's responsibility for services on city-annexed property. — County that held an easement over a drainage system located on commercial property that was initially located in the county but was later annexed by the city had the responsibility to repair and maintain the drainage system even after the property was annexed by the city. Although the Service Delivery Agreement provided that the city would perform stormwater services within the city's boundary, the city performed repairs at the right of way, not on private property. City of Norcross v. Gwinnett County, 355 Ga. App. 662, 843 S.E.2d 31, 2020 Ga. App. LEXIS 367

(2020), cert. denied, 310 Ga. 851, 854 S.E.2d 682, 2021 Ga. LEXIS 31 (2021).

36-70-24. (Effective until January 1, 2026.) Criteria for service delivery strategy.

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

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

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

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

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

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

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

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

History.

Code 1981, § 36-70-24, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 1999, p. 789, § 1; Ga. L. 2004, p. 69, § 20.

Editor's notes.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Editor's notes.

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Law reviews.

For annual survey of zoning and land use law, see 57 Mercer L. Rev. 447 (2005).

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

For annual survey on local government, see 73 Mercer L. Rev. 193 (2021).

JUDICIAL DECISIONS

Constitutionality. — Provisions of former O.C.G.A. §§ 36-70-24(4)(c) and 36-36-11, pertaining to the establishment of a dispute resolution process when a bona fide land use dispute arises between a city and county over the use of land which is the subject of annexation, do not violate Ga. Const. 1983, Art. IX, Sec. II, Para. IV. Higdon v. City of Senoia, 273 Ga. 83, 538 S.E.2d 39, 2000 Ga. LEXIS 819 (2000), superseded by statute as stated in Coweta County v. City of Newnan, 374 Ga. App. 702, 913 S.E.2d 841, 2025 Ga. App. LEXIS 114 (2025) (decided prior to 2004 amendment of O.C.G.A. §§ 36-70-24 and 36-36-11).

Trial court erred by finding that the Service Delivery Strategy Act, O.C.G.A. § 36-70-20, specifically O.C.G.A. § 36-70-25.1(d)(2), was unconstitutional because it did not permit the trial court to direct that the parties enter into a particular agreement and, therefore, did not invade the province of the legislative branch by imposing a tax or allocating the proceeds of that tax. City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

Service delivery fees outside of geographic boundaries. — Trial court properly found the city's water rates for customers beyond the municipal boundaries amounted to an impermissible tax as O.C.G.A. § 36-70-24(2)(A) specifically provided that water or sewer fees charged to customers located outside the geographic boundaries of a service provider shall not be arbitrarily higher than the fees charged to customers receiving such service which are located within the geographic boundaries. City of Winder v. Barrow County, 365 Ga. App. 832, 880 S.E.2d 323, 2022 Ga. App. LEXIS 509 (2022), rev'd, 318 Ga. 550, 899 S.E.2d 157, 2024 Ga. LEXIS 67 (2024), vacated, 373 Ga. App. 831, 910 S.E.2d 258, 2024 Ga. App. LEXIS 491 (2024).

Funding sources benefiting unincorporated areas limited. — Absent an agreement by the parties, the Services Delivery Strategy (SDS) Act, O.C.G.A. § 36-70-20 et seq., specifically O.C.G.A. § 36-70-24(3)(B), limits the sources within a special district that can be used to fund services provided for the

primary benefit of the unincorporated area of the county, that "property taxes" means ad valorem property taxes, and that "assessments" refer to any assessment that is not otherwise classified as a tax or fee. City of Winder v. Barrow County, 318 Ga. 550, 899 S.E.2d 157, 2024 Ga. LEXIS 67 (2024).

Road maintenance funding for unincorporated areas of a county depended on a totality of circumstances involved, not just location or usage, and absent agreement, funding sources benefiting unincorporated areas were limited to those listed in the Services Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq. City of Winder v. Barrow County, 318 Ga. 550, 899 S.E.2d 157, 2024 Ga. LEXIS 67 (2024).

Adoption of service delivery charge strategy not required. — In an action for violations of the Open Records Act, O.C.G.A. § 50-18-70 et seq., and the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., the plaintiff was not an "affected municipality" as the plaintiff was not required to adopt a resolution approving the service delivery charge strategy because the strategy was already in place and, thus, O.C.G.A. § 36-70-28 did not apply to the parties' dispute, rather the more specific statute, O.C.G.A. § 36-70-24, regarding water rate differentials applied. City of Sandy Springs v. City of Atlanta, 358 Ga. App. 604, 855 S.E.2d 779, 2021 Ga. App. LEXIS 98 (2021).

36-70-25. (Effective until January 1, 2026.) Approval; extension of deadline date.

(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.

History.
Code 1981, § 36-70-25, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 2000, p. 1439, § 1.

Editor's notes.
This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Law reviews.
For annual survey on local government, see 73 Mercer L. Rev. 193 (2021).

JUDICIAL DECISIONS

Scope of trial court's authority. — Trial court exceeded the court's authority under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., by finding it in breach of contract and by imposing declaratory and injunctive relief because it was not authorized to impose a remedy not provided by O.C.G.A. § 36-70-25.1(d)(2) for claims brought under the Act; the court had no authority under the Act to fashion a different remedy or enjoin the parties as to the funding or the method of provision of those services. City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

36-70-25.1. (Effective until January 1, 2026.) Dispute resolution procedures.

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

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

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

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

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

(D) The judge may, by order of the court, substitute any mediation entered into pursuant to subsection (c) of this Code section for the mediation required pursuant to this subsection; and

(2) If no service delivery strategy has been submitted for verification to the Department 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.

History.

Code 1981, § 36-70-25.1, enacted by Ga. L. 2000, p. 1439, § 1; Ga. L. 2006, p. 72, § 36/SB 465.

Editor's notes.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Code Commission notes.

Ga. L. 2000, p. 1439, § 1, as enacted, contained two subsections designated as (d). Pursuant to Code Section 28-9-5, in 2000, the second subsection (d) was redesignated as subsection (e) and subsection (e) was redesignated as subsection (f); "subsection (c)" was substituted for "subsection (b)" in subparagraph (d)(1)(D); and "subsection (d)" was substituted for "subsection (c)" in newly designated subsection (e).

Pursuant to Code Section 28-9-5, in 2006, "imposition" was substituted for "impositions" in the introductory paragraph of subsection (d).

Law reviews.

For annual survey on local government law, see 70 Mercer L. Rev. 177 (2018).

For annual survey on local government, see 73 Mercer L. Rev. 193 (2021).

JUDICIAL DECISIONS

Constitutionality. — Trial court erred by finding that the Service Delivery Strategy Act, O.C.G.A. § 36-70-20, specifically O.C.G.A. § 36-70-25.1(d)(2), was unconstitutional because it did not permit the trial court to direct that the parties enter into a particular agreement and, therefore, did not invade the province of the legislative branch by imposing a tax or allocating the proceeds of that tax. City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

Scope of trial court's authority. — Trial court exceeded the court's authority under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., by finding it in breach of contract and by imposing declaratory and injunctive relief because it was not authorized to impose a remedy not provided by O.C.G.A. § 36-70-25.1(d)(2) for claims brought under the Act; the court had no authority under the Act to fashion a different remedy or enjoin the parties as to the funding or the method of provision of those services. City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

Trial court's ruling that sovereign immunity did not bar claims under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20, specifically O.C.G.A. § 36-70-25.1(d)(2), was affirmed because sovereign immunity was waived only to the extent of the statute, which extends no further than the remedies specifically authorized by the Act and the trial court could not exceed the scope of

§ 36-70-25.1(d)(2) by granting relief not provided therein for claims brought under the Act. City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

Trial court properly found city's water rates for customers beyond municipal boundaries amounted to impermissible tax as O.C.G.A. § 36-70-24(2)(A) specifically provided that water or sewer fees charged to customers located outside geographic boundaries of service provider shall not be arbitrarily higher than fees charged to customers receiving such service which are located within geographic boundaries. City of Winder v. Barrow County, 365 Ga. App. 832, 880 S.E.2d 323, 2022 Ga. App. LEXIS 509 (2022), rev'd, 318 Ga. 550, 899 S.E.2d 157, 2024 Ga. LEXIS 67 (2024), vacated, 373 Ga. App. 831, 910 S.E.2d 258, 2024 Ga. App. LEXIS 491 (2024).

Funding sources benefiting unincorporated areas limited. — Determination as to whether a city's water charges constitute an illegal tax on the outside customers and whether the city could transfer profits collected from those customers to its general fund were not items that must be negotiated as part of a Services Delivery Strategy (SDS) Agreement, and could not be considered items "remaining in dispute" under the statutory process outlined in the SDS Act pursuant to, O.C.G.A. § 36-70-25.1(d). City of Winder v. Barrow County, 318 Ga. 550, 899 S.E.2d 157, 2024 Ga. LEXIS 67 (2024).

Road maintenance funding for unincorporated areas of a county depended on a totality of circumstances involved, not just location or usage, and absent agreement, funding sources benefiting unincorporated areas were limited to those listed in the Services Delivery Strategy Act, O.C.G.A. § 36–70–20 et seq. City of Winder v. Barrow County, 318 Ga. 550, 899 S.E.2d 157, 2024 Ga. LEXIS 67 (2024).

Claim seeking declaration that agreement still in effect not barred by sovereign immunity. — County's claims against the Georgia Department of Community Affairs (DCA) commissioner and board members in their individual capacities were not barred by sovereign immunity; the county sought a declaration that under O.C.G.A. § 36-70-25.1(f) and the county's service delivery agreement, the county and its cities were eligible for state-administered financial assistance and that denial of such assistance was not in accordance with law. Bd. of Comm'rs of Lowndes County v. Mayor & Council of Valdosta, 309 Ga. 899, 848 S.E.2d 857, 2020 Ga. LEXIS 671 (2020).

36-70-26. (Effective until January 1, 2026.) Required filing; verification of components.

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.

History.

Code 1981, § 36-70-26, enacted by Ga. L. 1997, p. 1567, § 1.

Editor's notes.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669, 2012 U.S. App. LEXIS 23812 (11th Cir. 2012).

36-70-27. (Effective until January 1, 2026.) Limitation of funding for projects inconsistent with strategy.

(a)(1) 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.

(2) Paragraph (1) of this subsection shall not apply to any drinking water project of the Georgia Environmental Finance Authority or of any local government or authority if such project is a proposed drinking water supply reservoir or any water withdrawal, treatment, distribution, or other potable water facility associated with such reservoir and the project shall furnish potable water to wholesale users in incorporated areas in one or more counties. Within one year after such proposed drinking water supply reservoir becomes operational, the local governments and authorities in the affected county or counties shall update their service delivery strategy or strategies to be consistent with water supply arrangements resulting from the operation of such reservoir.

(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

(B) Any other municipality located in such county.

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

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

History.
Code 1981, § 36-70-27, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 1999, p. 789, § 2; Ga. L. 2000, p. 1439, § 2; Ga. L. 2010, p. 1088, § 1/HB 406.

Editor's notes.
This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2010, "Georgia Environmental Finance Authority" was substituted for "Georgia Environmental Facilities Authority" in the first sentence of paragraph (a)(2).

JUDICIAL DECISIONS

Scope of trial court's authority. — Trial court's ruling that sovereign immunity did not bar claims under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., specifically O.C.G.A. § 36-70-25.1(d)(2), was affirmed because sovereign immunity was waived only to the extent of the statute, which extends no further than the remedies specifically authorized by the Act and the trial court could not exceed the scope of § 36-70-25.1(d)(2) by granting relief not provided therein for claims brought under the Act. City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

36-70-28. (Effective until January 1, 2026.) Review and revision of approved strategy.

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

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

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

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

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

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

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

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

History.
Code 1981, § 36-70-28, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 2000, p. 1439, § 3; Ga. L. 2006, p. 72, § 36/SB 465.

Editor's notes.
This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Law reviews.
For annual survey on local government, see 73 Mercer L. Rev. 193 (2021).

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669, 2012 U.S. App. LEXIS 23812 (11th Cir. 2012).

Plaintiff not an affected municipality. — In an action for violations of the Open Records Act, O.C.G.A. § 50-18-70 et seq., and the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., the plaintiff was not an "affected municipality" as the plaintiff was not required to adopt a resolution approving the service delivery charge strategy because the strategy was already in place and, thus, O.C.G.A. § 36-70-28 did not apply to the parties' dispute, rather the more specific statute, O.C.G.A. § 36-70-24, regarding water rate differentials applied. City of Sandy Springs v. City of Atlanta, 358 Ga. App. 604, 855 S.E.2d 779, 2021 Ga. App. LEXIS 98 (2021).

ARTICLE 2

(EFFECTIVE JANUARY 1, 2026.) SERVICE DELIVERY

Delayed effective date.
This article is set out twice in this Code. This version is effective January 1, 2026. For version of this article effective until January 1, 2026, see the preceding version.

36-70-20. (Effective January 1, 2026.) Legislative intent.

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

History.

Code 1981, § 36-70-20, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026.

Editor's notes.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Amendments.

The 2024 amendment, effective January 1, 2026, substituted "incompatible" for "noncompatible" in the middle of the last sentence.

Law reviews.

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669, 2012 U.S. App. LEXIS 23812 (11th Cir. 2012).

Scope of trial court's authority. — Trial court's ruling that sovereign immunity did not bar claims under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., specifically O.C.G.A. § 36-70-25.1(d)(2), was affirmed because sovereign immunity was waived only to the extent of the statute, which extends no further than the remedies specifically authorized by the Act and the trial court could not exceed the scope of § 36-70-25.1(d)(2) by granting relief not provided therein for claims brought under the Act. City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

Trial court properly found city's water rates for customers beyond municipal boundaries amounted to impermissible tax as O.C.G.A. § 36-70-24(2)(A) specifically provided that water or sewer fees charged to customers located outside geographic boundaries of service provider shall not be arbitrarily higher than fees charged to customers receiving such service which are located within geographic boundaries. City of Winder v. Barrow County, 365 Ga. App. 832, 880 S.E.2d 323, 2022 Ga. App. LEXIS 509

(2022), rev'd, 318 Ga. 550, 899 S.E.2d 157, 2024 Ga. LEXIS 67 (2024), vacated, 373 Ga. App. 831, 910 S.E.2d 258, 2024 Ga. App. LEXIS 491 (2024).

Declaratory and injunctive relief effectively denied. — Because the strategies by a county and the municipalities within the county under the Service Delivery Strategic Act, O.C.G.A. § 36-70-20 et seq., had nothing to do with a developer's actions, given that it was not the decision of the developer, or any individual property owner, to control the property owner's supplier of water, the developer was properly granted summary judgment in a city's action for declaratory and injunctive relief. Also, the city's quest to overturn the May 2005 service delivery strategy was rendered moot by the enactment of later strategy. City of Demorest v. Town of Mt. Airy, 282 Ga. 653, 653 S.E.2d 43, 2007 Ga. LEXIS 835 (2007).

Effect on existing utility authorities. — Water authority's claims for declaratory relief and to enjoin a county and a city from encroaching on its territory were rejected as a service agreement between the parties under the Service Delivery Act, O.C.G.A. § 36-70-20 et seq., lawfully limited the authority's territory, which had been granted in the authority's creating legislation. Alcovy Shores Water & Sewerage Auth. v. Jasper County, 277 Ga. App. 341, 626 S.E.2d 560, 2006 Ga. App. LEXIS 81 (2006).

36-70-21. Implementation agreements.

(a) Each county and municipality shall execute an agreement for the implementation of a local government service delivery strategy as set forth in this article:

(1) By December 31 of each year following the year in which the county's ten-year comprehensive plan update is due in accordance with the rules promulgated by the department pursuant to this chapter or Article 1 of Chapter 8 of Title 50; and

(2) Within 180 days of the occurrence of an event requiring review and revision pursuant to subsection (b) of Code Section 36-70-28.

(b) For municipalities located within multiple counties, the review and deadline for an agreement for the implementation of a local government service delivery strategy shall be applicable for the portion of the municipality that lies within a given county in conjunction with such county's review and deadline.

(c) The provisions of this article shall not apply to any consolidated government in which no other municipal corporation exists within the county.

History.

Code 1981, § 36-70-21, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026; Ga. L. 2025, p. 1029, § 36(30)/SB 153, effective July 1, 2025.

Editor's notes.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "December 31" for "December 31st" in paragraph (a)(1).

36-70-22. Date for process initiation; notice to municipalities and counties impacted.

(a)(1) Each county shall initiate the process for developing a local government service delivery strategy required by paragraph (1) of subsection (a) of Code Section 36-70-21 no earlier than April 1 and no later than July 1 of the year following any year in which the county's ten-year comprehensive plan update is due.

(2) Each county shall initiate the process for developing a local government service delivery strategy required by a triggering event under paragraph (2) of subsection (a) of Code Section 36-70-21 no later than 30 days following the occurrence of the event. If the county does not initiate such process within the 30 day period, any municipality in the county may initiate the process.

(3) Any municipality affected by a change in service delivery or revenue distribution arrangements as described in subsection (b.1) of Code Section 36-70-28 may initiate the process of amending a local government service delivery strategy pursuant to subsection (b.1) of Code Section 36-70-28.

(b) Initiation of the strategy shall be accomplished by the provision of a written notice from the county to the governing bodies of all municipalities located wholly or partially within the county or providing services within the county and to other counties providing services within the county. Such notice shall:

(1) State the date, time, and place for a joint meeting at which designated representatives of all local governing bodies shall assemble for the purpose of commencing deliberations on the service delivery strategy;

(2) Be sent not more than 45 and not less than 15 days prior to the meeting date; and

(3) Identify all local governments to which the notice will be delivered.

(c) In the event the county governing authority fails to initiate the process by July 1 of the year following any year in which the county's ten-year comprehensive plan update is due, any municipality within the county may do so by sending a written notice, containing the required information, to the county and all other municipalities.

History.

Code 1981, § 36-70-22, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026; Ga. L. 2025, p. 1029, § 36(31)/SB 153, effective July 1, 2025.

Editor's notes.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Amendments.

The 2024 amendment, effective Janu-

ary 1, 2026, substituted the current provisions of this Code section for the former provisions, which read: "Each county shall initiate the process for developing a local government service delivery strategy after July 1, 1997, but no later than January 1, 1998. Initiation of the strategy shall be accomplished by the provision of a written notice from the county to the governing bodies of all municipalities located wholly or partially within the county or providing services within the county and to other counties providing services within the county. Such notice shall state the date, time, and place for a joint meeting at which designated representatives of all local governing bodies shall assemble for the purpose of commencing deliberations on the service delivery strategy. The notice shall be sent not more than 45 and not less than 15 days prior to the meeting date. In the event the county governing authority fails to initiate the process by January 1, 1998, any municipality within the county may do so by sending a written notice, containing the required information, to the county and all other municipalities."

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "April 1" for "April 1st" and "July 1" for "July 1st" in paragraph (a)(1).

36-70-22.1. Response proposals.

(a) Within 60 days of the initiation of the process for developing a local government service delivery strategy, all local governments that received the written notice provided for in Code Section 36-70-22 shall provide all other local governments identified in such written notice with a written proposal of a local government service delivery strategy containing the components required by Code Section 36-70-23 in compliance with the criteria required by Code Section 36-70-24 together with all factual information, data, and evidence supporting such proposal.

(b) Such written proposal for each local government may be modified periodically with written notice provided to all local governments that received the written notice provided for in Code Section 36-70-22; provided, however, that written proposals shall be finalized by each local government prior to an agreement to enter into nonbinding arbitration under Code Section 36-70-25.2 and the judicial process provided for in Code Section 36-70-25.3. Modifications to written proposals pursuant to this subsection may include written responses to any written proposal of another local government in the same county.

(c) All such written proposals and supporting documentation shall be considered public records and subject to disclosure pursuant to Code Section 50-18-71.

History.

Code 1981, § 36-70-22.1, enacted by Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026; Ga. L. 2025, p. 1029, § 36(32)/SB 153, effective July 1, 2025.

Editor's notes.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, deleted ", and" following "Code Section 36-70-23" and substituted "all factual" for "all such factual" in subsection (a).

36-70-23. (Effective January 1, 2026.) Required components.

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

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

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

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

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

History.
Code 1981, § 36-70-23, enacted by Ga. L. 1997, p. 1567, § 1; reenacted without change, Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026.

Editor's notes.
This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026, reenacted this Code section without change.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and

the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669, 2012 U.S. App. LEXIS 23812 (11th Cir. 2012); City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

County's responsibility for services on city-annexed property. — County that held an easement over a drainage system located on commercial property that was initially located in the county but was later annexed by the city had the responsibility to repair and maintain the drainage system even after the property was annexed by the city. Although the Service Delivery Agreement provided that the city would perform stormwater services within the city's boundary, the city performed repairs at the right of way, not on private property. City of Norcross v. Gwinnett County, 355 Ga. App. 662, 843 S.E.2d 31, 2020 Ga. App. LEXIS 367 (2020), cert. denied, 310 Ga. 851, 854 S.E.2d 682, 2021 Ga. LEXIS 31 (2021).

36-70-23.1. (Effective January 1, 2026.) State-wide mapping standards.

The department shall develop state-wide mapping standards in consultation with the Georgia Geospatial Advisory Council created under Article 13 of Chapter 8 of Title 50, which shall be used for any service delivery strategy for which the parties elect to describe geographic areas for local government services within each county by using maps. Such state-wide mapping standards shall include standards for describing geographical areas to include by jurisdiction level, census tract, and parcel number. The department shall promulgate such mapping standards by rule or regulation on or before March 1, 2026.

History.

Code 1981, § 36-70-23.1, enacted by Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026.

Editor's notes.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

36-70-24. (Effective January 1, 2026.) Criteria for service delivery strategy.

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

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

(2)(A) The strategy shall provide that water or sewer fees charged to customers located outside the geographic boundaries of a service

provider shall not be arbitrarily higher than the fees charged to customers receiving such service which are located within the geographic boundaries of the service provider.

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

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

(B) Such funding shall be derived from:

(i) Any one or more of the following sources:

(I) Special service districts created by the county in which ad valorem property taxes, assessments, or user fees are levied or imposed;

(II) Grants;

(III) Any one or more of the following taxes and fees: solid waste franchise fees, cable franchise fees, alcohol excise taxes, alcohol licensing fees, financial institution taxes, hotel-motel taxes, occupation taxes, railroad equipment taxes, insurance premium taxes, rental car excise taxes, impact fees, stormwater fees, zoning fees, or title ad valorem taxes, but excluding any amounts of such taxes and fees to the extent such amount is derived from incorporated areas of the county; and

(IV) Revenues apportioned to the county as part of an intergovernmental agreement from the county and one or more municipalities; or

(ii) Through such other mechanism agreed upon by the parties approving the strategy which complies with the intent of subparagraph (A) of this paragraph.

(C)(i) The strategy shall require the county to provide an annual report to each party to the strategy that:

(I) Identifies the total amount of funds received by the county from the funding sources utilized under division (i) or (ii) of subparagraph (B) of this paragraph for the provision of county services provided primarily for the benefit of the unincorporated area of the county and the county's share of any countywide service funded with one or more municipalities; and

(II) The total cost to the county of providing the services described in subdivision (I) of this division.

(ii) The provisions of this subparagraph shall not require any party to the strategy to establish separate accounts for such funds; and

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

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

History.

Code 1981, § 36-70-24, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 1999, p. 789, § 1; Ga. L. 2004, p. 69, § 20; Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026; Ga. L. 2025, p. 667, § 2/HB 513, effective January 1, 2026.

Delayed effective date.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Amendments.

The 2024 amendment, effective January 1, 2026, substituted the current provisions of subparagraph (3)(B) for the former provisions, which read: "Such funding shall be derived from special service districts created by the county in which property taxes, insurance premium taxes, assessments, or user fees are levied or imposed or through such other mechanism agreed upon by the affected parties which complies with the intent of subparagraph (A) of this paragraph; and".

The 2025 amendment, effective January 1, 2026, rewrote subparagraph (3)(B) and added subparagraph (3)(C).

Editor's notes.

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Law reviews.

For annual survey of zoning and land use law, see 57 Mercer L. Rev. 447 (2005).

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

For annual survey on local government, see 73 Mercer L. Rev. 193 (2021).

JUDICIAL DECISIONS

Constitutionality. — Provisions of former O.C.G.A. §§ 36-70-24(4)(c) and 36-36-11, pertaining to the establishment of a dispute resolution process when a bona fide land use dispute arises between a city and county over the use of land

which is the subject of annexation, do not violate Ga. Const. 1983, Art. IX, Sec. II, Para. IV. Higdon v. City of Senoia, 273 Ga. 83, 538 S.E.2d 39, 2000 Ga. LEXIS 819 (2000), superseded by statute as stated in Coweta County v. City of Newnan, 374 Ga. App. 702, 913 S.E.2d 841, 2025 Ga. App. LEXIS 114 (2025) (decided prior to 2004 amendment of O.C.G.A. §§ 36-70-24 and 36-36-11).

Trial court erred by finding that the Service Delivery Strategy Act, O.C.G.A. § 36-70-20, specifically O.C.G.A. § 36-70-25.1(d)(2), was unconstitutional because it did not permit the trial court to direct that the parties enter into a particular agreement and, therefore, did not invade the province of the legislative branch by imposing a tax or allocating the proceeds of that tax. City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

Service delivery fees outside of geographic boundaries. — Trial court properly found the city's water rates for customers beyond the municipal boundaries amounted to an impermissible tax as O.C.G.A. § 36-70-24(2)(A) specifically provided that water or sewer fees charged to customers located outside the geographic boundaries of a service provider shall not be arbitrarily higher than the fees charged to customers receiving such service which are located within the geographic boundaries. City of Winder v. Barrow County, 365 Ga. App. 832, 880 S.E.2d 323, 2022 Ga. App. LEXIS 509 (2022), rev'd, 318 Ga. 550, 899 S.E.2d 157, 2024 Ga. LEXIS 67 (2024), vacated, 373 Ga. App. 831, 910 S.E.2d 258, 2024 Ga. App. LEXIS 491 (2024).

Funding sources benefiting unincorporated areas limited. — Absent an agreement by the parties, the Services Delivery Strategy (SDS) Act, O.C.G.A. § 36-70-20 et seq., specifically O.C.G.A. § 36-70-24(3)(B), limits the sources within a special district that can be used to fund services provided for the primary benefit of the unincorporated area of the county, that "property taxes" means ad valorem property taxes, and that "assessments" refer to any assessment that is not otherwise classified as a tax or fee. City of Winder v. Barrow County, 318 Ga. 550, 899 S.E.2d 157, 2024 Ga. LEXIS 67 (2024).

Road maintenance funding for unincorporated areas of a county depended on a totality of circumstances involved, not just location or usage, and absent agreement, funding sources benefiting unincorporated areas were limited to those listed in the Services Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq. City of Winder v. Barrow County, 318 Ga. 550, 899 S.E.2d 157, 2024 Ga. LEXIS 67 (2024).

Adoption of service delivery charge strategy not required. — In an action for violations of the Open Records Act, O.C.G.A. § 50-18-70 et seq., and the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., the plaintiff was not an "affected municipality" as the plaintiff was not required to adopt a resolution approving the service delivery charge strategy because the strategy was already in place and, thus, O.C.G.A. § 36-70-28 did not apply to the parties' dispute, rather the more specific statute, O.C.G.A. § 36-70-24, regarding water rate differentials applied. City of Sandy Springs v. City of Atlanta, 358 Ga. App. 604, 855 S.E.2d 779, 2021 Ga. App. LEXIS 98 (2021).

36-70-25. (Effective January 1, 2026.) Development and approval of local government service delivery strategy.

(a) The county and each municipality within the county shall participate in the development of the strategy.

(b) Approval of a local government service delivery 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 for the purposes of this article, the population in the most recent United States decennial census shall be utilized.

History.

Code 1981, § 36-70-25, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 2000, p. 1439, § 1; Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026.

Delayed effective date.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Amendments.

The 2024 amendment, effective January 1, 2026, deleted former subsections (a) and (d), which read: "(a) Approval of the local government service delivery strategy shall be accomplished as provided for in this Code section.

"(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."; redesignated former subsection (b) as present subsections (a) and (b); substituted "a local government service delivery strategy" for "the strategy" in subsection (b); and, inserted "for the purposes of this article" in subsection (c).

Law reviews.

For annual survey on local government, see 73 Mercer L. Rev. 193 (2021).

JUDICIAL DECISIONS

Scope of trial court's authority. — Trial court exceeded the court's authority under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., by finding it in breach of contract and by imposing declaratory and injunctive relief because it was not authorized to impose a remedy not provided by O.C.G.A. § 36-70-25.1(d)(2) for claims brought under the Act; the court had no authority under the Act to fashion a different remedy or enjoin the parties as to the funding or the method of provision of those services. City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

36-70-25.1. (Effective January 1, 2026.) Mediation process.

(a) As used in this Code section, the term "affected municipality" means the county seat and each municipality of at least 500 persons.

(b) If a county and the affected municipalities in the county are

unable to reach an agreement on all services within 90 days of initiation of the process provided for in Code Section 36-70-22, the county and all affected municipalities shall, by such ninetieth day, commence mediation in an attempt to reach a final agreement. Such mediation shall be limited to discussing only those services and geographic areas which remain to be agreed upon.

(c) The costs of the mediation process undergone pursuant to this Code section shall be shared by the parties to the mediation pro rata based on each party's population according to the most recent United States decennial census with the county's population including only the unincorporated population of the county.

History.

Code 1981, § 36-70-25.1, enacted by Ga. L. 2000, p. 1439, § 1; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026.

Delayed effective date.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Amendments.

The 2024 amendment, effective January 1, 2026, rewrote this Code section.

Code Commission notes.

Ga. L. 2000, p. 1439, § 1, as enacted, contained two subsections designated as (d). Pursuant to Code Section 28-9-5, in 2000, the second subsection (d) was redesignated as subsection (e) and subsection (e) was redesignated as subsection (f); "subsection (c)" was substituted for "subsection (b)" in subparagraph (d)(1)(D); and "subsection (d)" was substituted for "subsection (c)" in newly designated subsection (e).

Law reviews.

For annual survey on local government law, see 70 Mercer L. Rev. 177 (2018).

For annual survey on local government, see 73 Mercer L. Rev. 193 (2021).

JUDICIAL DECISIONS

Constitutionality. — Trial court erred by finding that the Service Delivery Strategy Act, O.C.G.A. § 36-70-20, specifically O.C.G.A. § 36-70-25.1(d)(2), was unconstitutional because it did not permit the trial court to direct that the parties enter into a particular agreement and, therefore, did not invade the province of the legislative branch by imposing a tax or allocating the proceeds of that tax. City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

Scope of trial court's authority. — Trial court exceeded the court's authority under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., by finding it in breach of contract and by imposing declaratory and injunctive relief because it was not authorized to impose a remedy not provided by O.C.G.A. § 36-70-25.1(d)(2) for claims brought under the Act; the court had no authority under the Act to fashion a different remedy or enjoin the parties as to the funding or the method of provision of those services. City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

Trial court's ruling that sovereign immunity did not bar claims under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20, specifically O.C.G.A. § 36-70-25.1(d)(2), was affirmed because sovereign immunity was waived only to the extent of the statute, which extends no further than the remedies specifically authorized by the Act and the trial court could not exceed the scope of § 36-70-25.1(d)(2) by granting relief not provided therein for claims brought under

the Act. City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

Trial court properly found city's water rates for customers beyond municipal boundaries amounted to impermissible tax as O.C.G.A. § 36-70-24(2)(A) specifically provided that water or sewer fees charged to customers located outside geographic boundaries of service provider shall not be arbitrarily higher than fees charged to customers receiving such service which are located within geographic boundaries. City of Winder v. Barrow County, 365 Ga. App. 832, 880 S.E.2d 323, 2022 Ga. App. LEXIS 509 (2022), rev'd, 318 Ga. 550, 899 S.E.2d 157, 2024 Ga. LEXIS 67 (2024), vacated, 373 Ga. App. 831, 910 S.E.2d 258, 2024 Ga. App. LEXIS 491 (2024).

Funding sources benefiting unincorporated areas limited. — Determination as to whether a city's water charges constitute an illegal tax on the outside customers and whether the city could transfer profits collected from those customers to its general fund were not items that must be negotiated as part of a Services Delivery Strategy (SDS) Agreement, and could not be considered items "remaining in dispute" under the statutory process outlined in the SDS Act pursuant to, O.C.G.A. § 36-70-25.1(d). City of Winder v. Barrow County, 318 Ga. 550, 899 S.E.2d 157, 2024 Ga. LEXIS 67 (2024).

Road maintenance funding for unincorporated areas of a county depended on a totality of circumstances involved, not just location or usage, and absent agreement, funding sources benefiting unincorporated areas were limited to those listed in the Services Delivery Strategy Act, O.C.G.A. § 36–70–20 et seq. City of Winder v. Barrow County, 318 Ga. 550, 899 S.E.2d 157, 2024 Ga. LEXIS 67 (2024).

Claim seeking declaration that agreement still in effect not barred by sovereign immunity. — County's claims against the Georgia Department of Community Affairs (DCA) commissioner and board members in their individual capacities were not barred by sovereign immunity; the county sought a declaration that under O.C.G.A. § 36-70-25.1(f) and the county's service delivery agreement, the county and its cities were eligible for state-administered financial assistance and that denial of such assistance was not in accordance with law. Bd. of Comm'rs of Lowndes County v. Mayor & Council of Valdosta, 309 Ga. 899, 848 S.E.2d 857, 2020 Ga. LEXIS 671 (2020).

36-70-25.2. Nonbinding arbitration process.

(a) As used in this Code section, the term "affected municipality" means the county seat and each municipality of at least 500 persons.

(b)(1) After completing the mediation process required by Code Section 36-70-25.1, but prior to the 180 days following the initiation of the process under this article, the county and any affected municipalities with outstanding disagreements related to the service delivery strategy may elect to begin nonbinding arbitration in an attempt to resolve only such outstanding disagreements.

(2) Evidence presented as part of any such nonbinding arbitration shall be limited to information included in the written proposals required by Code Section 36-70-22.1 and any written documentation associated with the required mediation conducted pursuant to Code Section 36-70-25.1.

(3) Within 15 days of the conclusion of the evidentiary phase of the

nonbinding arbitration, the arbitrator shall issue to the parties its written decision, which shall be considered a public record and subject to disclosure pursuant to Code Section 50-18-71.

(c)(1) The costs of the arbitration process undergone pursuant to this Code section shall be shared by the parties to the arbitration pro rata based on each party's population according to the most recent United States decennial census with the county's population including only the unincorporated population of the county.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, if the arbitrator issues a written determination that any party or parties advanced a position that lacked substantial justification, which shall mean substantially frivolous, substantially groundless, or substantially vexatious, the costs shall be borne by such party or parties that advanced such position.

History.

Code 1981, § 36-70-25.2, enacted by Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026; Ga. L. 2025, p. 1029, § 36(33)/SB 153, effective July 1, 2025.

Delayed effective date.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "180 days" for "the 180th day" in paragraph (b)(1).

36-70-25.3. Judicial resolution of certain disputes.

(a) As used in this Code section, the term "participating local government" means:

(1) Any county that completed the mediation process required by Code Section 36-70-25.1 and requested or participated in nonbinding arbitration pursuant to Code Section 36-70-25.2; and

(2) Any municipality required to adopt a resolution approving the local government service delivery strategy pursuant to subsection (b) of Code Section 36-70-25 that completed the mediation process required by Code Section 36-70-25.1 and requested or participated in nonbinding arbitration pursuant to Code Section 36-70-25.2.

(b) Subsequent to the completion of the mediation process required by Code Section 36-70-25.1 and nonbinding arbitration, if any, requested pursuant to Code Section 36-70-25.2, a participating local government with outstanding disagreements related to the service delivery strategy may petition the superior court of the county to resolve such disagreements. Such petition shall be assigned pursuant to Code Section 15-1-9.1 or Code Section 15-6-13 to a judge who is not a judge in the circuit in which the county is located and is a senior judge under Code Section 15-1-9.2.

(c) The assigned judge shall conduct one or more evidentiary hearings as he or she determines are necessary and render a decision with regard to the disputed items. In rendering the decision, such judge shall consider the required elements of a service delivery strategy and seek to satisfy the intent of this article as provided in Code Section 36-70-20.

(d) Evidence presented as part of the judicial process established by this Code section shall be limited to:

(1) Information included in the written proposals required by Code Section 36-70-22.1;

(2) Written documentation associated with the required mediation conducted pursuant to Code Section 36-70-25.1; and

(3) The decision or final report issued with respect to any nonbinding arbitration conducted pursuant to Code Section 36-70-25.2.

(e) The assigned judge shall be authorized to utilize the power of contempt to obtain compliance with the decision rendered pursuant to this Code section.

History.
Code 1981, § 36-70-25.2, enacted by Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026; Ga. L. 2025, p. 1029, § 36(33)/SB 153, effective July 1, 2025.

Delayed effective date.
This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "nonbinding" for "non-binding" in paragraphs (a)(1) and (a)(2) and in subsection (b).

36-70-26. (Effective January 1, 2026.) Required filing; verification of components; failure to file; rules and regulations.

(a) Each county shall file the agreement for the implementation of strategy required by Code Section 36-70-21 with the department after the agreement has been adopted by resolution as provided for in Code Section 36-70-25.

(b) 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.

(c) In the event that no agreement is properly filed by a county by December 31 of the year following the year in which the county's ten-year comprehensive plan update is due or within 180 days of the triggering event under paragraph (2) of subsection (a) of Code Section 36-70-21, the department shall notify the affected local governments

and all relevant state agencies that the jurisdictions are out of compliance with the laws regarding service delivery strategies, and the sanctions provided for in Code Section 36-70-27 shall apply; provided, however, that, in the event the local governments are participating in a nonbinding arbitration pursuant to Code Section 36-70-25.2, the deadline shall not be extended for more than 180 days.

(d) The department shall promulgate rules and regulations only to the extent necessary to implement the provisions of this Code section.

History.

Code 1981, § 36-70-26, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026.

Delayed effective date.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Amendments.

The 2024 amendment, effective January 1, 2026, substituted the current provisions of this Code section for the former provisions, which read: "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."

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669, 2012 U.S. App. LEXIS 23812 (11th Cir. 2012).

36-70-27. (Effective January 1, 2026.) Limitation of funding; sanctions.

(a)(1) 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 local government service delivery strategy that the department has verified as meeting the requirements of Code Section 36-70-26, 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.

(2) Paragraph (1) of this subsection shall not apply to any:

(A) Drinking water or wastewater project of the Georgia Environmental Finance Authority;

(B) Public safety or Environmental Protection Division permits; or

(C) County, municipality, or authority that establishes to the satisfaction of the department through the adoption of a resolution that such county, municipality, or authority does not have any outstanding disagreements related to the service delivery strategy and is not otherwise responsible for such service delivery strategy not being verified by the department.

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

(c) The sanctions specified in subsection (a) of this Code section shall not apply to any state administered financial assistance or grant, loan, or permit that the applicable state agency or department determines is intended to address any of the following:

(1) A state of emergency declared by any federal, state, or local emergency management agency, official, or authority;

(2) A natural disaster;

(3) Any set of conditions or circumstances that pose a danger to the health, safety, or welfare of any person or property; or

(4) The order of any federal or state agency or court.

History.

Code 1981, § 36-70-27, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 1999, p. 789, § 2; Ga. L. 2000, p. 1439, § 2; Ga. L. 2010, p. 1088, § 1/HB 406; Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026.

Delayed effective date.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Amendments.

The 2024 amendment, effective January 1, 2026, rewrote this Code section.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2010, "Georgia Environmental Finance Authority" was substituted for "Georgia Environmental Facilities Authority" in the first sentence of paragraph (a)(2).

JUDICIAL DECISIONS

Scope of trial court's authority. — Trial court's ruling that sovereign immunity did not bar claims under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., specifically O.C.G.A. § 36-70-25.1(d)(2), was affirmed because sovereign immunity was waived only to the extent of the statute, which extends no further than the remedies specifically authorized by the Act and the trial court could not exceed the scope of § 36-70-25.1(d)(2) by granting relief not provided therein for claims brought under the Act. City of Union Point v. Greene County, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part,

City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

36-70-28. (Effective January 1, 2026.) Review and revision of approved strategy.

(a) As used in this Code section, the term "affected municipality" means the county seat and each municipality of at least 500 persons.

(b) In addition to the ten-year update required by paragraph (1) of subsection (a) of Code Section 36-70-21, each county and affected municipality shall review and revise the approved strategy:

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

(2) In the event of the creation, abolition, or consolidation of local governments;

(3) When the existing service delivery strategy agreement expires; and

(4) Whenever the county and affected municipalities agree to revise the strategy.

(b.1)(1) In the event that a change in service delivery or revenue distribution arrangements affects less than all of the local governments that are parties to the approved strategy, an amendment to the strategy limited to such changed service or services or revenue distribution arrangements between only those specific local governments may be submitted solely by the affected local governments and without the approval of the other nonimpacted county and affected municipalities in the county whose approval would otherwise be required under subsection (b) of Code Section 36-70-25.

(2) Any amendments to the approved strategy or revenue distribution arrangement which affect less than all of the local governments that are parties to the approved strategy shall be subject to review and revision whenever the service delivery strategy affecting the county and all municipalities within the county becomes subject to review and revision under paragraph (1) of subsection (a) of Code Section 36-70-21 or subsection (b) of this Code section.

(c) No amendment to Code Section 36-70-24 made by the General Assembly shall constitute an event necessitating review and revision to an approved strategy under subsection (b) of this Code section.

(d) In the event that a county or an affected municipality located within the county refuses to review and revise a strategy in accordance with paragraph (2) of subsection (b) of this Code section, then any of the

parties may use the mediation or nonbinding arbitration processes provided for in this article.

History.

Code 1981, § 36-70-28, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 2000, p. 1439, § 3; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2025, p. 667, § 3/HB 513, effective January 1, 2026.

Delayed effective date.

This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

Amendments.

The 2024 amendment, effective January 1, 2026, substituted the current provisions of this Code section for the former provisions, which read: "(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) Each county and affected municipality shall review, and revise if necessary, the approved strategy:

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

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

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

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

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

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

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

The 2025 amendment, effective January 1, 2026, added subsection (c) and redesignated former subsection (c) as present subsection (d).

Law reviews.

For annual survey on local government, see 73 Mercer L. Rev. 193 (2021).

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669, 2012 U.S. App. LEXIS 23812 (11th Cir. 2012).

Plaintiff not an affected municipality. — In an action for violations of the Open Records Act, O.C.G.A. § 50-18-70 et seq., and the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., the plaintiff was not an "affected municipality" as the plaintiff was not required to adopt a resolution approving the service delivery charge strategy because the strategy was already in place and, thus, O.C.G.A. § 36-70-28 did not apply to the parties' dispute, rather the more specific statute, O.C.G.A. § 36-70-24, regarding water rate differentials applied. City of Sandy Springs v. City of Atlanta, 358 Ga. App. 604, 855 S.E.2d 779, 2021 Ga. App. LEXIS 98 (2021).

36-70-29. (Effective January 1, 2026.) Restrictions on rules and regulations.

The department shall be prohibited from acting or promulgating rules or regulations regarding this article except to the extent explicitly provided for in this article.

History.
Code 1981, § 36-70-29, enacted by Ga. L. 2024, p. 1044, § 1/HB 1407, effective January 1, 2026.

Delayed effective date.
This Code section is set out twice in this Code. See the delayed effective date note at the beginning of this article.

CHAPTER 71

DEVELOPMENT IMPACT FEES

Sec.		Sec.	
36-71-1.	Short title; legislative findings and intent.	36-71-10.	Appeal of fee determination; arbitration.
36-71-2.	Definitions.	36-71-11.	Intergovernmental agreements.
36-71-3.	Imposition.	36-71-12.	Existing municipal and county laws to be brought into conformance with chapter.
36-71-4.	Calculation.	36-71-13.	Construction of reasonable project improvements; private agreements; hook-up or connection fees for water or sewer service; applicability of chapter to water authorities.
36-71-5.	Development Impact Fee Advisory Committee.		
36-71-6.	Hearings on proposed fee ordinance.		
36-71-7.	Credit for present value of construction accepted by municipality or county from developer.		
36-71-8.	Deposit and expenditure of fees; annual report.		
36-71-9.	Refunds.		

Administrative rules and regulations.

Development Impact Fee Compliance Requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Office of Coordinated Planning, Minimum Planning Standards and Procedures for Local Comprehensive Planning, Rule 110-3-2-.07.

Law reviews.

For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990).

For comment, "NEPA and Gentrification: Using Federal Environmental Review to Combat Urban Displacement," see 70 Emory L.J. 711 (2021).

36-71-1. Short title; legislative findings and intent.

(a) This chapter shall be known and may be cited as the "Georgia Development Impact Fee Act."

(b) The General Assembly finds that an equitable program for planning and financing public facilities needed to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety, and general welfare of the citizens of the State of Georgia. It is the intent of this chapter to:

(1) Ensure that adequate public facilities are available to serve new growth and development;

(2) Promote orderly growth and development by establishing uniform standards by which municipalities and counties may require that new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;

(3) Establish minimum standards for the adoption of development impact fee ordinances by municipalities and counties; and

(4) Ensure that new growth and development is required to pay no more than its proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development exactions.

History.

Code 1981, § 36-71-1, enacted by Ga. L. 1990, p. 692, § 1.

Law reviews.

For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003).

For survey article on real property law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 397 (2003).

For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005).

For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

For annual survey of Administrative Law, see 58 Mercer L. Rev. 1 (2006)

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Legislative intent. — Intent of the Georgia Development Impact Fee Act, O.C.G.A. § 36-71-1 et seq., was to promote orderly growth and development by establishing uniform standards by which municipalities and counties could require that new growth and development pay a proportionate share, but no more than its proportionate share, of the cost of new facilities needed to serve new growth and development. City of Griffin v. McDaniel, 270 Ga. App. 349, 606 S.E.2d 607, 2004 Ga. App. LEXIS 1437 (2004), cert. denied, No. S05C0538, 2005 Ga. LEXIS 332 (Ga. Apr. 26, 2005).

County ordinance imposing impact fees on new developments only in unincorporated areas. — Because Cherokee County, Georgia lacked the power to impose impact fees on new development in incorporated areas of Cherokee County, the county acted rationally and reasonably by imposing impact fees on new developments only in unincorporated areas. Cherokee County v. Greater Atlanta Homebuilders Ass'n, 255 Ga. App. 764, 565 S.E.2d 925, 2002 Ga. App. LEXIS 760 (2002).

Applicability. — Georgia Department of Community Affairs has properly interpreted the second and third sentences of O.C.G.A. § 36-71-13(c) to apply only to "governmental entities," as that term is defined by the Georgia Development Impact Fee Act, O.C.G.A. § 36-71-1 et seq. City of Griffin v. McDaniel, 270 Ga. App. 349, 606 S.E.2d 607, 2004 Ga. App. LEXIS 1437 (2004), cert. denied, No. S05C0538, 2005 Ga. LEXIS 332 (Ga. Apr. 26, 2005).

36-71-2. Definitions.

As used in this chapter, the term:

(1) "Capital improvement" means an improvement with a useful life of ten years or more, by new construction or other action, which increases the service capacity of a public facility.

(2) "Capital improvements element" means a component of a comprehensive plan adopted pursuant to Chapter 70 of this title which sets out projected needs for system improvements during a

planning horizon established in the comprehensive plan, a schedule of capital improvements that will meet the anticipated need for system improvements, and a description of anticipated funding sources for each required improvement.

(3) "Comprehensive plan" has the same meaning as provided for in Chapter 70 of this title.

(4) "Developer" means any person or legal entity undertaking development.

(5) "Development" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land, any of which creates additional demand and need for public facilities.

(6) "Development approval" means any written authorization from a municipality or county which authorizes the commencement of construction.

(7) "Development exaction" means a requirement attached to a development approval or other municipal or county action approving or authorizing a particular development project, including but not limited to a rezoning, which requirement compels the payment, dedication, or contribution of goods, services, land, or money as a condition of approval.

(8) "Development impact fee" means a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development.

(9) "Encumber" means to legally obligate by contract or otherwise commit to use by appropriation or other official act of a municipality or county.

(10) "Feepayor" means that person who pays a development impact fee or his successor in interest where the right or entitlement to any refund of previously paid development impact fees which is required by this chapter has been expressly transferred or assigned to the successor in interest. In the absence of an express transfer or assignment of the right or entitlement to any refund of previously paid development impact fees, the right or entitlement shall be deemed "not to run with the land."

(11) "Governmental entity" means any water authority, water and sewer authority, or water or waste-water authority created by or pursuant to an Act of the General Assembly of Georgia.

(12) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities in

terms of demand to capacity ratios, the comfort and convenience of use or service of public facilities, or both.

(13) "Present value" means the current value of past, present, or future payments, contributions or dedications of goods, services, materials, construction, or money.

(14) "Project" means a particular development on an identified parcel of land.

(15) "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project and are not system improvements. The character of the improvement shall control a determination of whether an improvement is a project improvement or system improvement and the physical location of the improvement on site or off site shall not be considered determinative of whether an improvement is a project improvement or a system improvement. If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than users or occupants of a particular project, the improvement or facility is a system improvement and shall not be considered a project improvement. No improvement or facility included in a plan for public facilities approved by the governing body of the municipality or county shall be considered a project improvement.

(16) "Proportionate share" means that portion of the cost of system improvements which is reasonably related to the service demands and needs of the project within the defined service area.

(17) "Public facilities" means:

(A) Water supply production, treatment, and distribution facilities;

(B) Waste-water collection, treatment, and disposal facilities;

(C) Roads, streets, and bridges, including rights of way, traffic signals, landscaping, and any local components of state or federal highways;

(D) Storm-water collection, retention, detention, treatment, and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;

(E) Parks, open space, and recreation areas and related facilities;

(F) Public safety facilities, including police, fire, emergency medical, and rescue facilities; and

(G) Libraries and related facilities.

(18) "Service area" means a geographic area defined by a municipality, county, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles or both.

(19) "System improvement costs" means costs incurred to provide additional public facilities capacity needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions, including but not limited to the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchases, court awards and costs, attorneys' fees, and expert witness fees), and expenses incurred for qualified staff or any qualified engineer, planner, architect, landscape architect, or financial consultant for preparing or updating the capital improvement element, and administrative costs, provided that such administrative costs shall not exceed 3 percent of the total amount of the costs. Projected interest charges and other finance costs may be included if the impact fees are to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the municipality or county to finance the capital improvements element but such costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs.

(20) "System improvements" means capital improvements that are public facilities and are designed to provide service to the community at large, in contrast to "project improvements."

History.

Code 1981, § 36-71-2, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 1992, p. 905, § 1; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2007, p. 414, § 1/HB 232.

Law reviews.

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

In general. — O.C.G.A. § 36-71-2 was not drafted to allow the terms "municipality," "county," and "governmental entity" to be used interchangeably. City of Griffin v. McDaniel, 270 Ga. App. 349, 606 S.E.2d 607, 2004 Ga. App. LEXIS 1437 (2004), cert. denied, No. S05C0538, 2005 Ga. LEXIS 332 (Ga. Apr. 26, 2005).

36-71-3. Imposition.

(a) Municipalities and counties which have adopted a comprehensive

plan containing a capital improvements element are authorized to impose by ordinance development impact fees as a condition of development approval on all development pursuant to and in accordance with the provisions of this chapter. After the transition period provided in this chapter, development exactions for other than project improvements shall be imposed by municipalities and counties only by way of development impact fees imposed pursuant to and in accordance with the provisions of this chapter.

(b) Notwithstanding any other provision of this chapter, that portion of a project for which a valid building permit has been issued prior to the effective date of a municipal or county development impact fee ordinance shall not be subject to development impact fees so long as the building permit remains valid and construction is commenced and is pursued according to the terms of the permit.

(c) Payment of a development impact fee shall be deemed to be in compliance with any municipal or county requirement for the provision of adequate public facilities or services in regard to the system improvements for which the development impact fee was paid.

History.
Code 1981, § 36-71-3, enacted by Ga. L. 1990, p. 692, § 1.

JUDICIAL DECISIONS

County ordinance imposing impact fees on new developments only in unincorporated areas. — Because Cherokee County, Georgia lacked the power to impose impact fees on new development in incorporated areas of Cherokee County, the county acted rationally and reasonably by imposing impact fees on new developments only in unincorporated areas. Cherokee County v. Greater Atlanta Homebuilders Ass'n, 255 Ga. App. 764, 565 S.E.2d 925, 2002 Ga. App. LEXIS 760 (2002).

36-71-4. Calculation.

(a) A development impact fee shall not exceed a proportionate share of the cost of system improvements, as defined in this chapter.

(b) Development impact fees shall be calculated and imposed on the basis of service areas.

(c) Development impact fees shall be calculated on the basis of levels of service for public facilities that are adopted in the municipal or county comprehensive plan that are applicable to existing development as well as the new growth and development.

(d) A municipal or county development impact fee ordinance shall provide that development impact fees shall be collected not earlier in the development process than the issuance of a building permit

authorizing construction of a building or structure; provided, however, that development impact fees for public facilities described in subparagraph (D) of paragraph (17) of Code Section 36-71-2 may be collected at the time of a development approval that authorizes site construction or improvement which requires public facilities described in subparagraph (D) of paragraph (17) of Code Section 36-71-2.

(e) A municipal or county development impact fee ordinance shall include a schedule of impact fees specifying the development impact fee for various land uses per unit of development on a service area by service area basis. The ordinance shall provide that a developer shall have the right to elect to pay a project's proportionate share of system improvement costs by payment of development impact fees according to the fee schedule as full and complete payment of the development project's proportionate share of system improvement costs.

(f) A municipal or county development impact fee ordinance shall be adopted in accordance with the procedural requirements of Code Section 36-71-6.

(g) A municipal or county development impact fee ordinance shall include a provision permitting individual assessments of development impact fees at the option of applicants for development approval under guidelines established in the ordinance.

(h) A municipal or county development impact fee ordinance shall provide for a process whereby a developer may receive a certification of the development impact fee schedule or individual assessment for a particular project, which shall establish the development impact fee for a period of 180 days from the date of certification.

(i) A municipal or county development impact fee ordinance shall include a provision for credits in accordance with the requirements of Code Section 36-71-7.

(j) A municipal or county development impact fee ordinance shall include a provision prohibiting the expenditure of development impact fees except in accordance with the requirements of Code Section 36-71-8.

(k) A municipal or county development impact fee ordinance may provide for the imposition of a development impact fee for system improvement costs previously incurred by a municipality or county to the extent that new growth and development will be served by the previously constructed system improvements.

(l) A municipal or county development impact fee ordinance may exempt all or part of particular development projects from development impact fees if:

(1) Such projects are determined to create extraordinary economic development and employment growth or affordable housing;

(2) The public policy which supports the exemption is contained in the municipality's or county's comprehensive plan; and

(3) The exempt development project's proportionate share of the system improvement is funded through a revenue source other than development impact fees.

(m) A municipal or county development impact fee ordinance shall provide that development impact fees shall only be spent for the category of system improvements for which the fees were collected and in the service area in which the project for which the fees were paid is located.

(n) A municipal or county development impact fee ordinance shall provide that, in the event a building permit is abandoned, credit shall be given for the present value of the development impact fee against future development impact fees for the same parcel of land.

(o) A municipal or county development impact fee ordinance shall provide for a refund of development impact fees in accordance with the requirements of Code Section 36-71-9.

(p) A municipal or county development impact fee ordinance shall provide for appeals from administrative determinations regarding development impact fees in accordance with the requirements of Code Section 36-71-10.

(q) Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.

(r) Development impact fees shall be calculated on a basis which is net of credits for the present value of revenues that will be generated by new growth and development based on historical funding patterns and that are anticipated to be available to pay for system improvements, including taxes, assessments, user fees, and intergovernmental transfers.

History.
Code 1981, § 36-71-4, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 1993, p. 91, § 36; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2007, p. 414, § 2/HB 232.

JUDICIAL DECISIONS

County ordinance imposing impact fees on new developments only in unincorporated areas. — Because Cherokee County, Georgia lacked the power to impose impact fees on a new development in incorporated areas of Cherokee County, the county acted rationally and reasonably by imposing impact fees on new developments only in unincorporated areas. Cherokee County v.

Greater Atlanta Homebuilders Ass'n, 255 Ga. App. 764, 565 S.E.2d 925, 2002 Ga. App. LEXIS 760 (2002).

Agreement between a county and a developer was unenforceable under O.C.G.A. §§ 13-8-1 and 13-8-2 because the agreement violated the prohibition in O.C.G.A. § 36-71-4(d) against the prepayment of impact fees; the agreement calculated the payment of impact fees not in reference to the issuance of building permits but as a sum certain for the purpose of retiring the county's debt for improving the county's water/sewer system. Effingham County Bd. of Comm'rs v. Park West Effingham, L.P., 308 Ga. App. 680, 708 S.E.2d 619, 2011 Ga. App. LEXIS 266 (2011), cert. denied, No. S11C1139, 2011 Ga. LEXIS 762 (Ga. Oct. 3, 2011).

Provision regarding payment of development impact fees severable. — Trial court did not err by denying a county's motion for summary judgment and concluding that the county's obligation to provide water and sewer lines under a 2006 agreement was not affected by the Georgia Court of Appeal's decision in another case invalidating the prepayment of development impact fees under a similar agreement because the invalid portion of the contract regarding the impact fees was severable under the agreement, which included an explicit severability clause. Effingham County v. Roach, 329 Ga. App. 805, 764 S.E.2d 600, 2014 Ga. App. LEXIS 705 (2014), cert. denied, No. S15C0577, 2015 Ga. LEXIS 222 (Ga. Mar. 30, 2015), overruled, Rivera v. Washington, 298 Ga. 770, 784 S.E.2d 775, 2016 Ga. LEXIS 248 (2016).

36-71-5. Development Impact Fee Advisory Committee.

(a) Prior to the adoption of a development impact fee ordinance, a municipality or county adopting an impact fee program shall establish a Development Impact Fee Advisory Committee.

(b) Such committee shall be composed of not less than five nor more than ten members appointed by the governing authority of the municipality or county and at least 50 percent of the membership shall be representatives from the development, building, or real estate industries. An existing planning commission or other existing committee that meets these requirements may serve as the Development Impact Fee Advisory Committee.

(c) The Development Impact Fee Advisory Committee shall serve in an advisory capacity to assist and advise the governing body of the municipality or county with regard to the adoption of a development impact fee ordinance. In that the committee is advisory, no action of the committee shall be considered a necessary prerequisite for municipal or county action in regard to adoption of an ordinance.

History.

Code 1981, § 36-71-5, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2007, p. 414, § 3/HB 232.

36-71-6. Hearings on proposed fee ordinance.

Prior to the adoption of an ordinance imposing a development impact fee pursuant to this chapter, the governing body of a municipality or county shall cause two duly noticed public hearings to be held in regard

to the proposed ordinance. The second hearing shall be held at least two weeks after the first hearing.

History.
Code 1981, § 36-71-6, enacted by Ga. L. 1990, p. 692, § 1.

36-71-7. Credit for present value of construction accepted by municipality or county from developer.

(a) In the calculation of development impact fees for a particular project, credit shall be given for the present value of any construction of improvements or contribution or dedication of land or money required or accepted by a municipality or county from a developer or his predecessor in title or interest for system improvements of the category for which the development impact fee is being collected. Credits shall not be given for project improvements.

(b) In the event that a developer enters into an agreement with a county or municipality to construct, fund, or contribute system improvements such that the amount of the credit created by such construction, funding, or contribution is in excess of the development impact fees which would otherwise have been paid for the development project, the developer shall be reimbursed for such excess construction, funding, or contribution from development impact fees paid by other development located in the service area which is benefited by such improvements.

History.
Code 1981, § 36-71-7, enacted by Ga. L. 1990, p. 692, § 1.

Law reviews.
For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Impact fee credits. — Because O.C.G.A. § 36-71-13(b) permitted an owner and a city to enter into a private development agreement and the agreement unambiguously provided for reimbursement in the form of impact fee credits under O.C.G.A. § 36-71-7(b) and not cash, the trial court properly granted partial summary judgment to the city. Fulton Greens, L.P. v. City of Alpharetta, 272 Ga. App. 459, 612 S.E.2d 491, 2005 Ga. App. LEXIS 149 (2005).

36-71-8. Deposit and expenditure of fees; annual report.

(a) An ordinance imposing development impact fees shall provide that all development impact fee funds shall be maintained in one or more interest-bearing accounts. Accounting records shall be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees shall be considered funds of the account on which it is earned and

shall be subject to all restrictions placed on the use of development impact fees under the provisions of this chapter. The accounting records shall include the following information:

(1) The accounting records to be maintained shall specify the address of each property which paid development impact fees, the amount of fees paid in each category in which fees were collected, and the date that such fees were paid; and

(2) As to any exemptions granted, the accounting records to be maintained shall specify the address of each property for which exemptions were granted, the reason for which such exemption was granted, and the revenue source from which the exempt development's proportionate share of the system improvements is to be paid.

(b) Expenditures of development impact fees shall be made only for the category of system improvements and in the service area for which the development impact fee was imposed as shown by the capital improvements element and as authorized by this chapter. Development impact fees shall not be used to pay for any purpose that does not involve system improvements that create additional service available to serve new growth and development.

(c)(1) Development impact fees, collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways, shall be expended to fund, in whole or in part, system improvement projects:

(A) That have been identified in the capital improvements element of the municipality's comprehensive development plan; and

(B) That are chosen by a municipality after consideration of the following factors:

(i) The proximity of the proposed system improvements to developments within the service area which have generated development impact fees collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways; and

(ii) The proposed system improvements which will have the greatest effect on level of service for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways impacted by the developments which have paid such impact fees.

(2) Where the expenditure of development impact fees paid by a development is allocated to system improvements in the general area of such development, through an agreement between the municipal-

ity and the developer and such agreement is approved by the governing body, the analysis required by subparagraph (B) of paragraph (1) of this subsection shall not be applicable.

(3) The provisions of this subsection shall only apply to municipalities that have more than 140,000 parcels of land.

(d)(1) As part of its annual audit process, a municipality or county shall prepare an annual report describing the amount of any development impact fees collected, encumbered, and used during the preceding year by category of public facility and service area.

(2) In municipalities that have more than 140,000 parcels of land, the portion of the annual report relating to development impact fees collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways shall be referred to such municipality's most recently constituted Development Impact Fee Advisory Committee which shall report to the governing body of such municipality any perceived inequities in the expenditure of impact fees collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways.

History. Code 1981, § 36-71-8, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 2007, p. 414, § 4/HB 232.

36-71-9. Refunds.

Any municipality or county which adopts a development impact fee ordinance shall provide for refunds in accordance with the following provisions:

(1) Upon the request of an owner of property on which a development impact fee has been paid, a municipality or county shall refund the development impact fee if capacity is available and service is denied or if the municipality or county, after collecting the fee when service is not available, has failed to encumber the development impact fee or commence construction within six years after the date that the fee was collected. In determining whether development impact fees have been encumbered, development impact fees shall be considered encumbered on a first-in, first-out (FIFO) basis;

(2) When the right to a refund exists due to a failure to encumber development impact fees, the municipality or county shall provide written notice of entitlement to a refund to the feepayor who paid the development impact fee at the address shown on the application for development approval or to a successor in interest who has given notice to the municipality or county of a transfer or assignment of the right or entitlement to a refund and who has provided a mailing address. Such notice shall also be published within 30 days after the

expiration of the six-year period after the date that the development impact fees were collected and shall contain the heading "Notice of Entitlement to Development Impact Fee Refund";

(3) An application for a refund shall be made within one year of the time such refund becomes payable under paragraph (1) or (2) of this Code section or within one year of publication of the notice of entitlement to a refund under this Code section, whichever is later;

(4) A refund shall include a refund of a pro rata share of interest actually earned on the unused or excess development impact fee collected;

(5) All refunds shall be made to the feepayor within 60 days after it is determined by a municipality or county that a sufficient proof of claim for a refund has been made; and

(6) The feepayor shall have standing to sue for a refund under the provisions of this chapter if there has been a timely application for a refund and the refund has been denied or has not been made within one year of submission of the application for refund to the collecting municipality or county.

History.
Code 1981, § 36-71-9, enacted by Ga. L. 1990, p. 692, § 1.

36-71-10. Appeal of fee determination; arbitration.

(a) A municipality or county which adopts a development impact fee ordinance shall provide for administrative appeals to the governing body or such other body as designated in the ordinance of a determination of the development impact fees for a particular project.

(b) A developer may pay a development impact fee under protest in order to obtain a development approval or building permit, as the case may be. A developer making such payment shall not be estopped from exercising the right of appeal provided by this chapter, nor shall such developer be estopped from receiving a refund of any amount deemed to have been illegally collected.

(c) A municipality or county development impact fee ordinance may provide for the resolution of disputes over the development impact fee by binding arbitration through the American Arbitration Association or otherwise.

History.
Code 1981, § 36-71-10, enacted by Ga. L. 1990, p. 692, § 1.

36-71-11. Intergovernmental agreements.

Municipalities and counties which are jointly affected by development are authorized to enter into intergovernmental agreements with each other, with authorities, or with the state for the purpose of developing joint plans for capital improvements or for the purpose of agreeing to collect and expend development impact fees for system improvements, or both, provided that such agreement complies with any applicable state laws.

History.
Code 1981, § 36-71-11, enacted by Ga. L. 1990, p. 692, § 1.

Law reviews.
For survey article on real property law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 397 (2003).

36-71-12. Existing municipal and county laws to be brought into conformance with chapter.

This chapter shall not repeal any existing laws authorizing a municipality or county to impose fees or require contributions or property dedications for capital improvements; provided, however, that all local ordinances or resolutions imposing development exactions for system improvements on April 4, 1990, shall be brought into conformance with this chapter no later than November 30, 1992.

History.
Code 1981, § 36-71-12, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 1992, p. 905, § 2.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1990, "April 4, 1990," was substituted for "the effective date of this chapter".

36-71-13. Construction of reasonable project improvements; private agreements; hook-up or connection fees for water or sewer service; applicability of chapter to water authorities.

(a) Nothing in this chapter shall prevent a municipality or county from requiring a developer to construct reasonable project improvements in conjunction with a development project.

(b) Nothing in this chapter shall be construed to prevent or prohibit private agreements between property owners or developers and municipalities, counties, or other governmental entities in regard to the construction or installation of system improvements and providing for credits or reimbursements for system improvement costs incurred by a developer including interproject transfers of credits or providing for reimbursement for project improvement costs which are used or shared by more than one development project.

(c) Nothing in this chapter shall limit a municipality, county, or other

governmental entity which provides water or sewer service from collecting a proportionate share of the capital cost of water or sewer facilities by way of hook-up or connection fees as a condition of water or sewer service to new or existing users, provided that the development impact fee ordinance of a municipality or county or other governmental entity that collects development impact fees pursuant to this chapter shall include a provision for credit for such hook-up or connection fees collected by the municipality or county to the extent that such hook-up or connection fee is collected to pay for system improvements. Imposition of such hook-up or connection fees by any governmental entity to pay for system improvements either existing or new shall be consistent with the capital improvement element of the comprehensive plan and shall be subject to the approval of each county, municipality, or combination thereof which appoints the governing body of such entity. The adoption, imposition, collection, and expenditure of such fees for system improvements by any governmental entity shall be subject to the same procedures applicable to the adoption, imposition, collection, and expenditure of development impact fees by a county.

(d) Nothing in this chapter shall apply to a water authority created by Act of the General Assembly, as long as such authority is not established as a political subdivision of the State of Georgia but instead acts subject to the approval of a county governing authority.

History.

Code 1981, § 36-71-13, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 1991, p. 94, § 36; Ga. L. 1992, p. 905, § 3.

Law reviews.

For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Applicability. — Georgia Department of Community Affairs has properly interpreted the second and third sentences of O.C.G.A. § 36-71-13(c) to apply only to "governmental entities," as that term is defined by the Georgia Development Impact Fee Act, O.C.G.A. § 36-71-1 et seq. City of Griffin v. McDaniel, 270 Ga. App. 349, 606 S.E.2d 607, 2004 Ga. App. LEXIS 1437 (2004), cert. denied, No. S05C0538, 2005 Ga. LEXIS 332 (Ga. Apr. 26, 2005).

Private development agreements. — Because O.C.G.A. § 36-71-13(b) permitted an owner and a city to enter into a private development agreement and the agreement unambiguously provided for reimbursement in the form of impact fee credits under O.C.G.A. § 36-71-7(b) and not cash, the trial court properly granted partial summary judgment to the city. Fulton Greens, L.P. v. City of Alpharetta, 272 Ga. App. 459, 612 S.E.2d 491, 2005 Ga. App. LEXIS 149 (2005).

Recoupment of costs. — O.C.G.A. § 36-71-13(c) was clearly designed to allow local governments providing water or sewer service to recoup part of the capital costs of their facilities from new or existing users as a condition of providing service to those users. City of Griffin v. McDaniel, 270 Ga. App. 349, 606 S.E.2d 607, 2004 Ga. App. LEXIS 1437 (2004),

cert. denied, No. S05C0538, 2005 Ga. LEXIS 332 (Ga. Apr. 26, 2005).

As a municipality providing sewer service, a city was entitled, under O.C.G.A. § 36-71-13(c), to collect a proportionate share of the capital cost of its sewer facilities as a condition of sewer service to new or existing users, without adopting an impact fee ordinance. City of Griffin v. McDaniel, 270 Ga. App. 349, 606 S.E.2d 607, 2004 Ga. App. LEXIS 1437 (2004), cert. denied, No. S05C0538, 2005 Ga. LEXIS 332 (Ga. Apr. 26, 2005).

CHAPTER 72

ABANDONED CEMETERIES AND BURIAL GROUNDS

Sec.		Sec.	
36-72-1.	Legislative findings and intent.		sion on application for permit.
36-72-2.	Definitions.	36-72-9.	Establishment of board or commission to review applications in certain counties.
36-72-3.	Authority of counties and municipalities to preserve abandoned cemeteries.	36-72-10.	Application fee.
36-72-4.	Permit required for developing land on which cemetery located.	36-72-11.	Appeal of application decision.
36-72-5.	Application for permit.	36-72-12.	Development activities pending appeal.
36-72-6.	Identification and notification of descendants of person in cemetery sought to be developed.	36-72-13.	Compliance inspections.
36-72-7.	Public hearing on development of abandoned cemetery; time for decision on application for permit.	36-72-14.	Jurisdiction of superior court; expending private or public funds to mitigate harm to cemetery.
36-72-8.	Issues considered in decision	36-72-15.	Disinterment and disposition of human remains or burial objects.
		36-72-16.	Penalties.

Cross references.
Georgia Cemetery and Funeral Services Act of 2000, § 10-14-1 et seq.

36-72-1. Legislative findings and intent.

(a) The care accorded the remains of deceased persons reflects respect and regard for human dignity as well as cultural, spiritual, and religious values. The General Assembly declares that human remains and burial objects are not property to be owned by the person or entity which owns the land or water where the human remains and burial objects are interred or discovered, but human remains and burial objects are a part of the finite, irreplaceable, and nonrenewable cultural heritage of the people of Georgia which should be protected.

(b) It is the intent of the General Assembly that the provisions of this chapter be construed to require respectful treatment of human remains in accord with the equal and innate dignity of every human being and consistent with the identifiable ethnic, cultural, and religious affiliation of the deceased individual as indicated by the method of burial or other historical evidence or reliable information.

History.
Code 1981, § 36-72-1, enacted by Ga. L. 1991, p. 274, § 3.

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

36-72-2. Definitions.

As used in this chapter, the term:

(1) "Abandoned cemetery" means a cemetery which shows signs of neglect including, without limitation, the unchecked growth of vegetation, repeated and unchecked acts of vandalism, or the disintegration of grave markers or boundaries and for which no person can be found who is legally responsible and financially capable of the upkeep of such cemetery.

(2) "Archeologist" means any person who is:

(A) A member of or meets the criteria for membership in the Society of Professional Archaeologists and can demonstrate experience in the excavation and interpretation of human graves; or

(B) Employed on July 1, 1991, by the state or by any county or municipal governing authority as an archeologist.

(3) "Burial ground" means an area dedicated to and used for interment of human remains. Such term shall include privately owned burial plots, individually and collectively, once human remains have been buried therein. The fact that the area was used for burial purposes shall be evidence that it was set aside for burial purposes.

(4) "Burial object" means any item reasonably believed to have been intentionally placed with the human remains at the time of burial or interment or any memorial, tombstone, grave marker, or shrine which may have been added subsequent to interment. Such term also means any inscribed or uninscribed marker, coping, curbing, enclosure, fencing, pavement, shelter, wall, stoneware, pottery, or other grave object erected or deposited incident to or subsequent to interment.

(5) "Cemetery" or "cemeteries" means any land or structure in this state dedicated to and used for interment of human remains. It may be either a burial park for earth interments or a mausoleum for vault or crypt interments or a combination of one or more thereof.

(6) "Descendant" means a person or group of persons related to a deceased human by blood or adoption in accordance with Title 19.

(7) "Genealogist" means a person who traces or studies the descent of persons or families and prepares a probative record of such descent.

(8) "Human remains" means the bodies of deceased human beings in any stage of decomposition, including cremated remains.

(9) "Preserve and protect" means to keep safe from destruction, peril, or other adversity and may include the placement of signs, markers, fencing, or other such appropriate features so as to identify the site as a cemetery or burial ground and may also include the cleaning, maintenance, and upkeep of the site so as to aid in its preservation and protection.

History.

Code 1981, § 36-72-2, enacted by Ga. L. 1991, p. 924, § 3; Ga. L. 1992, p. 2508, § 1; Ga. L. 2006, p. 1087, § 7/HB 910; Ga. L. 2025, p. 1029, § 36(35)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "Such term" for "The term" in paragraph (3).

Cross references.

Georgia Cemeterians Board Act, § 43-8B-1 et seq.

JUDICIAL DECISIONS

Abandonment was a jury question. — Descendants of the grantor of a burial ground were not entitled to summary judgment on a buyer's claim that the cemetery was abandoned, O.C.G.A. § 36-72-2(1), because there was evidence that no one had been buried there since 1971, that the descendants had not paid taxes on the lot, and that the descendants had not maintained the cemetery. City of Sandy Springs v. Mills, 331 Ga. App. 709, 771 S.E.2d 405, 2015 Ga. App. LEXIS 220 (2015).

36-72-3. Authority of counties and municipalities to preserve abandoned cemeteries.

Counties, anywhere within the county boundaries, and municipalities, anywhere within the municipal boundaries, are authorized, jointly and severally, to preserve and protect any abandoned cemetery or any burial ground which the county or municipality determines has been abandoned or is not being maintained by the person who is legally responsible for its upkeep, whether or not that person is financially capable of doing so, to expend public money in connection therewith, to provide for reimbursement of such funds by billing any legally responsible person or levying upon any of his property as authorized by local ordinance, and to exercise the power of eminent domain to acquire any interest in land necessary for that purpose.

History.

Code 1981, § 36-72-3, enacted by Ga. L. 1991, p. 924, § 3; Ga. L. 1992, p. 2508, § 2.

Law reviews.

For annual survey article discussing local government law, see 51 Mercer L. Rev. 397 (1999).

JUDICIAL DECISIONS

Duty of county. — O.C.G.A. § 36-72-3 authorizes but does not compel a county to preserve and protect abandoned cemeteries. Smith v. Pulaski County, 269 Ga. 688, 501 S.E.2d 213, 1998 Ga. LEXIS 625 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Persons sentenced to community service may be utilized to assist counties or municipalities in the care of abandoned cemeteries or burial grounds. 1999 Op. Att'y Gen. No. U99-5.

36-72-4. Permit required for developing land on which cemetery located.

No known cemetery, burial ground, human remains, or burial object shall be knowingly disturbed by the owner or occupier of the land on which the cemetery or burial ground is located for the purposes of developing or changing the use of any part of such land unless a permit is first obtained from the governing authority of the municipal corporation or county wherein the cemetery or burial ground is located, which shall have authority to permit such activity except as provided in Code Section 36-72-14.

History.
Code 1981, § 36-72-4, enacted by Ga. L. 1991, p. 924, § 3.

36-72-5. Application for permit.

Application for a permit shall include, at a minimum, the following information:

(1) Evidence of ownership of the land on which the cemetery or burial ground is located in the form of a legal opinion based upon a title search;

(2) A report prepared by an archeologist stating the number of graves believed to be present and their locations as can be determined from the use of minimally invasive investigation techniques, including remote sensing methods and the use of metal probes, which activities shall not require a permit;

(3) A survey prepared by or under the direction of a registered surveyor showing the location and boundaries of the cemetery or burial ground based on an archeologist's report;

(4) A plan prepared by a genealogist for identifying and notifying the descendants of those buried or believed to be buried in such cemetery. If those buried or believed to be buried are of aboriginal or American Indian descent, the genealogist, in preparing the notifica-

tion plan, shall consult with the Council on American Indian Concerns created pursuant to Code Section 44-12-280 and shall include in the notification plan not only any known descendants of those presumed buried but also any American Indian tribes as defined in paragraph (2) of Code Section 44-12-260 that are culturally affiliated; and

(5) A proposal for mitigation or avoidance of the effects of the planned activity on the cemetery or burial ground. If the proposal includes relocation of any human remains or burial objects, the proposal shall specify the method of disinterment, the location and method of disposition of the remains, the approximate cost of the process, and the approximate number of graves affected.

History.
Code 1981, § 36-72-5, enacted by Ga. L. 1991, p. 924, § 3; Ga. L. 1992, p. 1790, § 5.

JUDICIAL DECISIONS

Relocation allowed. — Court properly found that the evidence showed no specific dedication of this property by any of the property's owners for use as a public cemetery and that the evidence did not suggest that the cemetery was used by the public at large as a burial place which supported the granting of the application for relocation. Hughes v. Cobb County, 264 Ga. 128, 441 S.E.2d 406, 1994 Ga. LEXIS 278 (1994).

36-72-6. Identification and notification of descendants of person in cemetery sought to be developed.

The applicant shall implement its plan for identifying and locating descendants no later than the date the application is submitted to the governing authority. The governing authority shall review the applicant's plan for identifying and notifying the descendants of the deceased persons and may require as a condition for issuing a permit that the applicant implement additional reasonable attempts to identify and locate descendants. Notice to possible descendants shall include information on how to contact the governing authority and a summary of the rights of descendants under this chapter. The governing authority shall promptly inform any descendant who indicates an interest in the disposition of the human remains and burial objects regarding any proposals for mitigation, the terms of any permit issued, the time and place of any scheduled public hearings, and appeal procedures and events.

History.
Code 1981, § 36-72-6, enacted by Ga. L. 1991, p. 924, § 3.

36-72-7. Public hearing on development of abandoned cemetery; time for decision on application for permit.

(a) Within 15 days after it is satisfied that all reasonable effort has been made to notify descendants, as provided in Code Section 36-72-6, and following receipt of the recommendations of a board or commission created pursuant to Code Section 36-72-9, the governing authority shall schedule a public hearing at which any interested party or citizen may appear and be given an opportunity to be heard. In addition to the notice required in Code Section 36-72-6, notice of the public hearing shall be advertised in the legal organ of the jurisdiction once a week for the two consecutive weeks immediately preceding the week in which any such hearing is held.

(b) Within 30 days after the conclusion of the public hearing, the governing authority shall notify the applicant in writing of its decision. The governing authority shall have the authority to deny the application with written reasons therefor, to issue a permit adopting the application in whole or in part, or to issue a permit which may include additional requirements to mitigate the proposed activity's adverse effects on the cemetery or burial ground, including but not limited to relocation of the proposed project, reservation of the cemetery or burial ground as an undeveloped area within the proposed development or use of land, and respectful disinterment and proper disposition of the human remains. The governing authority may adopt the applicant's proposal for mitigation.

History.
Code 1981, § 36-72-7, enacted by Ga. L. 1991, p. 924, § 3.

JUDICIAL DECISIONS

Consideration of alternatives. — Given that O.C.G.A. § 36-72-7 gives the governing authority the power to adopt the application in whole or in part, or to issue a permit which may include additional requirements, the board of commissioners had the authority to consider alternatives and to issue a permit for disinterment and relocation to the alternate site. Hughes v. Cobb County, 264 Ga. 128, 441 S.E.2d 406, 1994 Ga. LEXIS 278 (1994).

36-72-8. Issues considered in decision on application for permit.

The governing authority shall consider the following in making its determination:

(1) The presumption in favor of leaving the cemetery or burial ground undisturbed;

(2) The concerns and comments of any descendants of those buried in the burial ground or cemetery and any other interested parties;

(3) The economic and other costs of mitigation;

(4) The adequacy of the applicant's plans for disinterment and proper disposition of any human remains or burial objects;

(5) The balancing of the applicant's interest in disinterment with the public's and any descendant's interest in the value of the undisturbed cultural and natural environment; and

(6) Any other compelling factors which the governing authority deems relevant.

History.
Code 1981, § 36-72-8, enacted by Ga. L. 1991, p. 924, § 3.

JUDICIAL DECISIONS

Evidence supported relocation. — There was evidence in the record which supported the trial court's conclusion of fact that, due to lack of maintenance and inappropriate surroundings, relocation would preserve rather than destroy the cultural heritage of the county and the cemetery. Hughes v. Cobb County, 264 Ga. 128, 441 S.E.2d 406, 1994 Ga. LEXIS 278 (1994).

36-72-9. Establishment of board or commission to review applications in certain counties.

The governing authority of any county whose population is in excess of 290,000 as established by the United States decennial census of 1980 or any such future census shall be authorized to establish or empower a new or existing commission or board to hear and review any application filed pursuant to Code Section 36-72-5. The board or commission shall conduct a public hearing within 60 days of the filing of an application and shall make a written recommendation to the governing authority no later than 15 days following the public hearing with respect to the sufficiency of the notice to descendants, the plan for mitigation, the disturbance and adverse effects on the cemetery or burial ground, the survey of the cemetery, and plans for disinterment and reinterment.

History.
Code 1981, § 36-72-9, enacted by Ga. L. 1991, p. 924, § 3.

36-72-10. Application fee.

The governing authority shall be authorized to impose an application fee which shall reflect the cost to the governing authority for processing and reviewing the application including, but not limited to, the cost of hiring an attorney, independent archeologist, and independent surveyor to assist in making recommendations regarding the applicant's plan. Such fee, if imposed, shall not exceed $2,500.00.

History.
Code 1981, § 36-72-10, enacted by Ga. L. 1991, p. 924, § 3.

36-72-11. Appeal of application decision.

Should any applicant or descendant be dissatisfied with a decision of the governing authority, he or she, within 30 days of such decision, may file an appeal in the superior court of the county in which the cemetery or burial ground is located in addition to the superior courts enumerated in Code Section 50-13-19.

History.
Code 1981, § 36-72-11, enacted by Ga. L. 1991, p. 924, § 3.

36-72-12. Development activities pending appeal.

Until the expiration of the time for appeal as set forth in Code Section 36-72-11, the applicant shall not begin or resume activities which comply with the permit issued by the governing authority. If an appeal is filed, the applicant may begin or resume activities which comply with the permit only upon consent of the governing authority and the party seeking judicial review or upon order of the reviewing court for good cause shown.

History.
Code 1981, § 36-72-12, enacted by Ga. L. 1991, p. 924, § 3.

36-72-13. Compliance inspections.

The governing authority or local law enforcement agency shall inspect as necessary to determine whether the applicant has complied with the provisions of this chapter requiring cessation or limitation of activity and with the terms of the permit as issued by the governing authority or as modified by the superior court or reviewing court.

History.
Code 1981, § 36-72-13, enacted by Ga. L. 1991, p. 924, § 3.

36-72-14. Jurisdiction of superior court; expending private or public funds to mitigate harm to cemetery.

(a) Notwithstanding any provisions of this chapter to the contrary, when any agency, authority, or political subdivision of the state seeks to file an application for a permit under this chapter, the superior court having jurisdiction over the real property wherein the cemetery or burial ground is located shall have exclusive jurisdiction over the

permit application. The superior court shall conduct its investigation and determination of the permit in accordance with Code Sections 36-72-6 through 36-72-8.

(b) When activities of an agency, authority, or political subdivision of the state adversely affect an abandoned cemetery or a burial ground, such agency, authority, or political subdivision shall bear the cost of mitigating the harm to the abandoned cemetery or burial ground or reinterring the human remains as a part of the cost of the project and is authorized to expend public funds for such purpose. When activities of a private person, corporation, or other private entity adversely affect an abandoned cemetery or a burial ground, such person, corporation, or other entity shall bear the cost of mitigating the harm to the cemetery or burial ground or reinterring the human remains. The cost of mitigating the harm to an abandoned cemetery or to a burial ground or reinterring the human remains exposed through vandalism by an unidentified vandal or through erosion may be borne by the governing authority in whose jurisdiction the abandoned cemetery or burial ground is located.

(c) The provisions of this chapter notwithstanding, the Department of Transportation shall not be required to obtain a permit under this chapter unless human remains are to be relocated; provided, however, that the department shall be required to obtain an archaeologist's report, pursuant to paragraph (2) of Code Section 36-72-5, confirming the absence of human remains on the affected property.

History.
Code 1981, § 36-72-14, enacted by Ga. L. 1991, p. 924, § 3; Ga. L. 2011, p. 583, § 11/HB 137.

36-72-15. Disinterment and disposition of human remains or burial objects.

Any disinterment and disposition of human remains or burial objects permitted under this chapter shall be supervised, monitored, or carried out by the applicant's archeologist and shall be done at the expense of the person or entity to whom the permit is issued.

History.
Code 1981, § 36-72-15, enacted by Ga. L. 1991, p. 924, § 3.

36-72-16. Penalties.

Any person who knowingly fails to comply with the provisions of this chapter shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall pay a fine of not more than $5,000.00 for each grave site disturbed; provided, however, that any person who knowingly violates the provisions of Code Section 36-72-4 shall be

guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall be incarcerated for not more than six months and shall pay a fine not less than $5,000.00 for each grave site disturbed.

History.
Code 1981, § 36-72-16, enacted by Ga. L. 1991, p. 924, § 3.

CHAPTER 73

CONTRACTS FOR REGIONAL FACILITIES

Sec.		Sec.	
36-73-1.	Purpose.	36-73-4.	Impingement upon powers, authority, rights, and duties of sheriffs prohibited.
36-73-2.	Public hearing on proposed contract; notice.		
36-73-3.	Proposed facility located outside county or municipality; feasibility study.		

Editor's notes.

Ga. L. 1995, p. 699, § 2, not codified by the General Assembly, provides that this Act applies with respect to contracts entered into on or after April 18, 1995, but shall not invalidate any contract entered into prior to April 18, 1995.

36-73-1. Purpose.

It is the purpose of this chapter to provide certain conditions, limitations, and restrictions upon the exercise of the powers granted to counties and municipalities to enter into contracts for regional facilities under Article IX, Section IV, Paragraph IV of the Constitution.

History.

Code 1981, § 36-73-1, enacted by Ga. L. 1995, p. 699, § 1.

36-73-2. Public hearing on proposed contract; notice.

A county or municipality which proposes to enter into a contract under Article IX, Section IV, Paragraph IV of the Constitution shall, prior to entering into such contract, conduct at least one public hearing with respect to such proposed contract. Notice of such public hearing shall be given by a prominent advertisement in a newspaper of general circulation within the county or municipality. The parties proposing to enter into a contract may agree to conduct a joint public hearing in lieu of separate public hearings by each party. The notice of public hearing required in the case of a municipality may be combined with a notice of public hearing for the county within which the municipality is located.

History.

Code 1981, § 36-73-2, enacted by Ga. L. 1995, p. 699, § 1.

36-73-3. Proposed facility located outside county or municipality; feasibility study.

Where a county or municipality proposes to enter into a contract for a regional facility which will be located outside of such county or

municipality and such contract will require the expenditure of public funds of the county or municipality, the county or municipality shall, prior to entering into the contract, conduct a financial feasibility study of the contract. Such study may be conducted by the county or municipality or the county or municipality may contract with another party for the conducting of the study. Two or more parties proposing to enter into a contract may conduct or contract for a joint financial feasibility study, but in this case the financial feasibility study shall separately address the fiscal concerns of each party to the proposed contract. A financial feasibility study shall at a minimum include a statement of the expected useful life of the regional project and a statement or projection of the costs and benefits to the county or municipality over the entire expected useful life of the project.

History.
Code 1981, § 36-73-3, enacted by Ga. L. 1995, p. 699, § 1.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1998, "study" was inserted near the end of the first sentence.

36-73-4. Impingement upon powers, authority, rights, and duties of sheriffs prohibited.

No contract under Article IX, Section IV, Paragraph IV of the Constitution shall in any manner impinge upon the constitutional and statutory powers, authority, rights, and duties granted to the sheriffs of this state prior to the adoption of said Paragraph IV.

History.
Code 1981, § 36-73-4, enacted by Ga. L. 1995, p. 699, § 1.

CHAPTER 74

LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS

Article 1

General Provisions

Sec.
36-74-1. Short title.
36-74-2. Legislative intent.
36-74-3. Creating or abolishing boards; hearings and fines.

Article 2

Enforcement Boards Created on or after January 1, 2003

36-74-20. Application.
36-74-21. Definitions.
36-74-22. Membership; member requirements; chairperson; attorney's role.
36-74-23. Initiating of proceedings; time to correct violations; repeat violations; hearings.
36-74-24. Calling of hearings; hearing proceedings.
36-74-25. Powers of enforcement boards.
36-74-26. Administrative fines; public record.
36-74-27. Length of liens.
36-74-28. Appeals to superior court.
36-74-29. Notice required; form of notice.
Sec.
36-74-30. Other enforcement methods; probable cause for investigation required.

Article 3

Enforcement Boards Created Prior to January 1, 2003

36-74-40. Application of article.
36-74-41. Definitions.
36-74-42. Membership; member requirements; chairperson; attorney's role.
36-74-43. Initiating of proceedings; time to correct violations; repeat violations; hearings.
36-74-44. Calling of hearings; hearing proceedings; orders.
36-74-45. Powers of enforcement boards.
36-74-46. Administrative fines; public record.
36-74-47. Length of liens.
36-74-48. Petition for review to superior court.
36-74-49. Notice required; form of notice.
36-74-50. Other enforcement methods.

Cross references.

State building, plumbing, electrical, and other codes, § 8-2-20 et seq.

Building, electrical, and other codes, § 36-13-1 et seq.

Editor's notes.

Ga. L. 2000, p. 1102, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Inferior Court Training and Assistance Act of 2000.'"

ARTICLE 1

GENERAL PROVISIONS

Law reviews.

For note on 2000 enactment of this article, see 17 Ga. St. U.L. Rev. 52 (2000).

36-74-1. Short title.

This chapter shall be known and may be cited as the "Local Government Code Enforcement Boards Act" and is enacted to provide assistance to inferior courts with jurisdiction over county or municipal ordinances.

History. Code 1981, § 36-74-1, enacted by Ga. L. 2000, p. 1102, § 3; Ga. L. 2003, p. 581, § 2.

36-74-2. Legislative intent.

It is the intent of this chapter to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state by authorizing the creation of administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist.

History. Code 1981, § 36-74-2, enacted by Ga. L. 2000, p. 1102, § 3; Ga. L. 2003, p. 581, § 2.

36-74-3. Creating or abolishing boards; hearings and fines.

(a) Each county or municipality may, at its option, create or abolish by ordinance local government code enforcement boards as provided in this chapter.

(b) A county or a municipality may, by ordinance, adopt an alternate code enforcement system which gives code enforcement boards the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances.

History. Code 1981, § 36-74-3, enacted by Ga. L. 2000, p. 1102, § 3; Ga. L. 2003, p. 581, § 2.

ARTICLE 2

ENFORCEMENT BOARDS CREATED ON OR AFTER JANUARY 1, 2003

36-74-20. Application.

The provisions of this article shall apply to enforcement boards created on or after January 1, 2003.

History.
Code 1981, § 36-74-20, enacted by Ga. L. 2003, p. 581, § 2.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2003, "January" was substituted for "Jan.".

36-74-21. Definitions.

As used in this article, the term:

(1) "Code enforcement officer" means any person contracted with or employed by a county or municipality who has enforcement authority for health, safety, or welfare requirements and is authorized to issue citations or file formal complaints regarding the same.

(2) "County or municipal codes and ordinances" means zoning ordinances and resolutions, ordinances and resolutions enacting subdivision regulations, environmental ordinances and resolutions, state minimum standard codes provided for in Code Section 8-2-25, ordinances and resolutions enacted pursuant to Code Section 8-2-25, other ordinances and resolutions regulating the development of real property, and ordinances and regulations providing for control of litter and debris, control of junked or abandoned vehicles, and control of overgrown vegetation. Notwithstanding the above, the term "county and municipal codes and ordinances" shall not include:

(A) Those codes and ordinances requiring a permit, unless the alleged violator has failed to secure all necessary valid permits under said codes and ordinances; or

(B) Any local amendments to the state minimum standard codes provided for in Code Section 8-2-25 that have not been adopted in conformity with the requirements of subsection (c) of Code Section 8-2-25.

(3) "Enforcement board" means a local government code enforcement board.

(4) "Local governing body" means the governing authority of the county or municipality, however designated.

(5) "Local governing body attorney" means the legal counselor for the county or municipality.

(6) "Violation involving the health or safety of a third party" means a violation that creates a legitimate concern for the health and safety of a third-party occupant of a dwelling place or that creates an immediate and substantial danger to the environment.

History.
Code 1981, § 36-74-4, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-21, as redesignated by Ga. L. 2003, p. 581, § 2; Ga. L. 2012, p. 163, § 1/HB 93.

36-74-22. Membership; member requirements; chairperson; attorney's role.

(a) The local governing body may appoint one or more code enforcement boards and legal counsel for the enforcement boards. The local governing body may appoint code enforcement boards consisting of three, five, or seven members. The local governing body may appoint up to two alternate members for each code enforcement board to serve on the board in the absence of board members.

(b) Members of the enforcement boards shall be residents of the municipality, in the case of municipal enforcement boards, or residents of the county, in the case of county enforcement boards. In making appointments to an enforcement board, the local governing body shall make good faith efforts to appoint one or more individuals who have experience or expertise relevant to one or more of the county or municipal codes that are within the subject matter jurisdiction of the respective enforcement board, including individuals with property management and litter control experience; provided, however, that the authority and jurisdiction of an enforcement board shall not in any way be limited due to the absence from its membership of one or more individuals with such experience or expertise.

(c)(1) The initial appointments to a seven-member code enforcement board shall be as follows:

(A) Three members appointed for a term of two years each; and

(B) Four members appointed for a term of four years each.

(2) The initial appointments to a five-member code enforcement board shall be as follows:

(A) Two members appointed for a term of two years each; and

(B) Three members appointed for a term of four years each.

(3) The initial appointments to a three-member code enforcement board shall be as follows:

(A) One member appointed for a term of two years; and

(B) Two members appointed for a term of four years each.

(4) Upon the expiration of the initial terms specified in paragraphs (1), (2), and (3) of this subsection all terms shall be for three years.

(5) The local governing body of a county or a municipality may reduce a seven-member code enforcement board to five members, or a

five-member code enforcement board to three members, upon the simultaneous expiration of the terms of office of two members of the board.

(6) A member may be reappointed upon approval of the local governing body.

(7) An appointment to fill any vacancy on an enforcement board shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive meetings without cause and without prior approval of the chairperson, the enforcement board shall declare the member's office vacant, and the local governing body shall promptly fill such vacancy.

(8) The members shall serve in accordance with ordinances of the local governing body and may be suspended and removed for cause as provided in such ordinances for removal of members of boards. A local governing body may, with or without cause, refuse to reappoint any member of an enforcement board at the expiration of his or her term of office.

(d) The members of an enforcement board shall elect a chairperson, who shall be a voting member, from among the members of the board. The presence of four or more members shall constitute a quorum of any seven-member enforcement board, the presence of three or more members shall constitute a quorum of any five-member enforcement board, and the presence of two or more members shall constitute a quorum of any three-member enforcement board. Members shall serve without compensation but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the local governing body or as otherwise provided by law.

(e) The local governing body attorney shall either be counsel to an enforcement board or shall represent the municipality or county by presenting cases before the enforcement board but in no case shall the local governing body attorney serve in both capacities.

History.
Code 1981, § 36-74-5, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-22, as redesignated by Ga. L. 2003, p. 581, § 2.

36-74-23. Initiating of proceedings; time to correct violations; repeat violations; hearings.

(a) It shall be the duty of the code enforcement officer to initiate enforcement proceedings pursuant to the various codes; however, no member of a board shall have the power to initiate such enforcement proceedings.

(b) Except as provided in subsections (c) and (d) of this Code section,

if a violation of any code or ordinance is found, the code enforcement officer shall notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code enforcement officer shall proceed with enforcement through the appropriate court or shall proceed with enforcement through the appropriate code enforcement board. If the code enforcement officer proceeds through a code enforcement board, the code enforcement officer shall notify an enforcement board and request a hearing. The code enforcement board shall schedule a hearing, and written notice of such hearing shall be hand delivered or made as provided in Code Section 36-74-29 to said violator. At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in Code Section 36-74-29. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code enforcement officer, the case may be presented to the enforcement board even if the violation has been corrected prior to the board hearing, and the notice shall so state.

(c) If a repeat violation is found, the code enforcement officer shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code enforcement officer, upon notifying the violator of a repeat violation, shall notify an enforcement board and request a hearing. The code enforcement board shall schedule a hearing and shall provide written notice pursuant to Code Section 36-74-29. The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state.

(d) If the code enforcement officer has substantial reason to believe a violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code enforcement officer shall make a reasonable effort to notify the violator and may immediately notify the enforcement board and request a hearing.

History.

Code 1981, § 36-74-6, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-23, as redesignated by Ga. L. 2003, p. 581, § 2; Ga. L. 2012, p. 163, § 2/HB 93.

JUDICIAL DECISIONS

Violations properly affirmed. — Regardless of whether the trial court erred in finding that the defendant committed repeat violations of operating illegal rooming houses in a city, the court's finding that the city did not have to afford the defendant with a pre-suit opportunity to correct the deficiencies under O.C.G.A. § 36-74-23(b) was affirmed on the alternative ground that the violations posed a serious threat to public health, safety, and welfare. Lewis v. City of Savannah, 336 Ga. App. 126, 784 S.E.2d 1, 2016 Ga. App. LEXIS 138 (2016).

36-74-24. Calling of hearings; hearing proceedings.

(a) Upon request of the code enforcement officer, or at such other times as may be necessary, the chairperson of an enforcement board may call a hearing of an enforcement board; a hearing also may be called by written notice signed by at least three members of a seven-member enforcement board or signed by at least two members of a five-member enforcement board. Minutes shall be kept of all hearings by each enforcement board, and all hearings and proceedings shall be open to the public. The local governing body may provide or assign clerical and administrative personnel to assist the enforcement board in the proper performance of its duties.

(b) Each case before an enforcement board shall be presented by the local governing body attorney or by a code enforcement officer or other member of the administrative staff of the local governing body.

(c) An enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code enforcement officer and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(d) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted in this article. The findings and conclusions shall be by motion approved by a majority of those members present and voting, except that at least four members of a seven-member enforcement board, three members of a five-member enforcement board, or two members of a three-member enforcement board must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by said date. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the enforcement board shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

History.
Code 1981, § 36-74-7, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-24, as redesignated by Ga. L. 2003, p. 581, § 2; Ga. L. 2012, p. 163, § 3/HB 93.

36-74-25. Powers of enforcement boards.

Each enforcement board shall have the power to:

(1) Adopt rules for the conduct of its hearings, which rules shall, at a minimum, ensure that each side has an equal opportunity to present evidence and argument in support of its case;

(2) Subpoena alleged violators and witnesses to its hearings, with the approval of the court with jurisdiction over a criminal violator of the county or municipal code or ordinance. Subpoenas may be served by the sheriff, marshal, or police department of the county or by the police department of the municipality or by any other individual authorized by Code Section 24-13-24 to serve subpoenas;

(3) Subpoena evidence to its hearings in the same way as provided in paragraph (2) of this Code section, with the approval of the court with jurisdiction over a criminal violator of the county or municipal code or ordinance;

(4) Take testimony under oath; and

(5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

History.
Code 1981, § 36-74-8, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-25, as redesignated by Ga. L. 2003, p. 581, § 2; Ga. L. 2011, p. 99, § 51/HB 24.
Editor's notes.
Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.
Law reviews.
For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011).
For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

36-74-26. Administrative fines; public record.

(a) An enforcement board, upon notification by the code enforcement officer that an order of the enforcement board has not been complied with by the set time may order the violator to pay an administrative fine in an amount specified in this Code section.

(b)(1) An administrative fine imposed pursuant to this Code section for a violation involving the health or safety of a third party shall not exceed $1,000.00 per day.

(2) An administrative fine imposed pursuant to this Code section for a violation that is not a violation involving the health or safety of a third party shall not exceed a total of $1,000.00.

(3) In determining the amount of the fine, if any, the enforcement board shall consider the following factors:

(A) The gravity of the violation;

(B) Any actions taken by the violator to correct the violation; and

(C) Any previous violations committed by the violator.

(4) An enforcement board may reduce a fine imposed pursuant to this Code section.

(c) A certified copy of an order imposing an administrative fine may be recorded in the public records of any county and thereafter shall constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Upon petition to the superior court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien which remains unpaid, the enforcement board may request the local governing body attorney to foreclose on the lien.

(d) If an environmental court is in existence with jurisdiction over ordinances subject to the jurisdiction of the enforcement board, the violator may object to the fine imposed and submit to the jurisdiction of the environmental court. The case shall be transferred to the environmental court and handled de novo as an ordinance violation.

History.
Code 1981, § 36-74-9, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-26, as redesignated by Ga. L. 2003, p. 581, § 2; Ga. L. 2012, p. 163, § 4/HB 93.

36-74-27. Length of liens.

No lien imposed under this article shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

History.
Code 1981, § 36-74-10, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-27, as redesignated by Ga. L. 2003, p. 581, § 2.

36-74-28. Appeals to superior court.

An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the superior court. Such an appeal shall be a hearing de novo. An appeal shall be filed within 30 days of the execution of the order to be appealed.

History.
Code 1981, § 36-74-11, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-28, as redesignated by Ga. L. 2003, p. 581, § 2.

36-74-29. Notice required; form of notice.

(a) All notices required by this article shall be provided to the alleged violator by certified mail or statutory overnight delivery, return receipt requested; by hand delivery by the sheriff or other law enforcement officer, code enforcement officer, or other person designated by the local governing body; or by leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice.

(b) In addition to providing notice as set forth in subsection (a) of this Code section, at the option of the code enforcement board, notice may also be served by publication or posting, as follows:

(1) Notice may be published once during each week for four consecutive weeks (four publications being sufficient) in the newspaper in which the sheriff's advertisements are printed in the county where the code enforcement board is located. Proof of publication shall be made by affidavit of a duly authorized representative of the newspaper;

(2) If there is no newspaper of general circulation in the county where the code enforcement board is located, three copies of such notice shall be posted for at least 28 days in three different and conspicuous places in such county, one of which shall be at the front door of the courthouse in said county. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting; or

(3) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery, mail, or statutory overnight delivery as required under subsection (a) of this Code section. Evidence that an attempt has been made to deliver notice by hand, mail, or statutory overnight delivery as provided in subsection (a) of this Code section, together with proof of publication or posting as provided in this subsection, shall be sufficient to show that the notice requirements of this Code section have been met, without regard to whether or not the alleged violator actually received such notice.

History.
Code 1981, § 36-74-12, enacted by Ga. L. 2000, p. 1102, § 3; Ga. L. 2001, p. 1212, § 5; Code 1981, § 36-74-29, as redesignated by Ga. L. 2003, p. 581, § 2; Ga. L. 2012, p. 163, § 5/HB 93.

Editor's notes.
Ga. L. 2001, p. 1212, § 7, not codified by the General Assembly, provides that the Act is applicable with respect to notices delivered on or after July 1, 2001.

36-74-30. Other enforcement methods; probable cause for investigation required.

(a) It is the intent of this article to provide an additional or supplemental means of obtaining compliance with local codes. Nothing contained in this article shall prohibit a local governing body through its code enforcement officer from enforcing its codes by any other lawful means including criminal and civil proceedings; provided, however, that a local governing body shall not pursue a specific instance of an alleged violation of an ordinance against one violator before both a code enforcement board and a magistrate, municipal, or other court authorized to hear ordinance violations.

(b) No local government is authorized to perform investigations or inspections of residential rental property unless there is probable cause to believe there is or has been a violation or violations of applicable codes, and in no event may a local government require the registration of residential rental property. Conditions which appear to be code violations which are in plain view may form the basis for probable cause. If there is probable cause to believe that there is or has been a violation or violations of applicable codes on such a property managed by a person licensed pursuant to Chapter 40 of Title 43, upon request of a code enforcement officer, the tenant of such property shall provide the name, license number, and contact information for the property manger.

History.
Code 1981, § 36-74-13, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-30, as redesignated by Ga. L. 2003, p. 581, § 2; Ga. L. 2003, p. 818, § 2; Ga. L. 2012, p. 163, § 6/HB 93; Ga. L. 2025, p. 882, § 1/HB 399, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, added the last sentence in subsection (b).

ARTICLE 3

ENFORCEMENT BOARDS CREATED PRIOR TO JANUARY 1, 2003

36-74-40. Application of article.

The provisions of this article shall apply to enforcement boards created prior to January 1, 2003.

History.
Code 1981, § 36-74-40, enacted by Ga. L. 2003, p. 581, § 2.

36-74-41. Definitions.

As used in this article, the term:

(1) "Code inspector" means any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.

(2) "County or municipal codes and ordinances" means zoning ordinances and resolutions, ordinances and resolutions enacting subdivision regulations, environmental ordinances and resolutions, state minimum standard codes provided for in Code Section 8-2-25, ordinances and resolutions enacted pursuant to Code Section 8-2-25, other ordinances and resolutions regulating the development of real property, and ordinances and regulations providing for control of litter and debris, control of junked or abandoned vehicles, and control of overgrown vegetation. Notwithstanding the above, the term "county and municipal codes and ordinances" shall not include:

(A) Those codes and ordinances requiring a permit, unless the alleged violator has failed to secure all necessary valid permits under said codes and ordinances; or

(B) Any local amendments to the state minimum standard codes provided for in Code Section 8-2-25 that have not been adopted in conformity with the requirements of subsection (c) of Code Section 8-2-25.

(3) "Enforcement board" means a local government code enforcement board.

(4) "Local governing body" means the governing authority of the county or municipality, however designated.

(5) "Local governing body attorney" means the legal counselor for the county or municipality.

(6) "Repeat violation" means any violation of county or municipal codes or ordinances by an owner or co-owner whom the enforcement board has previously found to be in violation of a code or ordinance within one year prior to such violation.

(7) "Violation involving the health or safety of a third party" means a violation that creates a legitimate concern for the health and safety of a third-party occupant of a dwelling place or that creates an immediate and substantial danger to the environment or members of the community at large, especially minor children.

History.
Code 1981, § 36-74-41, enacted by Ga. L. 2003, p. 581, § 2.

36-74-42. Membership; member requirements; chairperson; attorney's role.

(a) The local governing body may appoint one or more code enforcement boards and legal counsel for the enforcement boards. The local governing body may appoint code enforcement boards consisting of three, five, or seven members. The local governing body may appoint up to two alternate members for each code enforcement board to serve on the board in the absence of board members.

(b) Members of the enforcement boards shall be residents of the municipality, in the case of municipal enforcement boards, or residents of the county, in the case of county enforcement boards. In making appointments to an enforcement board, the local governing body shall make good faith efforts to appoint one or more individuals who have experience or expertise relevant to one or more of the county or municipal codes that are within the subject matter jurisdiction of the respective enforcement board, including individuals with property management and litter control experience; provided, however, that the authority and jurisdiction of an enforcement board shall not in any way be limited due to the absence from its membership of one or more individuals with such experience or expertise.

(c)(1) The initial appointments to a seven-member code enforcement board shall be as follows:

(A) Three members appointed for a term of two years each; and

(B) Four members appointed for a term of four years each.

(2) The initial appointments to a five-member code enforcement board shall be as follows:

(A) Two members appointed for a term of two years each; and

(B) Three members appointed for a term of four years each.

(3) The initial appointments to a three-member code enforcement board shall be as follows:

(A) One member appointed for a term of two years; and

(B) Two members appointed for a term of four years each.

(4) Upon the expiration of the initial terms specified in paragraphs (1), (2), and (3) of this subsection all terms shall be for three years.

(5) The local governing body of a county or a municipality may reduce a seven-member code enforcement board to five members, or a

five-member code enforcement board to three members, upon the simultaneous expiration of the terms of office of two members of the board.

(6) A member may be reappointed upon approval of the local governing body.

(7) An appointment to fill any vacancy on an enforcement board shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive meetings without cause and without prior approval of the chairperson, the enforcement board shall declare the member's office vacant, and the local governing body shall promptly fill such vacancy.

(8) The members shall serve in accordance with ordinances of the local governing body and may be suspended and removed for cause as provided in such ordinances for removal of members of boards. A local governing body may, with or without cause, refuse to reappoint any member of an enforcement board at the expiration of his or her term of office.

(d) The members of an enforcement board shall elect a chairperson, who shall be a voting member, from among the members of the board. The presence of four or more members shall constitute a quorum of any seven-member enforcement board, the presence of three or more members shall constitute a quorum of any five-member enforcement board, and the presence of two or more members shall constitute a quorum of any three-member enforcement board. Members shall serve without compensation but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the local governing body or as otherwise provided by law.

(e) The local governing body attorney shall either be counsel to an enforcement board or shall represent the municipality or county by presenting cases before the enforcement board but in no case shall the local governing body attorney serve in both capacities.

History.
Code 1981, § 36-74-42, enacted by Ga. L. 2003, p. 581, § 2.

36-74-43. Initiating of proceedings; time to correct violations; repeat violations; hearings.

(a) It shall be the duty of the code inspector to initiate enforcement proceedings pursuant to the various codes; however, no member of a board shall have the power to initiate such enforcement proceedings.

(b) Except as provided in subsections (c) and (d) of this Code section, if a violation of any code or ordinance is found, the code inspector shall

notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall proceed with enforcement through the appropriate court or shall proceed with enforcement through the appropriate code enforcement board. If the code inspector proceeds through a code enforcement board, the code inspector shall notify an enforcement board and request a hearing. The code enforcement board shall schedule a hearing, and written notice of such hearing shall be hand delivered or made as provided in Code Section 36-74-49 to said violator. At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in Code Section 36-74-49. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the enforcement board even if the violation has been corrected prior to the board hearing, and the notice shall so state.

(c) If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify an enforcement board and request a hearing. The code enforcement board shall schedule a hearing and shall provide written notice pursuant to Code Section 36-74-49. The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state.

(d) If the code inspector has substantial reason to believe a violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the enforcement board and request a hearing.

History.
Code 1981, § 36-74-43, enacted by Ga. L. 2003, p. 581, § 2.

36-74-44. Calling of hearings; hearing proceedings; orders.

(a) Upon request of the code inspector, or at such other times as may be necessary, the chairperson of an enforcement board may call a hearing of an enforcement board; a hearing also may be called by written notice signed by at least three members of a seven-member enforcement board or signed by at least two members of a five-member enforcement board. Minutes shall be kept of all hearings by each enforcement board, and all hearings and proceedings shall be open to the public. The local governing body may provide or assign clerical and administrative personnel to assist the enforcement board in the proper performance of its duties.

(b) Each case before an enforcement board shall be presented by the local governing body attorney or by a code inspector or other member of the administrative staff of the local governing body.

(c) An enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(d) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order to comply or an order to pay an administrative fine consistent with powers granted in this article. The findings and conclusions and any order imposed shall be by motion approved by a majority of those members present and voting, except that at least four members of a seven-member enforcement board, three members of a five-member enforcement board, or two members of a three-member enforcement board must vote in order for the action to be official.

(e) An order to comply shall include notice that it must be complied with by a specified date and that an administrative fine may be imposed if the order is not complied with by such date.

(f) An order to pay a fine shall specify the amount of the fine as determined and voted upon by the enforcement board, as well as the date and time the fine is due. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchaser, successor in interest, or assign if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, and subsequent purchaser, successor in interest, or assign. If an order is recorded in the public records pursuant to this subsection and the fine is paid by the date and time specified in the order, the enforcement board shall issue an order acknowledging that the fine has been paid in full and such order shall be recorded in the public records. A hearing is not required to issue such an order acknowledging the payment of a fine.

(g) The enforcement board may issue an order to pay a fine against the violator if the cited violation was not corrected within the time specified on the code inspector's notice or if an order to comply was not satisfied within the time specified in the order, even if said violation was corrected and brought into compliance prior to the hearing at which the fine is imposed.

History.
Code 1981, § 36-74-44, enacted by Ga. L. 2003, p. 581, § 2.

36-74-45. Powers of enforcement boards.

Each enforcement board shall have the power to:

(1) Adopt rules for the conduct of its hearings, which rules shall, at a minimum, ensure that each side has an equal opportunity to present evidence and argument in support of its case;

(2) Subpoena alleged violators and witnesses to its hearings, with the approval of the court with jurisdiction over a criminal violator of the county or municipal code or ordinance. Subpoenas may be served by the sheriff, marshal, or police department of the county or by the police department of the municipality or by any other individual authorized by Code Section 24-13-24 to serve subpoenas;

(3) Subpoena evidence to its hearings in the same way as provided in paragraph (2) of this Code section, with the approval of the court with jurisdiction over a criminal violator of the county or municipal code or ordinance;

(4) Take testimony under oath; and

(5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

History.
Code 1981, § 36-74-45, enacted by Ga. L. 2003, p. 581, § 2; Ga. L. 2011, p. 99, § 52/HB 24.
Editor's notes.
Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.
Law reviews.
For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011).
For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

36-74-46. Administrative fines; public record.

(a)(1) An administrative fine imposed pursuant to this Code section for a violation involving the health or safety of a third party shall not exceed $1,000.00 per day.

(2) An administrative fine imposed pursuant to this Code section for a violation that is not a violation involving the health or safety of a third party shall not exceed a total of $1,000.00.

(3) In determining the amount of the fine, if any, the enforcement board shall consider the following factors:

(A) The gravity of the violation;

(B) Any actions taken by the violator to correct the violation; and

(C) Any previous violations committed by the violator.

(4) An enforcement board may reduce a fine imposed pursuant to this Code section.

(b) A certified copy of an order imposing an administrative fine may be recorded in the public records of any county and thereafter shall constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Upon petition to the superior court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien which remains unpaid, the enforcement board may request the local governing body attorney to foreclose on the lien.

History.
Code 1981, § 36-74-46, enacted by Ga. L. 2003, p. 581, § 2.

36-74-47. Length of liens.

No lien imposed under this article shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

History.
Code 1981, § 36-74-47, enacted by Ga. L. 2003, p. 581, § 2.

36-74-48. Petition for review to superior court.

An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the superior court of the county in which the subject property is located. Such an appeal shall be in the form of a petition for review governed by Chapter 3 of Title 5 and shall be heard on the record. A petition for review shall be filed within 30 days of the execution of the order to be appealed.

History.
Code 1981, § 36-74-48, enacted by Ga. L. 2003, p. 581, § 2; Ga. L. 2022, p. 767, § 2-26/HB 916.

Amendments.

The 2022 amendment, effective July 1, 2023, substituted "petition for review" for "writ of certiorari" and "Chapter 3" for "Chapter 4" in the second sentence, and substituted "A petition for review" for "An appeal" at the beginning of the third sentence. See Editor's notes for applicability.

Editor's notes.

Ga. L. 2022, p. 767, § 3-1/HB 916, not codified by the General Assembly, makes this Code section applicable to petitions for review filed in superior or state court on or after July 1, 2023.

36-74-49. Notice required; form of notice.

(a) All notices required by this article shall be provided to the alleged violator by certified mail or statutory overnight delivery, return receipt requested; by hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body; by leaving the notice at the violator's usual place of residence with any person residing therein who is over 15 years of age and informing such person of the contents of the notice; or by leaving the notice at the violator's usual place of business with a manager or other upper-level employee who is over 15 years of age and informing such person of the contents of the notice.

(b) In addition to providing notice as set forth in subsection (a) of this Code section, at the option of the code enforcement board, notice may also be served by publication or posting, as follows:

(1) Notice may be published once during each week for four consecutive weeks (four publications being sufficient) in the newspaper in which the sheriff's advertisements are printed in the county where the code enforcement board is located. Proof of publication shall be made by affidavit of a duly authorized representative of the newspaper;

(2) If there is no newspaper of general circulation in the county where the code enforcement board is located, three copies of such notice shall be posted for at least 28 days in three different and conspicuous places in such county, one of which shall be at the front door of the courthouse in said county. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting; or

(3) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery, mail, or statutory overnight delivery as required under subsection (a) of this Code section. Evidence that an attempt has been made to deliver notice by hand, mail, or statutory overnight delivery as provided in subsection (a) of this Code section, together with proof of publication or posting as provided in this subsection, shall be sufficient to show that the notice requirements of this Code section have

been met, without regard to whether or not the alleged violator actually received such notice.

History.
Code 1981, § 36-74-49, enacted by Ga. L. 2003, p. 581, § 2.

36-74-50. Other enforcement methods.

It is the intent of this article to provide an additional or supplemental means of obtaining compliance with local codes. Nothing contained in this article shall prohibit a local governing body through its code inspector from enforcing its codes by any other lawful means including criminal and civil proceedings; provided, however, that a local governing body shall not pursue a specific instance of an alleged violation of an ordinance against one violator before both a code enforcement board and a magistrate, municipal, or other court authorized to hear ordinance violations.

History.
Code 1981, § 36-74-50, enacted by Ga. L. 2003, p. 581, § 2.

CHAPTER 75

PUBLIC SAFETY AND JUDICIAL FACILITIES

Sec.		Sec.	
36-75-1.	Short title.	36-75-9.	Responsibility for bonds and obligations.
36-75-2.	Legislative authority; purpose.	36-75-10.	Construction.
36-75-3.	Definitions.	36-75-11.	Resolutions and referendums required prior to issuance of bonded indebtedness for new projects; exclusions.
36-75-4.	Public safety and judicial facilities authorities created for each county and municipality; joint authority; filing with Secretary of State.	36-75-12.	Prohibition on activation of joint public safety and judicial facilities authority in certain instances.
36-75-5.	Management by board of directors; membership; procedures.	36-75-13.	Prohibition on activation of joint public safety and judicial facilities authority in certain instances.
36-75-6.	Quorum.		
36-75-7.	Power of authority.		
36-75-8.	Bonds and notes; expenditure of revenue.		

Cross references.
"Bioterrorism" and "public health emergency" defined, § 31-12-1.1.

36-75-1. Short title.

This chapter shall be known and may be cited as the "Public Safety and Judicial Facilities Act."

History.
Code 1981, § 36-75-1, enacted by Ga. L. 2003, p. 862, § 1; Ga. L. 2004, p. 631, § 36; Ga. L. 2021, p. 684, § 1/HB 579.

36-75-2. Legislative authority; purpose.

This chapter is enacted pursuant to authority granted to the General Assembly by the Constitution of Georgia. Each authority created by this chapter is created for nonprofit and public purposes; and it is found, determined, and declared that the creation of each such authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of this state and that the authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this chapter. For such reasons, the state covenants the holders of the bonds issued under this chapter that such authority shall be required to pay no taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others; or upon its activities

in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise; and that the bonds of such authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The tax exemption provided in this Code section shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority.

History.
Code 1981, § 36-75-2, enacted by Ga. L. 2003, p. 862, § 1.

36-75-3. Definitions.

As used in this chapter, the term:

(1) "Authority" means each public corporation created pursuant to this chapter.

(2) "Cost of project" means all costs of site preparation and other start-up costs; all costs of construction; all costs of real and personal property required for the purposes of the project and facilities related thereto, including land and any rights or undivided interest therein, easements, franchises, fees, permits, approvals, licenses, and certificates and the securing of such permits, approvals, licenses, and certificates, and all machinery and equipment, including motor vehicles which are used for project functions; financing charges and interest prior to and during construction and during such additional period as the authority may reasonably determine to be necessary for the placing of the project in operation; costs of engineering, architectural, and legal services; cost of plans and specifications and all expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses; and such other expenses as may be necessary or incidental to the financing authorized in this chapter. The costs of any project may also include funds for the creation of a debt service reserve, a renewal and replacement reserve, and such other reserves as may be reasonably required by the authority for the operation of its projects and as may be authorized by any bond resolution or trust agreement or indenture pursuant to the provisions of which the issuance of any such bonds may be authorized. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds or notes issued under this chapter for such project.

(3) "County" means any county of this state or a governmental entity formed by the consolidation of a county and one or more municipal corporations.

(4) "Detention facilities" means facilities used or to be used for the incarceration of adult and juvenile offenders and juveniles subject to the jurisdiction of the juvenile court and administration and support structures for such facilities.

(5) "Governing body" means the elected or duly appointed officials constituting the governing body of each county and municipal corporation in the state.

(6) "Judicial facilities" means facilities used or to be used for the administration of justice and related activities, including all adult and juvenile courts, prosecutorial and public defender services, and their respective administrative and support structures.

(7) "Municipal corporation" means any incorporated municipality in this state.

(8) "Project" means the acquisition, construction, equipping, operation, maintenance, and repairing of county or municipal corporation judicial, detention, or public safety facilities.

(9) "Public safety facilities" means facilities used or to be used by or in direct support of management and operation of homeland security, police, fire, rescue, and emergency medical services.

History.
Code 1981, § 36-75-3, enacted by Ga. L. 2003, p. 862, § 1.

36-75-4. Public safety and judicial facilities authorities created for each county and municipality; joint authority; filing with Secretary of State.

(a) There is created in and for each county and municipal corporation in this state a public body corporate and politic, to be known as the "public safety and judicial facilities authority" of such county. No authority shall transact any business or exercise any powers under this chapter until the governing body of the county or municipal corporation, as the case may be, by proper ordinance or resolution, declares that there is a need for an authority to function in the county or municipal corporation and declares that such jurisdiction is at the time of such ordinance or resolution imposing a sales tax levied for the purposes of a metropolitan area system of public transportation.

(b) Any number of counties or municipal corporations or a combination of counties and municipal corporations may jointly form an authority to be known as the "joint public safety and judicial facilities authority" for such counties or municipal corporations or both. No authority shall transact any business or exercise any powers under this chapter until the governing authority of each county and municipal

corporation involved declare, by ordinance or resolution, that there is a need for an authority to function and declare that such jurisdiction is at the time of such ordinance or resolution imposing a sales tax levied for the purposes of a metropolitan area system of public transportation and until the governing authority of each county and municipal corporation approves an agreement with the other counties or municipal corporations for the activation of an authority and such agreement is executed.

(c) A copy of such ordinances, resolutions, and agreements shall be filed with the Secretary of State, who shall maintain a record of all authorities activated under this chapter.

History.
Code 1981, § 36-75-4, enacted by Ga. L. 2003, p. 862, § 1; Ga. L. 2006, p. 72, § 36/SB 465.

36-75-5. Management by board of directors; membership; procedures.

Control and management of the authority shall be vested in a board of directors whose members shall be residents of the county or municipal corporation, as applicable. Directors shall be appointed, and may be reappointed, for terms of four years. The resolution or ordinance activating the authority shall state the number of directors and the appointing authority for each. No member of the governing authority of a county or municipal corporation that activates an authority is eligible to be appointed as a director while serving a term of office as a member of the governing authority of such county or municipal corporation. The directors shall elect one of their members as chairperson and another as vice chairperson and shall also elect a secretary and a treasurer or a secretary-treasurer, either of whom may be a director. The directors shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties. The directors may make bylaws and regulations for the governing of the authority and may delegate to one or more of the officers, agents, and employees of the authority such powers and duties as may be deemed necessary and proper.

History.
Code 1981, § 36-75-5, enacted by Ga. L. 2003, p. 862, § 1.

36-75-6. Quorum.

A majority of the directors shall constitute a quorum for the transaction of business of the authority. However, any action with respect to any project of the authority must be approved by the affirmative vote of a majority of the directors.

History.
Code 1981, § 36-75-6, enacted by Ga. L. 2003, p. 862, § 1.

36-75-7. Power of authority.

Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the power:

(1) To bring and defend actions;

(2) To adopt and amend a corporate seal;

(3) To acquire, construct, improve, or modify, to place into operation, and to operate or cause to be placed into operation, either as owner of all or of any part in common with others, a project or projects within the political subdivision in which the authority is activated and within other political subdivisions, and to pay all or part of the cost of any such project or projects from the proceeds of revenue bonds of the authority or from any contribution or loans by persons, firms, or corporations or any other contribution, all of which the authority is authorized to receive, accept, and use;

(4) To acquire, in its own name, by purchase on such terms and conditions and in such manner as it may deem proper or by gift, grant, lease, or otherwise, real property or rights and easements therein and franchises and personal property necessary or convenient for its corporate purposes, which purposes shall include, but shall not be limited to, the constructing or acquiring of a project, the improving, extending, adding to, reconstructing, renovating, or remodeling of any project or part thereof already constructed or acquired, or demolition to make room for such project or any part thereof, and to insure the same against any and all risks as such insurance may, from time to time, be available; the authority may also use such property, rent or lease the same to or from others, make contracts with respect to the use thereof, or sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner which the authority deems to the best advantage of itself and its purposes; provided, however, that the powers to acquire, use, and dispose of property as set forth in this paragraph shall include the power to acquire, use, and dispose of any interest in such property, whether divided or undivided, which acquisition may result in the ownership of such property or any part thereof in common with any other party or parties, public or private; and title to any such property of the authority, however, shall be held by the authority exclusively for the benefit of the public;

(5) To make contracts and leases and to execute all instruments

necessary or convenient, including contracts for construction of projects and leases of projects or contracts with respect to the use of projects which it causes to be acquired or constructed, provided that all private persons, firms, and corporations, this state, and all political subdivisions, departments, instrumentalities, or agencies of the state or of any local government are authorized to enter into contracts, leases, or agreements with the authority upon such terms and for such purposes as they deem advisable; and without limiting the generality of the above, authority is specifically granted to counties and municipal corporations and to the authority to enter into contracts, lease agreements, or other undertakings relative to the furnishing of project activities and facilities or either of them by the authority to such political subdivisions and by such political subdivisions to the authority for a term not exceeding 50 years;

(6) To exercise any one or more of the powers, rights, and privileges conferred by this Code section either alone or jointly or in common with one or more other public or private parties or public and private parties; in any such exercise of such powers, rights, and privileges jointly or in common with others with respect to the construction, operation, and maintenance of project facilities, the authority may own an undivided interest in such facilities with any other party with which it may jointly or in common exercise the rights and privileges conferred by this chapter; the authority may enter into an agreement or agreements with respect to any such project facility with the other party or parties participating therein; any such agreement may contain such terms, conditions, and provisions, consistent with this chapter, as the parties thereto shall deem to be in their best interests; any such agreement may include, but need not be limited to, provisions for the construction, operation, and maintenance of such project facility by any one or more party of the parties to such agreement, which party or parties shall be designated in or pursuant to such agreement as agent or agents on behalf of itself and one or more of the other parties thereto, or by such other means as may be determined by the parties thereto, and may include provisions for a method or methods of determining and allocating, among or between the parties, costs of construction, operation, maintenance, renewals, replacements, improvements, and disposals with respect to such facility; in carrying out its functions and activities as such agent with respect to construction, operation, and maintenance of such a facility, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating parties; provided, however, that the agent shall act for the benefit of the public; notwithstanding anything contained in any other law to the contrary, pursuant to the terms of any such agreement, the

authority may delegate its powers and duties with respect to the construction, operation, and maintenance of such facility to the party acting as agent; and all actions taken by such agent in accordance with the provisions of such agreement may be binding upon the authority without further action or approval of the authority;

(7) To extend credit or make loans to any person, firm, corporation, or other industrial entity for the planning, design, construction, acquisition, or carrying out of any project, which credit or loans shall be secured by loan agreements, mortgages, security agreements, contracts, and all other instruments or fees or charges, upon such terms and conditions as the authority shall determine reasonable in connection with such loans, including provision for the establishment and maintenance of reserves and insurance funds, and in the exercise of powers granted by this Code section in connection with a project for such person, firm, corporation, or other industrial entity, to require the inclusion in any contract, loan agreement, security agreement, or other instrument of such provisions for guaranty, insurance, construction, use, operation, maintenance, and financing of a project as the authority may deem necessary or desirable;

(8) To acquire, accept, or retain equitable interests, security interests, or other interest in any property, real or personal, by mortgage, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure the repayment of any moneys loaned or credit extended by the authority;

(9) To accept, receive, and administer gifts, grants, appropriations, and donations of money, materials, and property of any kind, including loans and grants from the United States of America, this state, or a unit of local government or any of their agencies, departments, authorities, or instrumentalities upon such terms and conditions as the United States of America, this state, or a unit of local government or any of their agencies, departments, authorities, or instrumentalities shall impose; to administer trusts; and to sell, lease, transfer, convey, appropriate, and pledge any and all of its property and assets;

(10) To invest any accumulation of its funds in any fund or reserve in any manner that public funds of this state or its political subdivisions may be invested;

(11) To do any and all things necessary or proper for the accomplishment of the objectives of this chapter and to exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the Constitution and laws of this state, including the power to employ professional and administrative staff and personnel and to retain legal, engineering, fiscal, accounting, and other professional services; the power to purchase all kinds

of insurance, including, without limitation, insurance against tort liability and against risks of damage to property; the power to borrow money for any of the corporate purposes of the authority; the power to indemnify and hold harmless any parties contracting with the authority or its agents from damage to persons or property; and the power to act as self-insurer with respect to any loss or liability; provided, however, that obligations of the authority other than revenue bonds, for which provision is made in this chapter, shall be payable from the general funds of the authority and shall not be a charge against any special fund allocated to the payment of revenue bonds;

(12) To mortgage, convey, pledge, or assign any properties, revenues, income, tolls, charges, or fees owned or received by the authority;

(13) To borrow money and issue its revenue bonds and bond anticipation notes from time to time and to use the proceeds thereof for the purpose of paying all or part of the cost of any project, including the cost of extending, adding to, or improving such project, or for the purpose of refunding any such bonds of the authority theretofore issued; and to otherwise carry out the purposes of this chapter and to pay all other costs of the authority incident to, or necessary and appropriate to, such purposes, including the providing of funds to be paid into any fund or funds to secure such bonds and notes, provided that all such bonds and notes shall be issued in accordance with the procedures and subject to the limitations set forth in Code Section 36-63-9; provided, however, that the maximum aggregate amount of bonds issued shall be $50 million; and

(14) As security for repayment of authority obligations, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property, real or personal, of such authority and to execute any trust agreement, indenture, or security agreement containing any provisions not in conflict with law, which trust agreement, indenture, or security agreement may provide for foreclosure or forced sale of any property of the authority upon default on such obligations either in payment of principal or interest or in the performance of any term or condition contained in such agreement or indenture; this state, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein waives any right which it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority so mortgaged or encumbered, and any such mortgage or encumbrance may be foreclosed in accordance with law and the terms thereof.

History.
Code 1981, § 36-75-7, enacted by Ga. L. 2003, p. 862, § 1; Ga. L. 2006, p. 72, § 36/SB 465.

36-75-8. Bonds and notes; expenditure of revenue.

(a) Subject to the limitations and procedures provided by this Code section, the obligations of any authority evidenced by bonds, bond anticipation notes, trust indentures, deeds to secure obligations, security agreements, or mortgages executed in connection therewith may contain such provisions not inconsistent with law as shall be determined by the board of directors of the authority. The authority, in such instruments, may provide for the pledging of all or any part of its revenues, income, or charges and for the mortgaging, encumbering, or conveying of all or any part of its real or personal property; may covenant against pledging any or all of its revenues, income, or charges; and may further provide for the disposition of proceeds realized from the sale of any bonds and bond anticipation notes, for the replacement of lost, destroyed, stolen, or mutilated bonds and notes, and for the payment and redemption of such bonds and notes. Similarly, subject to the limitations and procedures of this Code section, undertakings of an authority may prescribe the procedure by which bondholders and noteholders may enforce rights against the authority and provide for rights upon breach of any covenant, condition, or obligation of the authority. Bonds, resolutions, trust indentures, mortgages, or deeds to secure obligations executed by an authority and bond anticipation notes executed by an authority may contain such provisions not otherwise contrary to law as the authority shall deem necessary or desirable.

(b) The proceeds derived from the sale of all bonds and bond anticipation notes issued by an authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this chapter, all or part of the cost of any project, including the cost of extending, financing, adding to, or improving such project, or for the purpose of refunding any bond anticipation notes issued in accordance with this chapter or refunding any previously issued bonds of the authority.

(c) All bonds and bond anticipation notes issued by an authority shall be revenue obligations of such authority and may be made payable out of any revenues or other receipts, funds, or moneys of the authority, subject only to any agreements with the holders of other bonds or bond anticipation notes or to particular security agreements pledging any particular revenues, receipts, funds, or moneys.

(d) Issuance by an authority of one or more series of bonds or bond anticipation notes for one or more purposes shall not preclude it from issuing other bonds or notes in connection with the same project or with any other projects, but the proceeding wherein any subsequent bonds or

bond anticipation notes shall be issued shall recognize and protect any prior pledge or mortgage made in any prior security agreement or made for any prior issue of bonds or bond anticipation notes, unless in the resolution authorizing such prior issue the right is expressly reserved to the authority to issue subsequent bonds or bond anticipation notes on a parity with such prior issue.

(e) An authority shall have the power and is authorized, whenever revenue bonds of the authority have been validated as provided in this chapter, to issue, from time to time, its notes in anticipation of the issuance of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, the authority may sell such notes at public or private sale. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any such resolution or resolutions; and the authority may include in any notes any terms, covenants, or conditions which it is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of the notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued.

(f) The interest rate on or rates to be borne by any bonds, notes, or other obligations issued by the authority shall be fixed by the board of directors of the authority. Any limitations with respect to interest rates found in Article 3 of Chapter 82 of this title or in the usury laws of this state shall not apply to obligations issued under this chapter.

(g) All revenue bonds issued by an authority under this chapter shall be issued and validated under and in accordance with Article 3 of Chapter 82 of this title, except as provided in subsection (f) of this Code section and except as specifically set forth below in this subsection:

(1) Revenue bonds issued by an authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide;

(2) Revenue bonds shall bear a certificate of validation. The signature of the clerk of the superior court of the judicial circuit in which the issuing authority is located may be made on the certificate of validation of such bonds by facsimile or by manual execution,

stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state; and

(3) In lieu of specifying the rate or rates of interest which revenue bonds to be issued by an authority are to bear, the notice to the district attorney or the Attorney General and the notice to the public of the time, place, and date of the validation hearing may state that the bonds, when issued, will bear interest at a rate not exceeding a maximum per annum rate of interest specified in such notices or, in the event the bonds are to bear different rates of interest for different maturity dates, that none of such rates will exceed the maximum rate specified in the notices; provided, however, that nothing contained in this paragraph shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices.

History.
Code 1981, § 36-75-8, enacted by Ga. L. 2003, p. 862, § 1.

36-75-9. Responsibility for bonds and obligations.

No bonds or other obligations of and no indebtedness incurred by any authority shall constitute an indebtedness or obligation of the State of Georgia or of any county, municipal corporation, or political subdivision thereof, nor shall any act of any authority in any manner constitute or result in the creation of an indebtedness of this state or of any such county, municipal corporation, or political subdivision. All such bonds and obligations shall be payable solely from the revenues therein pledged to such payment, including pledged rentals, sales proceeds, insurance proceeds, and condemnation awards; and no holder or holders of any such bonds or obligations shall ever have the right to compel any exercise of the taxing power of this state or of any county, municipal corporation, or political subdivision thereof, nor to enforce the payment thereof against any property of the state or of any such county, municipal corporation, or political subdivision.

History.
Code 1981, § 36-75-9, enacted by Ga. L. 2003, p. 862, § 1.

36-75-10. Construction.

This chapter shall be liberally construed to effect the purposes hereof. Sale or issuance of bonds by any authority shall not be subject to regulation under Chapter 5 of Title 10, the "Georgia Uniform Securities Act of 2008," or any other law. No proceeding or publication not required

in this chapter shall be necessary to the performance of any act authorized in this chapter, nor shall any such act be subject to referendum.

History. Code 1981, § 36-75-10, enacted by Ga. L. 2003, p. 862, § 1; Ga. L. 2008, p. 381, § 11/SB 358.

36-75-11. Resolutions and referendums required prior to issuance of bonded indebtedness for new projects; exclusions.

(a) On and after May 24, 2007, no public safety and judicial facilities authority created and activated by a single county pursuant to this chapter shall be authorized to issue bonds for new projects unless a resolution approving such projects is passed by a majority vote of the governing authority of the county that created and activated such authority.

(b) The proceeds of bonds issued by a public safety and judicial facilities authority created and activated by a single county pursuant to this chapter and any interest on such proceeds shall be used only for the projects set forth in the resolution approving the issuance of such bonds or for debt service on such bonds.

(c) Any authority other than the type of authority defined in paragraph (1) of Code Section 36-75-3:

(1) Which is authorized by general or local Act to operate and issue bonds in a single county that has activated or that activates a public safety and judicial facilities authority pursuant to this chapter; and

(2) Which constructs or operates buildings or facilities for use by any department, agency, division, or commission of any county that has activated or that activates a public safety and judicial facilities authority pursuant to this chapter shall obtain approval by resolution as provided for in subsection (a) of this Code section prior to issuing bonds for any new buildings, facilities, or real property or improvements to existing buildings, facilities, or real property and shall be bound to such resolution as provided in subsection (b) of this Code section.

(d) Subsections (a), (b), and (c) of this Code section shall apply only to the issuance of bonds the principal and interest of which will be repaid, directly or indirectly, in whole or in part, through funds of the county by agreement between the county and:

(1) A public safety and judicial facilities authority created and activated pursuant to this chapter; or

(2) Any authority other than the type of authority defined in

paragraph (1) of Code Section 36-75-3 that meets the conditions set forth in paragraphs (1) and (2) of subsection (c) of this Code section.

(e) The provisions of this Code section shall not apply under any circumstances to the issuance of "recovery zone economic development bonds" and "recovery zone facility bonds" as such terms are defined in Section 1401 of the federal American Recovery and Reinvestment Act of 2009.

History.
Code 1981, § 36-75-11, enacted by Ga. L. 2007, p. 421, § 1/HB 181; Ga. L. 2010, p. 4, § 2/HB 203; Ga. L. 2021, p. 684, § 2/HB 579.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2007, "May 24, 2007" was substituted for "the effective date of this Code section" in subsection (a).

JUDICIAL DECISIONS

Constitutionality. — War on Terrorism Local Assistance Act, O.C.G.A. § 36-75-1 et seq., is not unconstitutional because the Act does not violate the uniform terms and conditions provision for development authorities in Ga. Const. 1983, Art. IX, Sec. VI, Para. III; the uniformity required by Ga. Const. 1983, Art. IX, Sec. VI, Para. III in the laws creating development authorities is the same uniformity required by Ga. Const. 1983, Art. III, Sec. VI, Para. IV(a) in laws of a general nature. Dev. Auth. v. State, 286 Ga. 36, 684 S.E.2d 856, 2009 Ga. LEXIS 479 (2009).

Classification is not unreasonable or arbitrary and is therefore constitutional. — War on Terrorism Local Assistance Act, specifically O.C.G.A. § 36-75-11(c), is not unconstitutional because the classification in § 36-75-11 is not unreasonable and arbitrary since the classification applies in precisely the same way and without exception to every county development authority throughout the state that currently meets or may, in the future, meet the criteria set forth in § 36-75-11(c); the purpose of § 36-75-11 is to protect against the accumulation of excessive bonded indebtedness, and the legislature had a reasonable basis to first address this critical financial situation in counties. Dev. Auth. v. State, 286 Ga. 36, 684 S.E.2d 856, 2009 Ga. LEXIS 479 (2009).

Legislation enacting the War on Terrorism Local Assistance Act, Ga. L. 2003, p. 862, does not violate Ga. Const. 1983, Art. III, Sec. VI, Para. IV because the legislation and O.C.G.A. § 36-75-11(c) are logically related and do not embrace discordant subjects when the legislation generally pertains to public safety and judicial facilities authorities, and § 36-75-11(c) applies to authorities in counties that have activated public safety and judicial facilities authorities; it was the legislature's decision to enact a statute imposing a referendum requirement on any authority that has been authorized to incur bonded indebtedness in a county with an activated public safety and judicial facilities authority when that authority has constructed or operates buildings or facilities for use by a department, agency, division, or commission of such county. Dev. Auth. v. State, 286 Ga. 36, 684 S.E.2d 856, 2009 Ga. LEXIS 479 (2009).

36-75-12. Prohibition on activation of joint public safety and judicial facilities authority in certain instances.

Those public safety and judicial facilities authorities created and activated pursuant to this chapter that have issued the $50 million maximum aggregate amount of bonds permitted under paragraph (13)

of Code Section 36-75-7 shall be subject to the provisions of Code Section 36-75-11 when such bonded indebtedness is reduced and such authorities desire to issue additional bonds for new projects.

History.
Code 1981, § 36-75-12, enacted by Ga. L. 2007, p. 421, § 1/HB 181.

36-75-13. Prohibition on activation of joint public safety and judicial facilities authority in certain instances.

On and after May 24, 2007, no county or municipality that has activated or that activates a public safety and judicial facilities authority shall also activate a joint public safety and judicial facilities authority.

History.
Code 1981, § 36-75-13, enacted by Ga. L. 2007, p. 421, § 1/HB 181.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2007, "May 24, 2007" was substituted for "the effective date of this Code section".

CHAPTER 76

EXPEDITED FRANCHISING OF CABLE AND VIDEO SERVICES

Sec.
36-76-1. Short title.
36-76-2. Definitions.
36-76-3. Franchise options for cable service and video service providers.
36-76-4. Application process for the issuance of a state franchise; fees.
36-76-5. Transfers, modifications, and terminations of a state franchise.
36-76-6. Franchise fees.
36-76-7. Customer service requirements.
36-76-8. Public, educational, and governmental programming under a state franchise.
36-76-9. Service outlet to municipalities and counties; complimentary basic cable service or video service to public schools and public libraries.
36-76-10. Limitations on requirements that may be imposed upon holders of a state franchise.
36-76-11. Discrimination towards potential residential subscribers prohibited.

Administrative rules and regulations.

Cable and Video Service Complaints, Official Compilation of the Rules and Regulations of the State of Georgia, Rule 93-1-1-.01 et seq.

Law reviews.

For note on 2007 enactment of this chapter, see 24 Ga. St. U.L. Rev. 223 (2007).

36-76-1. Short title.

This chapter shall be known and may be cited as the "Consumer Choice for Television Act."

History.

Code 1981, § 36-76-1, enacted by Ga. L. 2007, p. 719, § 1/HB 227.

Law reviews.

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

36-76-2. Definitions.

As used in this chapter, the term:

(1) "Advertising and home shopping services revenues" means the amount of a cable service provider or video service provider's non-subscriber revenues from advertising disseminated through cable service or video service and home shopping services. The amount of such revenues that are allocable to a municipality or county shall be equal to the total amount of the cable service provider or video service provider's revenue received from such advertising and home shop-

ping services multiplied by the ratio of the number of such provider's subscribers located in such municipality or in the unincorporated area of such county to the total number of such provider's subscribers. Such ratio shall be based on the number of such provider's subscribers as of January 1 of the current year, except that in the first year in which services are provided, such ratio shall be computed as of the earliest practical date.

(2) "Affected local governing authority" means any municipal governing authority when any part of such municipality is located within the service area and any county governing authority when any part of the unincorporated area of such county is located within the service area.

(3) "Cable service" means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Such term shall not include any video programming provided by a provider of commercial mobile service as defined in 47 U.S.C. Section 332(d) or video programming accessed via a service that enables users to access content, information, email, or other services offered over the internet, including digital audiovisual works.

(4) "Cable service provider" means any person or group of persons:

(A) Who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or

(B) Who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

(5) "Cable system" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term shall not include:

(A) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(B) A facility that serves subscribers without using any public right of way as defined in this Code section;

(C) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. Sections 201 through 276, except that such facility shall be considered a cable system, other than for purposes of 47 U.S.C. Section 541(c), to the extent such

facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services as that term is defined in 47 U.S.C. Section 522(12);

(D) An open video system that complies with 47 U.S.C. Section 573; or

(E) Any facility of any electric utility used solely for operating such electric utility system.

(6) "Franchise" means an initial authorization or renewal of an authorization issued by a franchise authority, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, ordinance, certificate, agreement, or otherwise, that authorizes the construction or operation of a cable service provider or video service provider's network in the public rights of way.

(7) "Franchise authority" means any governmental entity empowered by federal, state, or local law to grant a franchise. With regard to the holder of a state franchise within the service areas covered by such state franchise, the Secretary of State shall be the sole franchising authority. With respect to a franchise agreement with a municipal or county governing authority, that municipality or county shall be the sole franchising authority within the service areas covered by that local franchise.

(8) "Gross revenues" means all revenues received from subscribers for the provision of cable service or video service, including franchise fees for cable service providers and video service providers, and advertising and home shopping services revenues and shall be determined in accordance with generally accepted accounting principles. Gross revenues shall not include:

(A) Amounts billed and collected as a line item on the subscriber's bill to recover any taxes, surcharges, or governmental fees that are imposed on or with respect to the services provided or measured by the charges, receipts, or payments therefor; provided, however, that, for purposes of this Code section, such tax, surcharge, or governmental fee shall not include any ad valorem taxes, net income taxes, or generally applicable business or occupation taxes not measured exclusively as a percentage of the charges, receipts, or payments for services;

(B) Any revenue, such as bad debt, not actually received, even if billed;

(C) Any revenue received by any affiliate or any other person in exchange for supplying goods or services used by the provider to provide cable service or video programming;

(D) Any amounts attributable to refunds, rebates, or discounts;

(E) Any revenue from services provided over the network that are associated with or classified as noncable or nonvideo services under federal law, including, without limitation, revenues received from telecommunications services, information services other than cable service or video service, internet access services, or directory or internet advertising revenue, including, without limitation, yellow pages, white pages, banner advertisements, and electronic publishing advertising. Where the sale of any such noncable or nonvideo service is bundled with the sale of one or more cable services or video services and sold for a single nonitemized price, the term "gross revenues" shall include only those revenues that are attributable to cable service or video service based on the provider's books and records; such revenues shall be allocated in a manner consistent with generally accepted accounting principles;

(F) Any revenue from late fees not initially booked as revenues, returned check fees, or interest;

(G) Any revenue from sales or rental of property, except such property as the subscriber shall be required to buy or rent exclusively from the cable service provider or video service provider to receive cable service or video service;

(H) Any revenue received from providing or maintaining inside wiring;

(I) Any revenue from sales for resale with respect to which the purchaser shall be required to pay a franchise fee, provided the purchaser certifies in writing that it shall resell the service and pay a franchise fee with respect thereto; or

(J) Any amounts attributable to a reimbursement of costs including, but not limited to, the reimbursements by programmers of marketing costs incurred for the promotion or introduction of video programming.

(9) "Incumbent service provider" means any cable service provider or video service provider providing cable service or video service, respectively, in a municipality or in an unincorporated area of a county on January 1, 2008.

(10) "Original programming" means programming produced specifically for or about a municipality or county or citizens thereof and shall include public government meetings. Original programming shall not include character generated messages, video bulletin board messages, traffic cameras, or other passively produced content.

(11) "PEG" means public, educational, or governmental.

(12) "Public right of way" means the area in, on, along, over, or under the public roads that are part of the municipal or county road system or the state highway system.

(13) "Service area" means the geographic territory within a municipality or unincorporated area of a county where a cable service provider or video service provider provides or has proposed to offer cable service or video service pursuant to a franchise.

(14) "Subscriber" means any person or entity lawfully receiving video service from a video service provider or cable service from a cable service provider.

(15) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. Section 522(20).

(16) "Video service" means the provision by a video service provider of video programming through wireline facilities located at least in part in the public rights of way without regard to delivery technology, including internet protocol technology. Such term shall not include any video programming provided by a provider of commercial mobile service or direct-to-home satellite services, as defined in 47 U.S.C. Sections 332(d) and 303(v), respectively, or video programming accessed via a service that enables users to access content, information, email, or other services offered over the internet, including digital audiovisual works.

(17) "Video service provider" means an entity providing video service as defined in this Code section. Such term shall not include a cable service provider.

History.

Code 1981, § 36-76-2, enacted by Ga. L. 2007, p. 719, § 1/HB 227; Ga. L. 2022, p. 807, § 1A/HB 1044; Ga. L. 2025, p. 1029, § 36(36)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that," for "however, that" in subparagraph (8)(A); substituted "internet" for "Internet" twice in subparagraph (8)(E); and substituted "Such term" for "The term" in paragraph (17).

Law reviews.

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

JUDICIAL DECISIONS

Exclusions. — Declaratory judgment claim of appellants, a county, a city, and a county government, was moot because a change to the Georgia's Consumer Choice for Television Act, O.C.G.A. § 36-76-1 et seq., expressly excluded streaming video from the Act's purview. Gwinnett County v. Netflix, Inc., 367 Ga. App. 138, 885 S.E.2d 177, 2023 Ga. App. LEXIS 120 (2023).

36-76-3. Franchise options for cable service and video service providers.

(a)(1) Any entity or person seeking to provide cable service or video service in this state after January 1, 2008, at the discretion of the cable service provider or video service provider, may elect from among the franchise options as set forth in this Code section. A cable service provider or video service provider shall not provide cable service or video service without a franchise obtained pursuant to this chapter.

(2) A cable service provider or video service provider may elect to negotiate a local cable service or video service franchise agreement with a municipal or county franchise authority duly authorized under the laws of Georgia and may enter into a negotiated cable television franchise agreement in accordance with Title VI of the Communications Act of 1934, as amended, 47 U.S.C. Section 521 et seq., or a video service franchise agreement in accordance with applicable state and federal law that establishes the terms and conditions for the franchise agreement within the jurisdictional limits of that municipality or county. A local cable service or video service franchise agreement entered into after January 1, 2008, shall remain in force and effect through its expiration date notwithstanding subsection (g) of Code Section 36-76-4.

(3) A cable service provider or video service provider may elect to adopt the terms of a negotiated franchise agreement entered into between a cable service provider or video service provider and a municipal or county franchise authority in the service area in which the cable service provider or video service provider desires to provide service. The municipal or county franchise authority shall be required to enter into any such negotiated franchise agreement upon the same terms and conditions to any requesting cable service provider or video service provider. A local cable service or video service franchise agreement that is adopted by a cable service provider or video service provider after January 1, 2008, shall remain in force and effect through its expiration date notwithstanding subsection (g) of Code Section 36-76-4.

(4) A cable service provider or video service provider may elect after January 1, 2008, to file an application for a state franchise in one or more specified service areas with the Secretary of State in accordance with the procedures set forth in this chapter.

(b) The alternatives in subsection (a) of this Code section shall not be mutually exclusive. A cable service provider or video service provider may elect after January 1, 2008, to negotiate with a municipal or county franchise authority to enter into a franchise agreement within a specified service area and may also obtain a state franchise for a

different service area. A cable service provider or video service provider shall not operate under a franchise agreement with a municipal or county governing authority and a state franchise from the Secretary of State for the same service area.

History.
Code 1981, § 36-76-3, enacted by Ga. L. 2007, p. 719, § 1/HB 227.

36-76-4. Application process for the issuance of a state franchise; fees.

(a) To receive a state franchise, a cable service provider or video service provider shall file an application for a state franchise with the Secretary of State, with a copy of such application provided simultaneously to each affected municipal or county governing authority at least 45 days prior to offering cable service or video service to subscribers within a specified service area.

(b) The Secretary of State may impose a fee not to exceed $500.00 for a state franchise application and a fee not to exceed $250.00 for an amendment to a state franchise.

(c) The application for a state franchise shall consist of an affidavit signed by an officer or general partner of the applicant that contains each of the following:

(1) An affirmative declaration that the applicant shall comply with all applicable federal and state laws and regulations, including municipal and county ordinances and regulations regarding the placement and maintenance of facilities in the public right of way that are generally applicable to all users of the public right of way and specifically including Chapter 9 of Title 25, the "Georgia Utility Facility Protection Act";

(2) A description of the applicant's service area, which description shall be sufficiently detailed so as to allow a local government to respond to subscriber inquiries, including the name of each municipal or county governing authority within the service area. For the purposes of this paragraph, an applicant may, in lieu of or as supplement to a written description, provide a map on 8 1/2 by 11 inch paper that is clear and legible and that fairly depicts the service area by making reference to the municipal or county governing authority to be served. If the geographic area is less than an entire municipality or county, the map shall describe the boundaries of the geographic area to be served in clear and concise terms;

(3) The location of the applicant's principal place of business, the name or names of the principal executive officer or officers of the

applicant, information concerning payment locations or addresses, and general information concerning equipment returns;

(4) Certification that the applicant is authorized to conduct business in the State of Georgia and that the applicant possesses satisfactory financial and technical capability to provide cable service or video service and a description of such capabilities. Such certification shall not be required from an incumbent service provider or any cable service provider or video service provider that has wireline facilities located in the public right of way as of January 1, 2008; and

(5) Notice to the affected local governing authority of its right to designate a franchise fee pursuant to Code Section 36-76-6.

(d) If an application is incomplete, the Secretary of State shall notify the applicant within ten days of the receipt of such application and shall provide the applicant with a reasonable period of time in which to provide a complete application. If no such notification is made within ten days of the receipt of the application, the application shall be deemed complete. Within 45 days of the receipt of a completed application, the Secretary of State shall, except as set forth in subsection (f) of this Code section, issue a state franchise that contains the following:

(1) A nonexclusive grant of authority to provide cable service or video service as requested in the application;

(2) A nonexclusive grant of authority to construct, maintain, and operate facilities along, across, or on the public right of way in the delivery of cable service or video service, subject to applicable federal and state laws and regulations, including municipal and county ordinances and regulations, regarding the placement and maintenance of facilities in the public right of way that are generally applicable to all users of the public right of way and specifically including Chapter 9 of Title 25, the "Georgia Utility Facility Protection Act"; and

(3) The expiration date of the state franchise, which shall be ten years from the date of issuance, subject to renewal.

(e) The failure of the Secretary of State to issue a state franchise within 45 days of the receipt of a completed application from an incumbent service provider or a cable service provider or video service provider that has wireline facilities located in any public right of way as of January 1, 2008, shall constitute issuance of the requested state franchise to the applicant without further action required by the applicant. The failure of the Secretary of State to issue a state franchise within 45 days of the receipt of a completed application from a cable service provider or video service provider that does not have an existing franchise with a municipal or county governing authority or that does

not have wireline facilities located in any public right of way as of January 1, 2008, shall constitute temporary issuance of the requested state franchise to the applicant subject to the provisions of subsection (f) of this Code section.

(f) A municipal or county governing authority that reasonably believes an applicant that has not yet accessed rights of way in that municipality or unincorporated area of a county and does not possess satisfactory financial and technical capability to provide cable service or video service or is not duly authorized to conduct business in Georgia shall object to the issuance of a state franchise before it is officially issued by the Secretary of State. If a municipal or county governing authority objects to the issuance of a state franchise on these grounds, the Secretary of State shall consider whether the objection is well founded and shall make a determination as to whether to grant the state franchise notwithstanding the objection or to deny or suspend the application pending the receipt of information sufficient to demonstrate the applicant has satisfactory financial and technical capability. If the Secretary of State has not acted on the objection of a municipal or county governing authority's objection and a state franchise is issued as set forth in subsection (e) of this Code section, then such temporary issuance of the state franchise shall be subject to the Secretary of State's determination on the objection.

(g)(1) At any time after January 1, 2008, an incumbent service provider may file an application for a state franchise pursuant to this Code section with the Secretary of State with a copy provided to each affected municipal or county governing authority except as set forth in paragraphs (2) and (3) of subsection (a) of Code Section 36-76-3. Upon the Secretary of State issuing such state franchise, any existing franchise for the service area covered by the state franchise shall, subject to the continuation of PEG support obligations in paragraph (4) of this subsection, terminate and be of no further force or effect.

(2) An incumbent service provider that elects to terminate an existing franchise for the service area covered by the state franchise under this subsection shall remain subject to the contractual rights, duties, and obligations incurred by the incumbent service provider under the terms and conditions of the terminated local franchise that are owed to any private person, including a subscriber.

(3) As used in this subsection, the term "private person" shall not include:

(A) The municipal or county governing authority that issued the terminated local franchise;

(B) A political subdivision, government agency, or authority of the state not described in subparagraph (A) of this paragraph; or

(C) Any official, agent, or employee acting in an official capacity of the municipal or county governing authority that issued the terminated local franchise.

(4) An incumbent service provider that elects to terminate a franchise under this subsection shall continue to provide PEG access support, as such existed on January 1, 2007, under the same terms as the terminated local franchise had it not been terminated until the local franchise would have expired under its own terms.

(5) Notwithstanding a termination of a local franchise pursuant to this subsection, a municipality or county shall be entitled to operate its existing PEG channel or channels, as such existed on January 1, 2007, relating to the number of channels and the usage criteria for such channels under the same terms as the terminated local franchise had it not been terminated, pursuant to this subsection, until July 1, 2012. The 12 month development period for PEG channels set forth in subsection (a) of Code Section 36-76-8 shall not apply to existing PEG channels operating under the entitlement provisions of this subsection.

(6) The 12 month development period for PEG channels set forth in subsection (a) of Code Section 36-76-8 shall not apply to channels being operated at the time that any holder of a state franchise adopts or renews a state franchise after July 1, 2012.

(7) An incumbent service provider that elects to terminate a franchise under this subsection, shall, until July 1, 2012, continue to provide access on the nonbasic or digital tier to any municipality or county that has an activated public safety training channel as of January 1, 2007. This channel shall be used exclusively for the purpose of training public safety personnel. After July 1, 2012, the state franchise holder shall be entitled to use other reasonable, readily accessible means to accomplish the purpose of the channel.

(8) Each holder of a state franchise shall have the obligation to provide access to the same number of PEG channels pursuant to Code Section 36-76-8 and the additional PEG support cash payments specified in this paragraph for PEG access facilities in a service area as the incumbent service provider with the most subscribers in such service area as of January 1, 2007, which obligation shall continue until the local franchise would have expired under its own terms as specified in paragraph (4) of this subsection; provided, however, that, if a local franchise would have expired before July 1, 2012, the holder of a state franchise shall continue to provide access to the same number of PEG channels until July 1, 2012, as provided in paragraph (5) of this subsection. To the extent such incumbent service provider provides PEG access support during said period in the form of

periodic payments to the municipal or county governing authority equal to a percentage of gross revenue or a prescribed per subscriber amount, the state franchise holder shall be obligated to make the same periodic payments to the governing authority at the same time and equal to the same percentage of gross revenue or prescribed per subscriber amount. To the extent such incumbent service provider provides PEG access support to the applicable governing authority during said period in the form of a lump sum payment that remains unsatisfied as of January 1, 2008, the holder of a state franchise shall be obligated to provide a lump sum payment to said authority based on its proportion of the total number of cable service and video service subscribers of all service providers in such service area. No payments shall be due under this paragraph until the municipality or county notifies the respective providers, in writing, of the percentage of gross revenues, the per subscriber amount, or the lump sum payment amount and the expiration date of the local franchise obtaining such obligations. The holder of a state franchise may designate that portion of the subscriber's bill attributable to any fee imposed pursuant to this paragraph as a separate item on the bill and recover such amount from the subscriber.

History.

Code 1981, § 36-76-4, enacted by Ga. L. 2007, p. 719, § 1/HB 227; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2025, p. 1029, § 36(37)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "geographic area" for "geographical area" in paragraph (c)(2) and substituted "however, that," for "however, that" in paragraph (g)(8).

Law reviews.

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

36-76-5. Transfers, modifications, and terminations of a state franchise.

(a) A state franchise shall be fully transferable to any successor in interest to the applicant. A notice of transfer shall be filed by the transferee with the Secretary of State with a copy provided to each affected municipal or county governing authority within 45 days of such transfer. The transfer notification shall consist of an affidavit signed by an officer or general partner of the transferee that contains each of the following:

(1) An affirmative declaration that the applicant shall comply with all applicable federal and state laws and regulations, including municipal and county ordinances and regulations, regarding the placement and maintenance of facilities in any public right of way that are generally applicable to all users of the public right of way

and specifically including Chapter 9 of Title 25, the "Georgia Utility Facility Protection Act";

(2) A description of the transferee's service area, including the name of each municipal or county governing authority within the service area;

(3) The location of the transferee's principal place of business and the name or names of the principal executive officer or officers of the transferee; and

(4) A description of material changes, if any, of the information set forth in the applicant's initial application for a state franchise.

(b) Any outstanding liabilities that have become due and are still owed to a municipal or county governing authority under a state franchise issued pursuant to this chapter shall be fully transferable under this Code section to any successor in interest to the applicant.

(c) The failure of the Secretary of State to issue an amended state franchise within 45 days of the receipt of a completed transfer notice shall constitute issuance of the requested amended state franchise to the transferee without further action required.

(d) A cable service provider or video service provider may modify its service area covered by the state franchise by notifying the Secretary of State of changes to the service area, with a copy provided to each affected municipal or county governing authority, at least 20 days prior to the effective date of such change. Such notification shall contain a geographic description of the new service area or areas and a list of each municipal or county governing authority within the service area.

(e) A state franchise issued pursuant to this chapter may be terminated by the cable service provider or video service provider by submitting a notice of termination to the Secretary of State with a copy provided to each affected municipal or county governing authority. Such notice shall identify the cable service provider or video service provider, the affected service area, and the effective date of such termination, which shall not be more than 60 days from the date of filing the notice of termination.

History.
Code 1981, § 36-76-5, enacted by Ga. L. 2007, p. 719, § 1/HB 227.

36-76-6. Franchise fees.

(a)(1) The holder of a state franchise, whether a cable service provider or a video service provider, shall pay to each affected local governing authority which complies with this Code section a fran-

chise fee which shall not exceed the maximum percentage rate permitted in 47 U.S.C. Section 542(b) of such holder's gross revenues received from the provision of cable service or video service to subscribers located within such holder's service area.

(2) Each affected local governing authority or its authorized designee shall provide written notice to the Secretary of State and each applicant for or holder of a state franchise with a service area located within that affected local governing authority's jurisdiction of the franchise fee rate that applies to the applicant for or holder of such state franchise. The applicant for or holder of a state franchise shall start assessing the franchise fee within 15 days of receipt of written notice from the affected local governing authority or its authorized designee and shall not be required to pay such franchise fee until the expiration of 15 days after receipt of such written notice. Any incumbent service provider who obtains a state franchise under paragraph (1) of subsection (g) of Code Section 36-76-4 shall pay its existing franchise fee during the 15 day period after receipt of written notice of the new fee. The franchise fee rate shall be uniformly applicable to all cable service providers and video service providers that obtain a state franchise within the affected local governing authority. For purposes of this Code section, an authorized designee is an agent authorized by charter or other act of the affected local governing authority.

(3) Any affected local governing authority may change the franchise fee applicable to holders of a state franchise once every two years. The affected local governing authority or its authorized designee shall provide written notice to the Secretary of State and the applicants for or holders of a state franchise with a service area within that affected local governing authority's jurisdiction of the new franchise fee rate. The holder of a state franchise shall start assessing the new franchise fee within 45 days of receipt of written notice of the change from the affected local governing authority or its authorized designee. The franchise fee rate shall be uniformly applicable to all cable service providers and video service providers that obtain a state franchise within the affected local governing authority's jurisdiction.

(b) Such franchise fee shall be paid directly to each affected local governing authority within 30 days after the last day of each calendar quarter. Such payment shall be considered complete if accompanied by a statement showing, for the quarter covered by the payment:

(1) The aggregate amount of the state franchise holder's gross revenues, specifically identifying subscriber and advertising and home shopping services revenues under this chapter insofar as the franchise holder's existing billing systems include such capability,

attributable to such municipality or unincorporated areas of the county; and

(2) The amount of the franchise fee payment due to such municipality or county.

In the event that franchise fees are not paid on or before the dates specified above, then the affected local governing authority shall provide written notice to the franchise holder giving the cable service provider or video service provider 15 days from the date of the franchise holder's receipt of such notice to cure any such nonpayment. In the event franchise fees are not remitted to the affected local government authority postmarked on or before the expiration of the 15 day cure period, then the holder of the state franchise shall pay interest thereon at a rate of 1 percent per month to the affected local governing authority. If the 15 day cure period expires on Saturday, Sunday, or a legal holiday, the due date shall be the next business day. Moreover, the franchise holder shall not be assessed interest on late payments if franchise payments were submitted in error to a neighboring local governing authority.

(c) Each affected local governing authority may, no more than once annually, audit the business records of the state franchise holder to the extent necessary to ensure payment in accordance with this Code section. For purposes of this subsection, an audit shall be defined as a comprehensive review of the records of the holder of a state franchise. Once any audited period of a state franchise holder has been the subject of a requested audit, such audited period of such state franchise holder shall not again be the subject of any audit. In the event of a dispute concerning the amount of the franchise fee due to an affected local governing authority under this Code section, an action may be brought in a court of competent jurisdiction by an affected local governing authority seeking to recover an additional amount alleged to be due or by a state franchise holder seeking a refund of an alleged overpayment; provided, however, that any such action shall be brought within three years following the end of the quarter to which the disputed amount relates. Such time period may be extended by written agreement between the state issued franchise holder and such affected local governing authority. Each party shall bear the party's own costs incurred in connection with any such examination or dispute. In the event that an affected local governing authority files an action to recover alleged underpayments of franchise fees and a court of competent jurisdiction determines the cable service provider or video service provider has underpaid franchise fees due for any 12 month period by 10 percent or more, the cable service provider or video service provider may be required to pay the affected local governing authority its reasonable costs associated with the audit along with any franchise fee underpayments; provided, however, late payments shall not apply.

(d) The statements made pursuant to subsection (b) of this Code section and any records or information furnished or disclosed by a cable service provider or video service provider to an affected local governing authority pursuant to subsection (c) of this Code section shall be exempt from public inspection under Article 4 of Chapter 18 of Title 50.

(e) No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim an affected local governing authority may have for further or additional sums payable as a franchise fee.

(f) Any amounts overpaid by the holder of a state franchise shall be deducted from future franchise payments.

(g) The holder of a state franchise may designate that portion of a subscriber's bill attributable to any franchise fee imposed pursuant to this Code section as a separate item on the bill and recover such amount from the subscriber; provided, however, that such separate listing shall be referred to as a "franchise" or a "franchise fee."

(h) No affected local governing authority shall levy any additional tax, license, fee, surcharge, or other assessment on a cable service provider or video service provider for or with respect to the use of any public right of way other than the franchise fee authorized by this Code section. Nor shall an affected local governing authority levy any other tax, license, fee, or assessment on a cable service provider or video service provider or its subscribers that is not generally imposed and applicable to a majority of all other businesses. The franchise fee authorized by this Code section shall be in lieu of any permit fee, encroachment fee, degradation fee, or other fee that could otherwise be assessed on a state issued franchise holder for the holder's occupation or work within the public right of way; provided, however, that nothing in this Code section shall restrict the right of any municipal or county governing authority to impose ad valorem taxes, sales taxes, or other taxes lawfully imposed on a majority of all other businesses within such municipality or county.

History.

Code 1981, § 36-76-6, enacted by Ga. L. 2007, p. 719, § 1/HB 227; Ga. L. 2012, p. 218, § 9/HB 397.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2007, subsection (a) was designated as present paragraph (a)(1) and former paragraphs (a)(1) and (a)(2) were redesignated as present paragraphs (a)(2) and (a)(3), respectively.

Law reviews.

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

JUDICIAL DECISIONS

Cause of action. — Trial court did not err by concluding that Georgia's Consumer Choice for Television Act O.C.G.A. § 36-76-1 et seq., did not provide appellants, a county, a city, and a county government, with a cause of action against appellees, streaming service providers, because neither of the two express causes of actions for violations of the Act applied to the instant case, as appellants did not allege that appellees were state franchise holders or that appellants conducted audits before instituting the action, and appellants were not residential subscribers. Gwinnett County v. Netflix, Inc., 367 Ga. App. 138, 885 S.E.2d 177, 2023 Ga. App. LEXIS 120 (2023).

36-76-7. Customer service requirements.

(a) The holder of a state franchise shall comply with the customer service standards as set forth in 47 C.F.R. 76.309(c). No franchising authority shall have the power to require the holder of a state franchise to comply with any customer service standards other than those set forth in this Code section.

(b) Except as provided in paragraph (2) of subsection (c) of this Code section, each affected local governing authority shall receive and handle complaints from subscribers of the holder of a state franchise that reside in the affected local governing authority's jurisdiction.

(c)(1) By December 31, 2007, the Governor's Office of Consumer Affairs shall establish a uniform set of rules, which may include fines and penalties, pursuant to which an affected local governing authority shall resolve subscriber complaints. Said rules shall include a requirement that the cable service provider or video service provider participate in mandatory nonbinding mediation with the affected local governing authority and the subscriber if the issue cannot be resolved between the cable service provider or video service provider and the subscriber. Said rules shall apply only until 50 percent of the potential subscribers within an affected local governing authority are offered service by two or more cable service providers or video service providers holding a state franchise or a local franchise.

(2) After such time as 50 percent of the potential subscribers within an affected local governing authority are being offered service by two or more cable service providers or video service providers holding a state franchise or a local franchise, an affected local governing authority may, in its discretion, by the adoption of a resolution or ordinance, discontinue receiving and handling all subscriber inquiries, billing issues, and other complaints for state franchise holders. Notwithstanding any other provision of law, where an affected local governing authority discontinues receiving and handling subscriber inquiries, billing issues, and other complaints relating to state franchise holders by adoption of a resolution or

ordinance pursuant to this paragraph, bills to subscribers by cable service providers or video service providers holding a state franchise shall not include the contact information of such affected local governing authority for the purpose of directing or initiating complaints or making other such subscriber inquiries.

(d) Rules, orders, actions, and regulations previously adopted pursuant to this Code section shall remain of full force and effect as rules, orders, actions, and regulations of the Attorney General until amended, repealed, or superseded by rules or regulations adopted by the Attorney General.

History.
Code 1981, § 36-76-7, enacted by Ga. L. 2007, p. 719, § 1/HB 227; Ga. L. 2008, p. 324, § 36/SB 455; Ga. L. 2015, p. 1088, § 26/SB 148.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2007, "inquiries" was substituted for "inquires" throughout paragraph (c)(2).

36-76-8. Public, educational, and governmental programming under a state franchise.

(a) No later than 12 months after receipt of a written request by a municipal or county governing authority, the holder of a state franchise shall designate capacity in its network to allow for the airing of noncommercial PEG programming required by this Code section.

(b)(1) Subject to the usage criteria set forth in this subsection, a municipal or county governing authority that does not have PEG access channels activated under the incumbent service provider's franchise agreement as of January 1, 2008, may request a sufficient amount of capacity on its network to support up to three PEG channels for a municipality in this state having a population of 50,000 or more according to the United States decennial census of 2000 or any future such census or an unincorporated area of a county which is located in a county in this state having a population of 50,000 or more according to the United States decennial census of 2000 or any future such census or up to two PEG channels for a municipality in this state having a population of 50,000 or less according to the United States decennial census of 2000 or any future such census or an unincorporated area of a county which is located in a county in this state having a population of 50,000 or less according to the United States decennial census of 2000, and the cable service provider or video service provider shall designate such sufficient amount of capacity. No cable service provider or video service provider shall be required to provide more than three PEG access channels on its network within a municipality or unincorporated area of a county if there does not exist at the time of the state franchise more than three active PEG channels in such municipality or unincorporated area of the county.

(2) To qualify for the first PEG channel on the basic or analog tier of service, the written request of the municipality or county shall include a certification that it has produced at least 15 hours of nonduplicative original programming for production in the first month of operation and that the municipality or county shall continue to produce at least 15 hours of nonduplicative original programming for each month that the channel is provided.

(3) Alternatively, to qualify for the first PEG channel on the basic or analog tier of service, two or more municipalities or counties may collectively include a certification that they have produced at least 15 hours of nonduplicative original programming for production in the first month of operation and that the municipalities or counties shall continue to produce at least 15 hours of nonduplicative original programming for each month that the channel is provided.

(4) To qualify for a second PEG channel on the basic or analog tier of service, the municipality or county shall certify that the first channel is being substantially utilized, and that upon activation, the second PEG channel shall also be substantially utilized. For purposes of this subsection, PEG channels shall be considered "substantially utilized" when 12 continuous hours of content are programmed on that channel each calendar day. In addition, at least 75 percent of the 12 hours of programming for each business day over each calendar quarter, on average, shall be nonduplicative programming. Nonduplicative programming shall include the first three broadcasts in a day of a meeting of an elected government body.

(5) To qualify for a third PEG channel, a municipality in this state having a population of 50,000 or more according to the United States decennial census of 2000 or any future such census or an unincorporated area of a county which is located in a county in this state having a population of 50,000 or more according to the United States decennial census of 2000 or any future such census shall certify that the channel shall be programmed for at least eight continuous hours of nonduplicative content per day. The third PEG channel shall only be available on the nonbasic digital tier.

(6) Any municipality or county that has not obtained a second PEG channel on the basic or analog tier may qualify for a second PEG channel on the nonbasic digital tier by certifying that the channel shall be programmed for at least eight continuous hours of nonduplicative content per day.

(7) Any PEG channel capability provided pursuant to this Code section that does not comply with the usage criteria set forth in this subsection or is not substantially utilized by the municipality or county shall no longer be made available after reasonable notice is

provided to the municipality or county but may be programmed at the franchise holder's discretion. At such time as the municipality or county certifies to the franchise holder that it shall meet the usage criteria for that particular channel, the cable service provider or video service provider shall restore the previously lost channel. However, the franchise holder shall be under no obligation to carry that channel on a basic or analog tier.

(c) Upon request by a municipality or county that does not have an activated PEG channel, the state franchise holder shall provide access to one nonexclusive PEG channel for the purpose of providing public, educational, and government programming. This nonexclusive channel shall be available as an additional option to municipalities and counties and shall not eliminate the requirements of subsection (b) of this Code section.

(d) In the event that the provision of video service and cable service is federally mandated to be digitally provided, the franchise holder shall be entitled to satisfy the PEG obligations by locating the channels on any channel provided in the basic subscription service offered by the provider.

(e) Municipalities, counties, and cable service providers and video service providers shall cooperate in the sharing of channel capacity to provide PEG access for municipalities and counties served by the cable service provider or video service provider.

(f) The holder of a state franchise shall designate capacity on its system sufficient to allow the provision of the same number of PEG access channels that a municipal or county governing authority has activated under the incumbent service provider's franchise agreement as of January 1, 2008.

(g) The operation of any PEG access channel provided pursuant to this Code section and the production of programming thereon, including all capital costs and costs of production, shall be the responsibility of the municipality or the county receiving the benefit of such channel, and the holder of a state franchise shall only have the responsibility to transmit such channel to subscribers. If the holder elects not to seek interconnection with the incumbent under subsection (i) of this Code section or if the incumbent service provider and the holder of a state franchise cannot reach mutual agreement on interconnection terms, the holder of a state franchise shall be responsible for providing one location of connectivity to each PEG access channel up to the first 200 feet from the holder's activated wireline video programming distribution facility located in the holder's designated service area.

(h) The municipality or the county shall ensure that all transmissions of content and programming provided by or arranged by them to

be transmitted over a PEG channel by a holder of a state franchise are provided and submitted to the cable service provider or video service provider in a manner or form that is capable of being accepted and transmitted by such cable service provider or video service provider over its system without further alteration or change in the content or transmission signal and which is compatible with the technology or protocol utilized by the cable service provider or video service provider to deliver its cable services or video services. The provision of PEG content to the cable service provider or video service provider shall constitute authorization for such cable service provider or video service provider to carry such content on the PEG channel of the municipality or county including, at the cable service provider or video service provider's option, providing such content beyond the jurisdictional boundaries of the municipality or county to the extent permitted by federal law.

(i) Where technically feasible, the holder of a state franchise and an incumbent service provider shall use reasonable efforts to interconnect their systems on mutually acceptable and reasonable terms for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable microwave link, satellite, or other reasonable method of connection. Holders of a state franchise and incumbent service providers shall not unreasonably withhold interconnection of PEG channels.

(j) A holder of a state franchise shall not be required to interconnect for or otherwise transmit commercial PEG programming content or PEG content that is branded with the logo, name, or other identifying marks of another cable service provider or video service provider, and a municipality or county may require a cable service provider or video service provider to remove its logo, name, or other identifying marks from PEG content that is to be made available to another provider.

History.
Code 1981, § 36-76-8, enacted by Ga. L. 2007, p. 719, § 1/HB 227.

36-76-9. Service outlet to municipalities and counties; complimentary basic cable service or video service to public schools and public libraries.

A cable service provider or video service provider shall, upon written request by a municipality or county, install, at no charge, one service outlet to a demarcation point located on the outside of any designated municipal or county building or multibuilding complex, provided such building demarcation point is within 125 feet from the cable service provider or video service provider's activated distribution point of connection. A cable service provider or video service provider shall not

be required to extend its facilities beyond the appropriate demarcation point located outside the building or to perform any inside wiring. The cable service provider or video service provider shall provide complimentary basic cable service or video service to public schools and public libraries over that one service outlet free of charge, which service shall not be used for commercial purposes. The cable service provider or video service provider shall provide complimentary basic cable service or video service to public buildings other than public schools and public libraries only to the extent such a complimentary service arrangement existed under the terms of a local franchise agreement in effect as of January 1, 2007, and shall continue only until the local franchise agreement would have expired under its own terms; provided, however, that such provider shall not be precluded from providing such additional complimentary service at its option. The municipality or county may not receive service at the same building from more than one cable service provider or video service provider at a time under this Code section.

History.
Code 1981, § 36-76-9, enacted by Ga. L. 2007, p. 719, § 1/HB 227.

36-76-10. Limitations on requirements that may be imposed upon holders of a state franchise.

No franchising authority, state agency, or political subdivision of the state shall impose any build-out requirement on system construction or service deployment on a holder of a state franchise. This chapter shall occupy the entire field of franchising or otherwise regulating cable service and video service. An affected local governing authority's power to regulate the holder of a state franchise shall be limited to:

(1) A requirement that the holder of a state franchise who is providing cable service or video service within the municipality or unincorporated area of the county shall notify each affected local governing authority at least ten days before providing service in such municipality or county. A municipal or county governing authority may require the holder of a state franchise to update the description of the service area provided in the application for a state franchise annually and may also require the holder of a state franchise to maintain a point of contact that shall be available during normal business hours;

(2) The establishment of reasonable guidelines regarding the use of PEG access channels;

(3) The lawful and reasonable exercise of the police powers of the municipal or county governing authority to the extent reasonably necessary to protect the health, safety, and welfare of the public;

(4) The enactment and enforcement of lawful and reasonable laws and rules and municipal or county ordinances and regulations concerning excavation, permitting, bonding requirements, indemnification requirements, and placement and maintenance of facilities in any public right of way that are generally applicable to all users of any public right of way, except to the extent specifically precluded by subsection (h) of Code Section 36-76-6; and

(5) The lawful and reasonable exercise of the rights established in this chapter.

History.
Code 1981, § 36-76-10, enacted by Ga. L. 2007, p. 719, § 1/HB 227.

Law reviews.
For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

36-76-11. Discrimination towards potential residential subscribers prohibited.

(a) A holder of a state franchise shall not deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides.

(b) For purposes of determining whether a cable service provider or video service provider has violated subsection (a) of this Code section, cost, density, distance, and technological or commercial limitations shall be taken into account. An alleged violation of subsection (a) of this Code section shall only be considered within the description of the service area set forth in an application or amended application for a state franchise. The inability to serve an end user because a holder is prohibited from placing its own facilities in a building or property shall not be found to be a violation of subsection (a) of this Code section. Use of an alternative technology or service arrangement that provides comparable content, service, and functionality shall not be considered a violation of subsection (a) of this Code section. This Code section shall not be construed as authorizing any build-out requirements on a cable service provider or video service provider.

(c) Any potential residential subscriber or group of residential subscribers who believes it is being denied access to services in violation of subsection (a) of this Code section may file a complaint with the affected local governing authority, along with a clear statement of the facts and the information upon which it is relying to support the complaint. Upon receipt of any such complaint, the affected local governing authority shall serve a copy of the complaint and supporting materials upon the subject cable service provider or video service provider, which shall have 60 days after receipt of such information to submit a written

answer and any other relevant information the provider wishes to submit to the affected local governing authority in response to the complaint. If the affected local governing authority is not satisfied with the response, the affected local governing authority shall compel the cable service provider or video service provider to participate in nonbinding mediation. If the mediation does not resolve the matter to the satisfaction of the affected local governing authority, the affected local governing authority may file a complaint with a court of competent jurisdiction. No affected local governing authority shall file an action in court without having participated in a mediation of the complaint. If such court finds that the holder of a state franchise is in material noncompliance with this Code section, the holder shall have a reasonable period of time, as specified by the court, to cure such noncompliance. The court may also award the affected local governing authority its reasonable costs and attorneys fees in seeking enforcement of subsection (a) of this Code section.

History.
Code 1981, § 36-76-11, enacted by Ga. L. 2007, p. 719, § 1/HB 227.

JUDICIAL DECISIONS

Cause of action. — Trial court did not err by concluding that Georgia's Consumer Choice for Television Act O.C.G.A. § 36-76-1 et seq., did not provide appellants, a county, a city, and a county government, with a cause of action against appellees, streaming service providers, because neither of the two express causes of actions for violations of the Act applied to the instant case, as appellants did not allege that appellees were state franchise holders or that appellants conducted audits before instituting the action, and appellants were not residential subscribers. Gwinnett County v. Netflix, Inc., 367 Ga. App. 138, 885 S.E.2d 177, 2023 Ga. App. LEXIS 120 (2023).

CHAPTERS 77
THROUGH 79

Reserved

Provisions Applicable to Counties, Municipal Corporations, and Other Governmental Entities

CHAPTER 80

GENERAL PROVISIONS

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36-80-26. Multicounty community improvement districts for transit projects.
36-80-27. Advertisement of bid or proposal opportunities.
36-80-28. Role of consultants; disclosures; application.
36-80-29. Electronic posting of legal notice; correction of errors.
36-80-30. Lemonade stands.
36-80-31. Transporting homeless outside of jurisdiction.

Cross references.

Housing cooperation, § 8-3-150 et seq.

Acquisition of property by counties, municipalities, and other entities for transportation purposes generally, § 32-3-1 et seq.

Deferred compensation plans for county, municipal, and other employees, § 45-18-30 et seq.

Liability of officers, agents, and others of counties, municipalities, and other entities for acts performed while fighting fires or performing duties at scene of emergencies, § 51-1-30.

Law reviews.

For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

36-80-1. Code of ethics; discussion of board policies and actions; exceptions.

A local board of education shall not adopt or follow any code of ethics which prevents the members of such board from discussing freely the policies and actions of such board outside of a board meeting. This Code section shall not apply to any matter or matters discussed in executive session as defined in subsection (a) of Code Section 50-14-1 or which are exempt from disclosure under Code Section 50-18-72.

History.

Code 1981, § 36-80-1, enacted by Ga. L. 2016, p. 200, § 1/SB 275.

Editor's notes.

Former Code Section 36-80-1, pertaining to all meetings of governing bodies to be public, private executive sessions, and a penalty, was repealed by Ga. L. 1988, p. 235, § 2, effective July 1, 1988. The former Code section was based on Ga. L. 1965, p. 118, § 2; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1987, p. 3, § 36.

36-80-2. Power to issue notes, certificates, and other evidence of indebtedness in anticipation of taxes.

Counties, municipalities, county boards of education, and other political subdivisions of the state which are authorized to levy taxes shall have the power and authority, within the limitations prescribed by Article IX, Section V, Paragraph V of the Constitution of Georgia, to issue notes, certificates, or other evidence of indebtedness in anticipation of the collection of taxes levied or to be levied during the calendar year.

History.

Ga. L. 1963, p. 450, § 1; Ga. L. 1983, p. 3, § 57.

OPINIONS OF THE ATTORNEY GENERAL

Borrowing for construction projects. — When allotted funds from the State Board of Education for school construction result in construction projects of less than $200,000.00, the Georgia Education Authority (Schools) does not directly supervise construction but requires the local school system to construct the project itself and then be reimbursed by the authority. This procedure often makes it necessary for the local school system to borrow a substantial part of the construction costs for a period of nine months to a year, and such borrowing is within the legal power of local school systems. 1968 Op. Att'y Gen. No. 68-18.

RESEARCH REFERENCES

ALR.

Power of legislature to add to or make more onerous the conditions or limitations prescribed by Constitution upon incurring public debts, 106 A.L.R. 231.

36-80-3. Authorized investments of funds by governing bodies.

(a) The governing body of a municipality, county, school district, or other local governmental unit or political subdivision, in addition to all other legal investments, may invest and reinvest money subject to its control and jurisdiction in:

(1) Obligations of the United States and of its agencies and instrumentalities;

(2) Bonds or certificates of indebtedness of this state and of its agencies and instrumentalities; and

(3) Certificates of deposit of banks which have deposits insured by the Federal Deposit Insurance Corporation; provided, however, that that portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured by direct obligations of this state or the United States which are of a par value equal to that portion of such certificates of deposit which would be uninsured.

(b) This Code section shall not impair the power of a municipality, county, school district, or other local governmental unit or political subdivision to hold funds in deposit accounts with banking institutions as otherwise authorized by law.

History.

Ga. L. 1964, p. 741, § 1; Ga. L. 1973, p. 1192, § 1.

Law reviews.

For article discussing tax-exempt financing in Georgia, see 18 Ga. St. B.J. 20 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Phrase "certificates of deposit" as used in former Code 1933, § 32-942 (see now O.C.G.A. § 20-2-411) applied to certificates of deposit issued by commercial banks and to certificates of deposit issued by federal or state chartered savings and loan associations. The investment of school funds in "certificates of deposit" issued by institutions other than those named would present a question of whether such investment would be prudent and in the exercise of sufficient care and diligence. 1969 Op. Att'y Gen. No. 69-306.

Investment of bond proceeds in certificates of deposit is not allowed under this section. 1974 Op. Att'y Gen. No. U74-71 (see O.C.G.A. § 36-80-3).

Responsibility of school officials. — Local school officials, in making legally authorized investments of local school funds, are not responsible if that investment results in a loss rather than a gain so long as the investment, at the time the investment was made, was reasonably prudent and cautious under the circumstances, and especially if the loss is occasioned by economic conditions over which the officials have no control. 1969 Op. Att'y Gen. No. 69-306.

RESEARCH REFERENCES

C.J.S.

26B C.J.S., Depositaries, § 35 et seq. 64A C.J.S., Municipal Corporations, § 1997 et seq.

ALR.

Extent of power of school district to provide for the comfort and convenience of teachers and pupils, 7 A.L.R. 791; 52 A.L.R. 249.

Municipal funds and credits as subject to levy under execution or garnishment on judgment against municipality, 89 A.L.R. 863.

Particular purposes within contemplation of statute authorizing issuance of bonds or use of funds by school district for specified purposes, 124 A.L.R. 883.

Requirement of prior appropriation by municipal authorities as condition of making a contract or incurring expense as applicable to local improvements, or bond issue payable only out of special funds and not constituting an obligation of the municipality, 124 A.L.R. 1467.

Rights and liabilities of municipality as to interest earned on improvement assessments or other special funds collected or held by it, 143 A.L.R. 1341.

36-80-4. Delegation of governing body's investment authority to financial officer.

The governing body may delegate the investment authority provided by Code Section 36-80-3 to the treasurer or other financial officer charged with custody of the funds of the local government, who shall thereafter assume full responsibility for such investment transactions until the delegation of authority terminates or is revoked.

History.

Ga. L. 1964, p. 741, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Phrase "certificates of deposit" as used in former Code 1933, § 32-942 (see now O.C.G.A. § 20-2-411) applied to certificates of deposit issued by commercial banks and to certificates of deposit issued by federal or state chartered savings and loan associations. The investment of school funds in

"certificates of deposit" issued by institutions other than those named would present a question of whether such investment would be prudent and in the exercise of sufficient care and diligence. 1969 Op. Att'y Gen. No. 69-306.

Responsibility of school officials. — Local school officials, in making legally authorized investments of local school funds, are not responsible if that investment results in a loss rather than a gain so long as the investment, at the time the investment was made, was reasonably prudent and cautious under the circumstances, and especially if the loss is occasioned by economic conditions over which the officials have no control. 1969 Op. Att'y Gen. No. 69-306.

RESEARCH REFERENCES

C.J.S.

20 C.J.S., Counties, § 188.

ALR.

Extent of power of school district to provide for the comfort and convenience of teachers and pupils, 7 A.L.R. 791; 52 A.L.R. 249.

Municipal funds and credits as subject to levy under execution or garnishment on judgment against municipality, 89 A.L.R. 863.

Requirement of prior appropriation by municipal authorities as condition of making a contract or incurring expense as applicable to local improvements, or bond issue payable only out of special funds and not constituting an obligation of the municipality, 124 A.L.R. 1467.

Rights and liabilities of municipality as to interest earned on improvement assessments or other special funds collected or held by it, 143 A.L.R. 1341.

36-80-5. Relief from or composition of debts under federal statute prohibited.

(a) No county, municipality, school district, authority, division, instrumentality, political subdivision, or public body corporate created under the Constitution or laws of this state shall be authorized to file a petition for relief from payment of its debts as they mature or a petition for composition of its debts under any federal statute providing for such relief or composition or otherwise to take advantage of any federal statute providing for the adjustment of debts of political subdivisions and public agencies and instrumentalities.

(b) No chief executive, mayor, board of commissioners, city council, board of trustees, or other governmental officer, governing body, or organization shall be empowered to cause or authorize the filing by or on behalf of any county, municipality, school district, authority, division, instrumentality, political subdivision, or public body corporate created under the Constitution or laws of this state of any petition for relief from payment of its debts as they mature or a petition for composition of its debts under any federal statute providing for such relief or composition or otherwise to take advantage of any federal statute providing for the adjustment of debts of political subdivisions and public agencies and instrumentalities.

History.

Ga. L. 1976, p. 1557, §§ 1, 2.

Law reviews.

For comment, "Federalism, States, and

the Power to Regulate Municipal Bankruptcies: Who May be a Debtor under Section 109(c)?," see 9 Bank. Dev. J. 621 (1993).

RESEARCH REFERENCES

ALR.

What amounts to "indebtedness" to state within constitutional or statutory provision as to release or compromise of same, 108 A.L.R. 376.

JUDICIAL DECISIONS

Bankruptcy. — Debtor, a Georgia county hospital authority, was ineligible for Chapter 9 relief because the State of Georgia, pursuant to O.C.G.A. § 36-80-5(a), had not specifically authorized the authority to file for relief under Chapter 9. United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), No. 12-50305, 2012 Bankr. LEXIS 3042 (Bankr. S.D. Ga. July 3, 2012).

36-80-6. State furnished services, assistance, funds, property, and other incentives for consolidated programs.

The state and all departments, boards, bureaus, commissions, and other agencies thereof are authorized and empowered, within the limitations of the Constitution of Georgia, to furnish and make available services, assistance, funds, property, and other incentives to any two or more counties, municipal corporations, public corporations, and other political subdivisions of this state or any combination thereof, in connection with any program of services, benefits, administration, or other undertaking in which the state or any of its agencies participates, by furnishing supervision, services, property, administration, or funds, where such counties, municipal corporations, public corporations, or other political subdivisions are thereby able and willing to provide for the consolidation, combining, merger, or joint administration of such program or any part or function thereof by the two or more units, so as to effectuate economy or simplification in the administration or financing thereof. The incentives referred to in this Code section shall also include the assuming by the state or its agencies of a greater share or, where funds are available and such is deemed feasible, the entire cost of such participating program.

History.

Ga. L. 1963, p. 354, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Payment for preparation of study. — State Planning and Programming Bureau (now Department of Community Affairs) can use money from Governor's emergency fund to prepare municipal planning study itself or, in the alternative, contract with a third party, such as a planning consultant, for preparation of the study by the latter. 1969 Op. Att'y Gen. No. 69-312.

36-80-7. Execution of contracts, plans, and documents for consolidated programs.

The state and all of its agencies are authorized to execute such contracts, plans, or other documents as may be necessary or desirable to effectuate the purposes of Code Section 36-80-6, this Code section, and Code Sections 36-80-8 and 36-80-9.

History.
Ga. L. 1963, p. 354, § 2; Ga. L. 1993, p. 91, § 36.

36-80-8. Establishment of area offices for consolidated programs.

The state and all of its agencies are empowered to establish and maintain area offices for such combined, consolidated, or merged undertakings.

History.
Ga. L. 1963, p. 354, § 3.

36-80-9. Promulgation of rules and regulations for consolidated programs; requirement of submission of plans and reports.

The state and its agencies are authorized to prescribe such reasonable rules, regulations, and requirements and to require the submission of such plans and reports from the participating units as may be deemed necessary or desirable to the proper administration of Code Sections 36-80-6 through 36-80-8 and this Code section.

History.
Ga. L. 1963, p. 354, § 4; Ga. L. 1993, p. 91, § 36.

36-80-10. Requirements and procedure for election for unbonded debt.

When any county, municipality, or political subdivision desires to incur any debt, within the purview and meaning of Article IX, Section V, Paragraph I or II of the Constitution of Georgia other than a bonded debt, the election required shall be called and held in accordance with Code Sections 36-80-11 through 36-80-14.

History.
Ga. L. 1904, p. 85, § 1; Civil Code 1910, § 463; Code 1933, § 87-601; Ga. L. 1983, p. 3, § 57.

JUDICIAL DECISIONS

Taxpayers may enjoin payment of illegal debt. — Taxpayers of a city have such an interest in the money raised by taxation for municipal purposes as to maintain a suit to restrain the creation or payment of illegal debts by the municipality. Renfroe v. City of Atlanta, 140 Ga. 81, 78 S.E. 449, 1913 Ga. LEXIS 41 (1913); Brumby v. Board of Lights & Waterworks, 147 Ga. 592, 95 S.E. 7, 1918 Ga. LEXIS 51 (1918).

Power under local Act to buy out competition. — Under the Act of 1906 (Ga. L. 1906, p. 846) giving the board power to erect waterworks and to make all contracts for the light and water supply, such Act did not authorize the board to pay $15,000.00 to a competing company to quit operating its electric light plant in the city, where under the contract the board obtained nothing in the way of plant, poles, etc., and such contract can be enjoined at the instance of a taxpayer. Brumby v. Board of Lights & Waterworks, 147 Ga. 592, 95 S.E. 7, 1918 Ga. LEXIS 51 (1918).

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Majority of voters participating necessary. — In municipal elections to incur debt, approval of a majority of qualified voters participating in the election is required to incur debt rather than approval of a majority of all qualified voters. 1954-56 Ga. Op. Att'y Gen. 491.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 520, 530.

C.J.S.

20 C.J.S., Counties, §§ 293, 294. 64A C.J.S., Municipal Corporations, § 1966.

ALR.

Requirement of prior appropriation by municipal authorities as condition of making a contract or incurring expense as applicable to local improvements, or bond issue payable only out of special funds and not constituting an obligation of the municipality, 124 A.L.R. 1467.

Constitutional or statutory requirement of prior approval by electors of issuance of bonds or incurring of indebtedness, by municipality, county, or state, as applicable to bonds or other instruments not creating indebtedness, 146 A.L.R. 604.

36-80-11. Notice of election for unbonded debt.

The officers charged with levying taxes, contracting debts, and the like for the county, municipality, or political subdivision shall give notice, for a period of 30 days next preceding the day of the election, in the newspaper in which sheriff's advertisements for the county are published, notifying the qualified voters that on the day named an election will be held to determine whether the debt desired or proposed to be incurred shall be incurred by the county, municipality, or political subdivision. The notice shall specify the amount of the debt to be incurred, the purposes for which it is to be incurred, the amount of the debt to be paid annually or at shorter periods, the terms of the contract under which the debt is to be incurred, and the wording of the ballots to be used in the election for or against incurring the debt.

History.
Ga. L. 1904, p. 85, § 1; Civil Code 1910, § 463; Code 1933, § 87-601.

JUDICIAL DECISIONS

Sufficiency of compliance with requirement to specify terms of contract. — Notice specifying that the rate of interest shall be "not exceeding 6 percent per annum," is not a compliance with the provisions of this section which requires "the terms of the contract under which the debt is to be incurred" to be set forth. City of Thomasville v. Thomasville Elec. Light & Gas Co., 122 Ga. 399, 50 S.E. 169, 1905 Ga. LEXIS 222 (1905).

36-80-12. Voting in election for unbonded debt; returns and declaration of election result.

The election shall be held at all the voting or election precincts within the limits of the county, municipality, or political subdivision. It shall be held by the same persons, in the same manner, and under the same rules and regulations as elections for officers of the county, municipality, or political subdivision are held. The returns shall be made to the officers calling or ordering the election, who shall, in the presence of and together with the several managers who bring up the returns, consolidate the returns and declare the result.

History.
Ga. L. 1878-79, p. 40, § 2; Civil Code 1895, § 378; Ga. L. 1904, p. 85, § 2; Civil Code 1910, § 464; Code 1933, § 87-602.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 130 et seq.

36-80-13. Authorization to incur unbonded debt following favorable vote.

When the notice is given and the election is held in accordance with Code Section 36-80-12, if the requisite majority of the qualified voters of the county, municipality, or political subdivision voting at the election vote for incurring the debt, the authority to incur the debt in accordance with Article IX, Section V, Paragraph I or II of the Constitution of Georgia is given to the proper officers of the county, municipality, or political subdivision.

History.
Ga. L. 1904, p. 85, § 3; Civil Code 1910, § 465; Code 1933, § 87-604; Ga. L. 1983, p. 3, § 57.

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Counties and municipalities may incur debts, including bank loans, if approved by a majority of qualified voters, as Ga. Const. 1976, Art. IX, Sec. VII, Para.

I (see now Ga. Const. 1983, Art. IX, Sec. V, Paras. I and II), amended the two-thirds vote requirement in the statute to require only a simple majority. 1977 Op. Att'y Gen. No. 77-51.

RESEARCH REFERENCES

ALR.

Inclusion in assessment for public improvement of amount to cover delinquencies as contrary to constitutional guaranties, 40 A.L.R. 1352; 42 A.L.R. 1185.

36-80-14. Annual sinking fund for unbonded debt.

Any county, municipality, or political subdivision of this state which incurs an indebtedness under Code Sections 36-80-10 through 36-80-13 and this Code section shall, on or before so doing, or annually thereafter, provide, without incurring further debt thereby, an annual sum sufficient in amount to pay the principal and interest of the debt within 30 years from the date of the incurring of the indebtedness.

History.

Ga. L. 1904, p. 85, § 5; Civil Code 1910, § 467; Code 1933, § 87-605; Ga. L. 1993, p. 91, § 36.

RESEARCH REFERENCES

Am. Jur. 2d.

64 Am. Jur. 2d, Public Securities and Obligations, §§ 5, 291 et seq.

ALR.

Liability of officer for loss of sinking fund through failure of bank, 25 A.L.R. 1358.

Constitutional provisions against impairment of obligations of contract as applied to sinking funds for retirement of municipal or other public bonds, 115 A.L.R. 220.

Existing sinking fund as a factor in determining whether indebtedness or proposed indebtedness of municipality or other political subdivision exceeds constitutional or statutory limit, 125 A.L.R. 1393.

36-80-15. Allocation and expenditure of proceeds from timber sales from military installations and facilities.

(a) The purpose of this Code section is to grant and prescribe the manner of expenditure of funds received by this state from the federal government from sales of timber from military installations and military facilities of the United States, as authorized by subsection (e) of Section 2665 of Title 10 of the United States Code, as amended by the Military Construction Authorization Act of 1982.

(b) The amount of such funds received by the state from sales from each military installation or facility shall be allocated to the county in which the installation or facility is located. If an installation or facility is located in more than one county, the amount allocated to each such county shall be the total amount derived from sales from that installation or facility times a fraction the numerator of which is the number of

acres of the installation or facility in the county and the denominator of which is the number of acres of the installation or facility in the state.

(c) Of the amount allocated to each county, 50 percent shall be paid to the county governing authority and 50 percent shall be paid to the county board of education. If, however, there is an independent school district in any county to which funds are allocated, then 50 percent of the funds allocated to the county shall be paid to the county governing authority and the remaining 50 percent shall be proportionally divided among the county school district and each independent school district in the county according to the ratio which the average daily attendance for each system bears to the total average daily attendance for all systems in the county, except that if pupils in one district attend school in another district they shall for purposes of determining average daily attendance be considered as attending school in the district in which they reside.

(d) Funds received by a county governing authority shall be used only on the county road system. Funds received by a board of education may be used for any purpose for which the board may lawfully expend public funds.

(e) Funds received by the state as described in this Code section shall be administered by the state treasurer and distributed by the state treasurer as provided in this Code section not less often than annually.

History.
Ga. L. 1982, p. 853, § 1; Code 1981, § 36-80-15, enacted by Ga. L. 1982, p. 853, § 2; Ga. L. 1987, p. 3, § 36; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, §§ 3, 4/SB 296.

36-80-16. Local Government Authorities Registration.

(a) This Code section shall be known and may be cited as the "Local Government Authorities Registration Act."

(b) The General Assembly finds that there is a need for the state to create and maintain a record of all local government authorities. Such a record can best be maintained through annual registration of all local government authorities.

(c) The purpose of this Code section is to prescribe a registration process for all local government authorities authorized to operate in the State of Georgia by general statute, local law, or local constitutional amendment.

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

(1) "Debt" includes all long-term or short-term credit obligations including, but not limited to, mortgages, bonds, loans, notes, interest-bearing warrants, and advances. For the purposes of this Code section, debt shall also include lease-purchase obligations.

(2) "Local government authority" includes without limitation instrumentalities of one or more local governments created to fulfill a specialized public purpose or any other legally created organization that has authority to issue debt for a public purpose independent of a county or municipality, not to include state authorities. Local government authorities include joint authorities, regional authorities, hospital authorities, housing authorities, residential care facilities for the elderly authorities, resource recovery development authorities, solid waste management authorities, downtown development authorities, airport authorities, industrial, payroll and other development authorities, transit authorities, water and sewer authorities, parking authorities, recreation authorities, stadium and coliseum authorities, building authorities, public service authorities, or any other local government authority regardless of name. Such local government authorities may have been created by local constitutional amendment, general statute, or local law.

(e) All local government authorities authorized to operate in the State of Georgia must register annually with the Department of Community Affairs.

(f) Any local government authority which fails to register with the Department of Community Affairs shall not incur any debt or credit obligations, nor shall it be eligible for receipt of any state funds, until such time as it meets the registration requirement. Failure to register shall not have any adverse affect on any outstanding debt or credit obligation.

(g) The Department of Community Affairs shall establish registration and reporting procedures for local government authorities. Such procedures shall include, but are not limited to, information on the authority's legal name, members, function, date and means of creation, contact person, address, and telephone number.

(h) The Department of Community Affairs shall establish reasonable fees for the work related to administration and enforcement of this Code section; provided, however, no fee shall be charged or allowed for the annual registration as required in this Code section.

(i) The Department of Community Affairs shall maintain a certified list of registered local government authorities, available on request. The department shall forward annually to the judge of the probate court in any affected county the registration information for all authorities operating in that county.

(j) Local government authorities shall initially register on or before January 1, 1996, and shall register each year thereafter by the date corresponding with the due date of that authority's report as provided for in subsection (b) of Code Section 36-81-8.

History.
Code 1981, § 36-80-16, enacted by Ga. L. 1995, p. 560, § 1; Ga. L. 1996, p. 6, § 36; Ga. L. 1998, p. 128, § 36; Ga. L. 1998, p. 596, § 1; Ga. L. 2018, p. 158, § 1/HB 257.

Administrative rules and regulations.
Local Government Efficiency Grant Program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Rule 110-5-1-.01 et seq.

Law reviews.
For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

36-80-16.1. PILOT restriction; financing capital projects.

(a) This Code section shall be known and may be cited as the "PILOT Restriction Act."

(b) As used in this Code section, the term "payments in lieu of taxes" means payments made directly or indirectly:

(1) Primarily in consideration of the issuance of revenue bonds or other revenue obligations and the application by the issuer of such bonds or other obligations of the proceeds of such bonds or other obligations to finance all or a portion of the costs of acquiring, constructing, equipping, or installing a capital project; and

(2) In further consideration of the laws of the State of Georgia granting an exemption from ad valorem taxation for such capital project,

to or for the account of the issuer of revenue bonds or other revenue obligations or the public bodies whose consent would otherwise be required, in the case of the separate payments provided for under subsection (d) of this Code section. Payments in lieu of taxes shall be deemed to be payments in lieu of taxes for educational purposes in the same proportion that property taxes for educational purposes would bear to total property taxes on such capital project if the project were subject to ad valorem property taxation. Such term shall not include payments made primarily in consideration for the use or occupancy of property, including but not limited to lease payments or rent paid under a lease, regardless of whether or not the lessee or tenant holds an interest that is taxable for property tax purposes.

(c)(1) No local government authority, as defined in Code Section 36-80-16, shall be authorized to issue revenue bonds or other revenue obligations to finance, in whole or in part, any capital project if the terms governing such revenue bonds or other revenue obligations provide for such capital project to be used primarily by a nongovernmental user or users that have no taxable property interest in any portion of such capital project and provide for such revenue bonds or other revenue obligations to be repaid, in whole or in part, through payments in lieu of taxes made by a nongovernmental user or users, unless:

(A) Each of the local governments that have property tax levying authority in the area in which such capital project is located consents by ordinance or resolution to the use of payments in lieu of taxes for such purposes; and

(B) In the case of payments in lieu of taxes for educational purposes, a consent is obtained that covers the use for such purposes of such payments in accordance with subsection (d) of this Code section, except that the terms governing such revenue bonds or other revenue obligations may provide for one or more of the public bodies, whose consent would otherwise be required, instead to receive, in such capacity, separate payments in lieu of taxes at least equal to the property taxes that such public body or bodies would have received if the capital project were subject to ad valorem taxation or in such other amount or amounts as may be agreed to by such public body or bodies.

(2) No such revenue bonds or other revenue obligations may be so issued without compliance with the requirements of paragraph (1) of this subsection.

(d)(1) When a capital project is located within the boundaries of a municipality with an independent school system, a consent by the municipality under subparagraph (c)(1)(B) of this Code section shall cover the use of payments in lieu of taxes for educational purposes, provided that, if the board of education of the independent school system is empowered to set the ad valorem tax millage rate for educational purposes and the legislative body of the municipality does not have the authority to modify such rate set by the board of education, the requisite consent shall be that of the board of education of the independent school system rather than that of the legislative body of the municipality.

(2) For those municipalities which do not have an independent school system, a consent by the municipality under subparagraph (c)(1)(B) of this Code section shall cover the use of payments in lieu of taxes for educational purposes if the county board of education or the local legislative body of the county, whichever is authorized to establish the ad valorem tax millage rate for educational purposes, consents to such coverage by resolution duly adopted by said board of education or local legislative body, as appropriate.

(3) The use of payments in lieu of taxes levied for county school district purposes shall be covered by a consent under subparagraph (c)(1)(B) of this Code section if the board of education of the county school district or the local legislative body of the county, whichever is authorized to establish the ad valorem tax millage rate for educational purposes, consents to such coverage by resolution duly adopted by said board of education or local legislative body, as appropriate.

(4) The use of payments in lieu of taxes levied for school district purposes within the boundaries of a consolidated government shall be covered by a consent under subparagraph (c)(1)(B) of this Code section if the board of education of such school district or the local legislative body of the consolidated government, whichever is authorized to establish the ad valorem tax millage rate for educational purposes within the school district, consents to such coverage by resolution duly adopted by said board of education or local legislative body, as appropriate.

(e) This Code section shall not affect revenue bonds or other revenue obligations which any local government authority has issued or which have been judicially validated on or before April 22, 2009. Each county board of tax assessors shall continue, notwithstanding this Code section, to exercise its powers and discharge its duties and is specifically authorized, without limitation, to use a method or methods of valuation for leases related to revenue bonds or other revenue obligations issued by a local government authority for a capital project or projects to be leased primarily to a nongovernmental user or users, based on assessments of the increasing interest of the nongovernmental user or users in the real or personal property, or both, over the term of the lease, or to use a simplified method or methods employing a specified percentage or specified percentages of such leasehold interests. Each local government authority that is authorized to issue revenue bonds or other revenue obligations secured by a taxable property interest, such as a taxable lease of a capital project, shall continue, notwithstanding this Code section, to exercise its powers and discharge its duties, including, in the case of development authorities, the development of trade, commerce, industry, and employment opportunities. Any local government or local government authority which directly or indirectly receives payments in lieu of taxes shall be authorized to use the same for any governmental or public purpose of such local government or local government authority.

History.

Code 1981, § 36-80-16.1, enacted by Ga. L. 2009, p. 158, § 3/HB 63; Ga. L. 2025, p. 1029, § 36(38)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "Such term" for "The term 'payments in lieu of taxes'" in subsection (b).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2009, "the term" was inserted in the introductory language of subsection (b) and "April 22, 2009" was substituted for "the effective date of this Code section" in the first sentence of subsection (e).

JUDICIAL DECISIONS

Valuation of leasehold estates. — Trial court erred in dismissing for failure to state a claim upon which relief could be granted a taxpayer's petition seeking a declaration that the valuation method a county board of assessors and the

development authority of the county used for leasehold estates arising from a local development authority sale-leaseback bond transaction was illegal and in granting the authority's motion for judgment on the pleadings because the taxpayer made material allegations that could be supported by admissible evidence on the issue of whether the valuation method fairly and justly approximated the fair market value of a bond transaction leasehold estate, and the board and authority failed to show that they were clearly entitled to judgment; although O.C.G.A. § 36-80-16.1(e) gave county boards of tax assessors authority to use simplified methods for determining the value of a bond transaction leasehold estate, the statute did not relieve the board and authority from their duty to value the leasehold estate at the estate's fair market value, and any contention that the statute did allow the board and authority to value a bond transaction leasehold estate at less than the estate's fair market value would make the statute illegal and unconstitutional. Sherman v. Fulton County Bd. of Assessors, 288 Ga. 88, 701 S.E.2d 472, 2010 Ga. LEXIS 813 (2010).

36-80-17. Authorization to contract for utility services; conditions and limitations.

(a) As used in this Code section, the term "local authority" means an instrumentality of one or more local governments created to fulfill a specialized public purpose or any other legally created organization that has authority to issue debt for a public purpose independent of a county or municipality, regardless of name; provided, however, that such term does not include a state authority. A local authority may have been created by local constitutional amendment, general statute, or local law.

(b) The governing body of any local authority which is authorized to provide electric, natural gas, or water utility services in this state may authorize the execution of one or more contracts which specify the rates, fees, or other charges which will be charged and collected by the local authority for electric, natural gas, or water utility services to be provided by the local authority to one or more of its utility customers. Any such contract shall be subject to the following conditions and limitations:

(1)(A) Except as provided in subparagraph (B) of this paragraph, no such contract shall be for a term in excess of ten years.

(B) No such contract for solar utility services or for wind utility services shall be for a term in excess of 20 years;

(2) Any such contract which is for a term in excess of two years shall include commercially reasonable provisions under which the rates, fees, or other charges shall be adjusted with respect to inflationary or deflationary factors affecting the provision of the utility service in question; and

(3) Any such contract shall include commercially reasonable provisions relieving the local authority from its obligations under the

contract in the event that the local authority's ability to comply with the contract is impaired by war, natural disaster, catastrophe, or any other emergency creating conditions under which the local authority's compliance with the contract would become impossible or create a substantial financial burden upon the local authority or its taxpayers.

History.
Code 1981, § 36-80-17, enacted by Ga. L. 1998, p. 1113, § 3; Ga. L. 2019, p. 605, § 3/SB 95; Ga. L. 2025, p. 1029, § 36(39)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "such term does" for "the term 'local authority' does" in subsection (a).

36-80-18. Environmental assessment required prior to acquiring real property for recreational area; continuing assessment.

(a) A county, municipality, local board of education, or public authority created by local or general law may not accept a gift of or otherwise acquire real property which is intended to be used for a park or recreational area unless, prior to such acceptance or acquisition, such political subdivision or authority retains an environmental health engineer for a phase 1 environmental assessment to examine the property for contaminants, hidden methane gas, and similar hazards which would be dangerous to public use of such property and receives a report regarding any discovered dangers. If such report discloses significant dangers, the property shall not be accepted or acquired unless the danger is eliminated; otherwise, such property may be accepted or acquired.

(b) At least every 20 years after property has been accepted or acquired pursuant to subsection (a) of this Code section, the political subdivision or authority shall retain an environmental health engineer to retest the property for hazards.

History.
Code 1981, § 36-80-18, enacted by Ga. L. 1999, p. 556, § 1.

36-80-19. General codification of ordinances and resolutions; publication and availability of code; official state repository for general codifications.

(a) As used in this Code section, the term "local governing authority" means the governing authority of each municipality and county in this state.

(b)(1) Each local governing authority shall, no later than January 1, 2002, provide for the general codification of all the ordinances and resolutions of that unit of local government having the force and effect of law. Except as provided in paragraph (2) of this subsection, the general codification shall be adopted by such local governing authority by ordinance and shall be published promptly, together with all amendments thereto and such local Acts of the General Assembly pertaining to the governing authority, codes of technical regulations, and other rules and regulations as the local governing authority may specify. This compilation shall be known and cited officially as "The Code of _____, Georgia."

(2) In cities having a population of 5,000 or less according to the most recent federal decennial census, the governing authority may at its discretion substitute a compilation of ordinances and resolutions for the codification required under paragraph (1) of this subsection. In such case, the compiled ordinances and resolutions shall, at a minimum, be arranged in a logical manner, such as by date, and should preferably include an index or other finding aids. In such case, the compilation shall be known as "The Compiled Ordinances and Resolutions of _____, Georgia" and shall be distributed and made available in the same manner provided in this Code section for codifications.

(3) Copies of the code, at the discretion of the local governing authority, shall be furnished to officers, departments, and agencies of the local governing authority. The code shall be made available for purchase by the public at a reasonable price as fixed by the local governing authority. Amendments to a code shall be incorporated into the general codification and published at least annually.

(c) The local governing authority shall cause each ordinance and each amendment to the general codification to be printed promptly following its adoption, and the printed ordinances and amendments shall be made available for purchase by the public at reasonable prices to be fixed by the local governing authority. Following publication of the first code under this Code section and at all times thereafter, the ordinances and amendments shall be printed in substantially the same style as the code currently in effect in such unit of local government and shall be suitable in form for incorporation therein. The local governing authority shall make such further arrangements as deemed desirable with reproduction and distribution of any current changes in or additions to codes of technical regulations and other rules and regulations included in the code.

(d) Each such general codification shall be:

(1) Made available by posting such codification on the internet; or

(2) In counties which have established a county law library, furnished as a copy to the county law library.

History.
Code 1981, § 36-80-19, enacted by Ga. L. 2000, p. 865, § 3; Ga. L. 2001, p. 1219, § 4; Ga. L. 2008, p. 267, § 3/SB 482; Ga. L. 2025, p. 1029, § 36(40)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "internet" for "Internet" in paragraph (d)(1).
Law reviews.
For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

36-80-20. Decal or seal required on vehicles owned or leased by any county, municipality, regional commission, school system, commission, board, or public authority.

(a) Every motor vehicle which is owned or leased by any county, municipality, regional commission, county or independent school system, commission, board, or public authority or which has been purchased or leased by any public official or public employee with public funds shall have affixed to the front door on each side of such vehicle a clearly visible decal or seal containing the name of or otherwise identifying such governmental entity.

(b) The requirements of subsection (a) of this Code section shall not apply to:

(1) Any vehicle used for law enforcement or prosecution purposes; or

(2) Any vehicle owned or leased by a county, municipality, or public housing authority expressly excepted from the provisions of this Code section by ordinance or resolution adopted by the governing authority of a county, municipality, or public housing authority following a public hearing on the subject held no more than 14 days prior to the adoption of the resolution or ordinance. Any such public hearing shall be advertised one time in the legal organ of the county at least seven days prior to the hearing date. Any such exemption under this paragraph shall be for a period of no more than 12 months at a time and may be renewed annually following a public hearing as required by this paragraph and advertisement as required by this paragraph.

History.
Code 1981, § 36-80-20, enacted by Ga. L. 2000, p. 486, § 1; Ga. L. 2001, p. 1059, § 1; Ga. L. 2008, p. 181, § 16/HB 1216.
Cross references.
Operation of vehicle owned or leased by the state or any branch, department, agency, commission, board, or authority of the state unless decal or seal affixed to front door, § 50-19-2.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2000, Code Section 36-89-1, as enacted by Ga. L. 2000, p. 486, § 1, was redesignated as Code Section 36-80-20.
Pursuant to Code Section 28-9-5, in

2001, "or" was added at the end of paragraph (b)(1).

Law reviews.

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

36-80-21. Electronic transmission of budgets.

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

(1) "Audit" means an annual report of the financial affairs and transactions of a county, municipality, or consolidated government as required by Code Section 36-81-7 and an annual report of a school district as required by rule and regulation of the State Board of Education.

(2) "Budget" means:

(A) A plan of financial operation embodying an estimate of proposed expenditures during a budget period and the proposed means of financing such expenditures for a county, municipality, or consolidated government as required by Article 1 of Chapter 81 of this title and such plans of financial operation for the general fund, each special revenue fund, each debt service fund, each internal service fund, each enterprise fund, and each fiduciary fund in use by such unit of local government as such funds are defined in Code Section 36-81-2; and

(B) A plan of financial operation of a school district as required by rule and regulation of the State Board of Education and Code Section 20-2-67.

(3) "Local government" means any local school board or a governing authority of a county or municipality having an annual budget in excess of $1 million.

(4) "Vinson Institute" means the Carl Vinson Institute of Government of the University of Georgia.

(5) "Website" means a website which shall be developed, operated, and maintained by the Vinson Institute that shall allow the public to review and analyze the information identified in subsections (c) and (d) of this Code section at no cost to the public or the local governments that post to the website.

(b) Each local government shall post the information required by this Code section to the website for each fiscal year beginning on and after January 1, 2011.

(c) As soon as a local government has adopted, by ordinance or resolution, a final budget for an upcoming fiscal year, a copy of the

budget shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable. In no event shall the PDF copy of the budget be transmitted to the Vinson Institute more than 30 calendar days following the adoption of the budget ordinance or resolution.

(d) After the close of a fiscal year, a copy of the audit of each local government shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable. The PDF copy of the audit of a county, municipality, or consolidated government shall be transmitted to the Vinson Institute concurrent with submission of the audit to the state auditor as required by subsection (d) of Code Section 36-81-7. The audit of a school district shall be transmitted to the Vinson Institute concurrent with submission of the audit to the State Board of Education as required by rule and regulation of the State Board of Education.

(e) Concurrent with the submission of the annual report by local law enforcement agencies required by subsection (g) of Code Section 9-16-19, a copy of such report shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable.

(f) The Vinson Institute shall, subject to appropriation by the General Assembly, develop the website for use by local governments under this Code section and provide all necessary training for local government officials in its operation in order to allow local governments to upload the information required by this Code section on a timely basis at no cost to such local governments.

History.

Code 1981, § 36-80-21, enacted by Ga. L. 2010, p. 519, § 1/HB 122; Ga. L. 2011, p. 752, § 36/HB 142; Ga. L. 2014, p. 866, § 36/SB 340; Ga. L. 2015, p. 693, § 3-23/HB 233.

Editor's notes.

This Code section formerly pertained to ownership of privately constructed water or sewage system, exemptions, and termination of provisions. The former Code section was based on Code 1981, § 36-80-21, enacted by Ga. L. 2007, p. 393, § 1/HB 471 and was repealed by Ga. L. 2007, p. 393, § 1/HB 471, effective January 1, 2009.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

36-80-22. Definitions; restrictions; requirements.

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

(1) "Agreement" means any written private contract for solid waste collection services between a firm and any commercial client.

(2) "Commercial client" means any private, nonresidential business entity or person required to have a business license who contracts with a firm for solid waste collection services.

(3) "Displacement" means the displacing of any firm's agreement by annexation, deannexation, or incorporation of a municipality.

(4) "Firm" means a private solid waste collection firm.

(5) "Governmental action" means the invalidation of any firm's existing agreement by a local government by a law, rule, or regulation, provided that such law, rule, or regulation is not enacted pursuant to an emergency as declared by the governing authority of the local government.

(6) "Local government" means a county, municipal corporation, or any county-municipal consolidated government.

(b) Prior to a firm receiving any protection under this Code section, the firm shall first establish that at least 30 days prior to the effective date of any governmental action or displacement, the firm is providing solid waste collection services in the county or municipality pursuant to an agreement.

(c) A firm's agreement with a private commercial entity or person that meets the requirements of subsection (b) of this Code section shall not be invalidated by any governmental action or displacement. This subsection shall not prevent commercial clients from discontinuing an agreement with a firm pursuant to the terms of any agreement such commercial client may have with a firm.

(d) Notwithstanding the provisions of this Code section, in order to protect the public health and safety, a local government shall have the authority to adopt local laws, rules, or regulations establishing standards and procedures for the collection and disposal of solid waste and recyclables generated by a commercial client.

History.
Code 1981, § 36-80-22, enacted by Ga. L. 2008, p. 1019, § 1/SB 154.

36-80-23. Prohibition on immigration sanctuary policies by local governmental entities; certification of compliance; punishment.

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

(1) "Federal officials or law enforcement officers" means any person employed by the United States government for the purpose of enforcing or regulating federal immigration laws and any peace officer certified by the Georgia Peace Officer Standards and Training Council where such federal official or peace officer is acting within the scope of his or her employment for the purpose of enforcing federal immigration laws or preserving homeland security.

(2) "Immigration status" means the legality or illegality of an individual's presence in the United States as determined by the federal Immigration and Nationality Act.

(3) "Immigration status information" means any information, not including any information required by law to be kept confidential but otherwise including, but not limited to, any statement, document, computer generated data, recording, or photograph, which is relevant to immigration status or the identity or location of an individual who is reasonably believed to be illegally residing within the United States or who is reasonably believed to be involved in domestic terrorism in violation of Code Section 16-11-221 or a terroristic act as that term is defined by Code Section 35-3-62.

(4) "Local governing body" means any political subdivision of this state, including any county, consolidated government, municipality, authority, school district, commission, board, or any other local public body corporate, governmental unit, sheriff's office, law enforcement agency, or political subdivision.

(5) "Local official or employee" means any elected or appointed official, supervisor or managerial employee, contractor, agent, or certified peace officer acting on behalf of or in conjunction with a local governing body.

(6) "Sanctuary policy" means any regulation, rule, policy, or practice adopted by a local governing body which prohibits or restricts local officials or employees from complying with an immigration detainer notice or communicating or cooperating with federal officials or law enforcement officers with regard to reporting immigration status information while such local official or employee is acting within the scope of his or her official duties.

(b) No local governing body, whether acting through its governing body or by an initiative, referendum, or any other process, shall enact, adopt, implement, or enforce any sanctuary policy.

(c) Any local governing body that acts in violation of this Code section shall be subject to the withholding of state funding or state administered federal funding other than funds to provide services specified in subsection (d) of Code Section 50-36-1.

(d) As a condition of funding, the Department of Community Affairs, the Department of Transportation, or any other state agency that provides funding to local governing bodies shall require certification pursuant to Code Section 50-36-4 as proof of compliance with this Code section.

(e)(1) It shall be unlawful for any local official or employee to knowingly and willfully violate any provision of this Code section.

(2) A person convicted of a violation of this Code section shall be punished as for a misdemeanor. A person convicted of a second or subsequent violation of this Code section shall be punished as for a misdemeanor of a high and aggravated nature.

History.

Code 1981, § 36-80-23, enacted by Ga. L. 2009, p. 734, § 1/SB 20; Ga. L. 2013, p. 111, § 5/SB 160; Ga. L. 2016, p. 244, § 1/SB 269; Ga. L. 2020, p. 493, § 36/SB 429; Ga. L. 2024, p. 491, § 6/HB 1105, effective May 1, 2024; Ga. L. 2025, p. 224, § 2-5/HB 161, effective July 1, 2025.

Amendments.

The 2024 amendment, effective May 1, 2024, substituted "the federal Immigration and Nationality Act" for "federal law" at the end of paragraph (a)(2); inserted "sheriff's office, law enforcement agency," near the end of paragraph (a)(4); inserted "complying with an immigration detainer notice or" near the middle of paragraph (a)(6); and, added subsection (e).

The 2025 amendment, effective July 1, 2025, substituted "in violation of Code Section 16-11-221" for "as that term is defined in Code Section 16-11-220" in paragraph (a)(3).

Editor's notes.

Ga. L. 2013, p. 111, § 2/SB 160, not codified by the General Assembly, provides: "It is the intent of the General Assembly that all public employers and contractors at every tier and level use the federal work authorization program on all projects, jobs, and work resulting from any bid or contract and that every public employer and contractor working for a public employer take all possible steps to ensure that a legal and eligible workforce is utilized in accordance with federal immigration and employment."

Ga. L. 2024, p. 491, § 1/HB 1105, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Criminal Alien Track and Report Act of 2024.'"

Law reviews.

For article, "State Government: Illegal Immigration Reform and Enforcement Act of 2011," see 28 Ga. St. U.L. Rev. 51 (2011).

For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 173 (2013).

For note, "Deference Condoning Apathy: Social Visibility in the Eleventh Circuit," see 35 Ga. St. U.L. Rev. 777 (2019).

For article, "Taming Immigration: The 64th Henry J. Miller Distinguished Lecture Series Remarks," see 36 Ga. St. U.L. Rev. 971 (2020).

For article, "'Known Adversary': The Targeting of the Immigrants' Rights Movement in the Post-Trump Era," see 72 Emory L.J. 1245 (2023).

For article on the 2024 amendment of this Code section, see 41 Ga. St. U.L. Rev. 13 (2024).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from violations of subsection (e) of O.C.G.A. § 36-80-23 appear to be offenses for which fingerprinting is required. 2024 Op. Att'y Gen. No. 24-3.

36-80-24. Limitation on elected official's or constitutional officer's use of government issued purchasing or credit cards; policy development.

(a) As used in this Code section, the term "constitutional officer" means the locally elected clerk of superior court, judge of the probate court, sheriff, tax receiver, tax collector, or tax commissioner.

(b) An elected official of a county, municipal corporation, local school system, or consolidated government or a constitutional officer shall be prohibited from the use of a government purchasing card or a government credit card unless:

(1) Such purchases are solely for items or services that directly relate to such official's or constitutional officer's public duties; and

(2) Such purchases are in accordance with guidelines adopted by the county, municipal corporation, local school system, consolidated government, or constitutional officer.

(c) Documents related to such purchases incurred by such elected officials or constitutional officers shall be available for public inspection.

(d) No such county, municipal corporation, local school system, or consolidated government shall issue government purchasing cards or government credit cards to elected officials on or after January 1, 2016, until the governing authority of such county, municipal corporation, local school system, or consolidated government, by public vote, has authorized such issuance and has promulgated specific policies regarding the use of such government purchasing cards or government credit cards. No constitutional officer shall issue government purchasing cards or government credit cards to himself, herself, or his or her employees on or after July 1, 2016, until he or she has promulgated specific policies regarding the use of such government purchasing cards or government credit cards that apply to himself or herself and his or her employees and such policies have been filed with the governing authority of the county. If an elected official of such county, municipal corporation, local school system, or consolidated government or constitutional officer promulgates specific policies regarding the use of such government purchasing cards or government credit cards, such policies shall include the following:

(1) Designation of officials who shall be authorized to be issued such government purchasing cards or government credit cards;

(2) A requirement that, before being issued a government purchasing card or government credit card, authorized users shall sign and accept an agreement with the county, municipal corporation, local school system, consolidated government, or constitutional officer issuing the government purchasing card or government credit card that such users will use such cards only in accordance with the policies of the issuing governmental entity or constitutional officer;

(3) Transaction limits for the use of such cards;

(4) A description of purchases that shall be authorized for use of such cards;

(5) A description of purchases that shall not be authorized for use of such cards;

(6) Designation of a government purchasing card or government credit card administrator;

(7) A process for auditing and reviewing purchases made with such cards; and

(8) Procedures for addressing a violation of such purchasing card or credit card policies and imposing penalties for violations, including, but not limited to, revocation of purchasing card or credit card privileges. Nothing in such procedures or any administrative action taken pursuant thereto shall preclude any other civil or criminal remedy under any other provision of law.

History.
Code 1981, § 36-80-24, enacted by Ga. L. 2015, p. 266, § 5/HB 192; Ga. L. 2016, p. 558, § 2/HB 949.

Cross references.
Misuse of government issued credit cards, § 16-9-37.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2016, "such policies" was substituted for "such, policies" in the last sentence of subsection (d).

36-80-25. Financing of public projects by local entities.

(a) As used in this Code section, the term "project" means and includes hospitals, healthcare facilities, dormitories, office buildings, clinics, housing accommodations, nursing homes, rehabilitation centers, extended care facilities, and other health related facilities, whether public or private.

(b) To the extent that the Constitution of Georgia permits the General Assembly by law to further define the powers and duties of any local government authority, as defined in Code Section 36-80-16, whose purpose includes the public purpose of developing or promoting trade, commerce, or industry, and to enlarge or restrict the same, each such local government authority is authorized and shall have the power to

finance (by loan, grant, lease, or otherwise), refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, renovate, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage projects and to pay the cost of any project from the proceeds of revenue bonds of such a local government authority or any other funds of such local government authority, or from any contributions or loans by persons, corporations, limited or general partnerships, or other entities, all of which such a local government authority is authorized to receive, accept, and use. To the extent that any project serves a governmental function, the General Assembly finds and determines that such a project by its nature comprises both public and private components that are integrated so as to produce the desired public purpose and that therefore carrying out such a project is proper and authorized for such a local government authority under the Constitution of Georgia.

History.

Code 1981, § 36-80-25, enacted by Ga. L. 2015, p. 266, § 6/HB 192; Ga. L. 2025, p. 1029, § 36(41)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "healthcare" for "health care" in subsection (a).

Cross references.

State debt, Ga. Const. 1983, Art. VII, Sec. IV.

36-80-26. Multicounty community improvement districts for transit projects.

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

(1) "County" means any county created under the Constitution or laws of this state.

(2) "Regional transit plan" means the official multiyear plan for transit services and facilities adopted pursuant to Code Section 50-39-12.

(3) "Transit" means regular, continuing shared-ride or shared-use surface transportation services that are made available by a public entity and are open to the general public or open to a segment of the general public defined by age, disability, or low income. Such term includes services or systems operated by or under contract with the state, a public agency or authority, a county or municipality, a community improvement district, or any other similar public entity of this state and all accompanying infrastructure and services necessary to provide access to these modes of transportation. Such term excludes charter or sightseeing services, school bus services, courtesy shuttle and intra-facility or terminal services, limousine carriers, and ride share network services, transportation referral services, and taxi services not paid for by a public entity.

(4) "Transit projects" means and includes purposes to establish, enhance, operate, and maintain, or improve access to transit, including general obligation debt and other multiyear obligations issued to finance such projects.

(b) A community improvement district for the purpose of the provision of transit projects which are wholly or partially located in more than one county may be created under the authority granted in and consistent with the processes set forth in Section VII of Article IX of the Georgia Constitution. Any such multicounty community improvement district may be authorized to be created upon the passage of a local act of the General Assembly by each county in which such community improvement district is to be wholly or partially located. The transit projects to be provided by such community improvement district shall be projects included in the regional transit plan and through agreement with the Atlanta-region Transit Link "ATL" Authority. The administrative body of any such community improvement district shall include one member appointed by the governing authority of each county or municipality which is located wholly or partially within such community improvement district.

History.

Code 1981, § 36-80-26, enacted by Ga. L. 2018, p. 377, § 1-1/HB 930; Ga. L. 2025, p. 1029, § 36(42)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "As used in" for "For purposes of" in subsection (a) and substituted "multicounty" for "multi-county" in subsection (b).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2018, Code Section 36-80-26, as enacted by Ga. L. 2018, p. 926, § 1/HB 489, was redesignated as Code Section 36-80-27.

Editor's notes.

Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of the Act became effective January 1, 2019.

Administrative rules and regulations.

Bidding Requirements for School Capital Outlay Projects, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, School Facilities and Capital Outlay Management, Rule 160-5-4-.18.

36-80-27. Advertisement of bid or proposal opportunities.

If a bid or proposal opportunity is extended by a county, municipal corporation, or local board of education for goods, services, or both, valued at $100,000.00 or more, such bid or proposal opportunity shall be advertised by such respective local governmental entity in the Georgia Procurement Registry, as established in subsection (b) of Code Section 50-5-69, at no cost to the local governmental entity. Such bid or proposal opportunity shall be advertised on such registry for the same period of time, as set by ordinance or policy, if any, as the county,

municipality, or local board of education advertises bid or proposal opportunities in the official legal organ or other media normally utilized by the local governing entity. Each advertisement shall include such details and specifications as will enable the public to know the extent and character of the bid or proposal opportunity.

History.
Code 1981, § 36-80-27, enacted by Ga. L. 2018, p. 926, § 1/HB 489; Ga. L. 2019, p. 283, § 1/HB 322.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2018, Code Section 36-80-26, as enacted by Ga. L. 2018, p. 926, § 1/HB 489, was redesignated as Code Section 36-80-27.
Law reviews.
For article, "Construction Law," see 70 Mercer L. Rev. 51 (2018).

36-80-28. Role of consultants; disclosures; application.

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

(1) "Consultant" means an individual or company that is paid or engaged to develop or draft specifications or requirements for a solicitation or to serve in a consultative role during the bid or proposal evaluation or negotiation process.

(2) "Local government" means a county, municipal corporation, consolidated government, or board of education, or any authority of a county, municipal corporation, consolidated government, or board of education whether created by or pursuant to a general state law, a local act of the General Assembly, or a local constitutional amendment.

(b) Consultants who enter into contracts or arrangements with counties, municipalities, school boards, and other local governmental entities to prepare or develop specifications or requirements for bids, requests for proposals, procurement orders, or purchasing orders for such county, municipality, school board, or other local governmental entity shall, at the time of entering into such contract or arrangement, execute an agreement which provides that:

(1) The consultant shall avoid any appearance of impropriety and shall follow all policies and procedures of the county, municipality, school board, or other local governmental entity with whom the consultant is entering into a contract or an arrangement;

(2) The consultant shall immediately disclose to such county, municipality, school board, or other local governmental entity any material transaction or relationship, including, but not limited to, that of the consultant, the consultant's employees, or the consultant's agents or subsidiaries, that reasonably could be expected to give rise to a conflict of interest, including, but not limited to, past, present, or known prospective engagements, involvement in litigation or other dispute, client relationships, or other business or financial interest,

and shall immediately disclose any material transaction or relationship subsequently discovered during the pendency of the contract or arrangement; and

(3) An acknowledgment that any violation or threatened violation of the agreement may cause irreparable injury to the county, municipality, school board, or other local governmental entity, entitling such county, municipality, school board, or other local governmental entity to seek injunctive relief in addition to all other legal remedies.

(c) Any violation or threatened violation of the agreement may cause irreparable injury to the county, municipality, or other local governmental entity, entitling such county, municipality, or other local governmental entity to seek injunctive relief in addition to all other legal remedies.

(d)(1) This Code section shall not apply to economic development activities that are confidential pursuant to Article 4 of Chapter 18 of Title 50.

(2) This Code section shall not apply to any development authority which shall include any authority created by law or by constitutional amendment for one or more counties or municipalities, or any combination thereof, for the purpose of promoting the development of trade, commerce, industry, and employment opportunities or for other purposes and, without limiting the generality of the foregoing, shall specifically include all authorities created pursuant to Chapter 62 of this title; provided, however, that nothing in this paragraph shall impair or interfere with the provisions of subparagraph (e)(1)(B) of Code Section 36-62-5 regarding reporting of potential conflicts of interest by development authority board members.

(3) An attorney who provides legal services to the county, municipality, school board, or other local government entity shall only be required to disclose the existence of a conflict under this Code section and not the details of such conflict.

(e) Any person may bring an action to declare null and void any purchase in violation of this Code section or to seek injunctive relief and damages against a person who makes a bid or proposal in violation of this Code section.

History. Code 1981, § 36-80-28, enacted by Ga. L. 2019, p. 41, § 1/HB 315; Ga. L. 2020, p. 493, § 36/SB 429.

36-80-29. Electronic posting of legal notice; correction of errors.

(a) As used in this Code section, the term "website" means:

(1) A website maintained by a county or municipal legal organ;

(2) A website maintained by a newspaper of general circulation that is not a designated legal organ;

(3) The Georgia Public Notice website or any other website maintained by an organization or collection of two or more legal organs; or

(4) A website maintained by a county or municipal government.

(b) Except as otherwise provided in subsection (a) of Code Section 28-1-14, in any case when a county or municipality is required to publish a legal notice in the county or municipal legal organ or other newspaper of general circulation, such notice may additionally be published by posting such notice in a conspicuous place on the website of the county or municipality, as applicable, or on a common state-wide website.

(c) In the event that an error is made in the text or publication date of a legal notice required to be published for a county or municipal government, a correction shall be made as follows:

(1) The correct notice shall be prominently displayed within two business days of the original publication date on the website of the legal organ or newspaper of general circulation or the website of the county or municipality;

(2) The legal organ or newspaper of general circulation shall have the correct notice posted on the Georgia Public Notice website within two business days of the original publication date; and

(3) The correct notice shall be published in the next edition of the legal organ or newspaper of general circulation after being displayed on the required website.

(d) Postings on the required website shall remain in place until the conclusion of the event or action being advertised; provided, however, that no website as defined in paragraphs (1) through (3) of subsection (a) of this Code section shall be required to maintain such posting for a period in excess of one year.

(e) A correction made as prescribed in this Code section shall be considered as having been correctly published on the original publication date and shall satisfy any and all legal requirements of adequate notice to the public.

History.

Code 1981, § 36-80-29, enacted by Ga. L. 2023, p. 535, § 3/HB 254, effective July 1, 2023.

Effective date.

This Code section became effective July 1, 2023.

Code Commission notes.

Ga. L. 2023, p. 535, § 3/HB 254, Ga. L. 2023, p. 546, § 1/SB 55, and Ga. L. 2023, p. 569, § 3/SB 62 each enacted a Code Section 36-80-29. Pursuant to Code Section 28-9-5, in 2023, Code Section 36-80-29, as enacted by Ga. L. 2023, p.

546, § 1/SB 55, was redesignated as Code Section 36-80-30, and Code Section 36-80-29, as enacted by Ga. L. 2023, p. 569, § 3/SB 62, was redesignated as Code Section 36-80-31.

36-80-30. Lemonade stands.

(a) This Code section shall be known and may be cited as the "Georgia Lemonade Stand Act."

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

(1) "Business" means any enterprise carried on for the purpose of gain or economic profit.

(2) "Gross receipts" means all receipts from whatever sources derived before any deductions and does not include tips, gratuities, or other amounts customarily assumed to be intended for the individual who has served the customer or client.

(c) A county, municipal corporation, or other governmental entity shall not require a license, permit, or registration for a business that:

(1) Is operated solely by an individual or individuals who are under 18 years of age and:

(A) Are enrolled in a public school, licensed private school, or licensed home study program or a state approved adult education class if studying for a high school equivalency (HSE) diploma; or

(B) Have obtained a high school diploma or a high school equivalency (HSE) diploma;

(2) Is located on private property with the permission of the property owner;

(3) Generates gross receipts of $5,000.00 or less in a calendar year; and

(4) Sells nonconsumable goods or prepackaged foods or lemonade or other nonpotentially hazardous nonalcoholic beverages.

History.

Code 1981, § 36-80-30, enacted by Ga. L. 2023, p. 546, § 1/SB 55, effective July 1, 2023; Ga. L. 2024, p. 1052, § 6(28)/SB 448, effective July 1, 2024.

Effective date.

This Code section became effective July 1, 2023.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised capitalization in subparagraphs (c)(1)(A) and (c)(1)(B).

Code Commission notes.

Ga. L. 2023, p. 535, § 3/HB 254, Ga. L. 2023, p. 546, § 1/SB 55, and Ga. L. 2023, p. 569, § 3/SB 62 each enacted a Code Section 36-80-29. Pursuant to Code Section 28-9-5, in 2023, Code Section 36-80-29, as enacted by Ga. L. 2023, p. 546, § 1/SB 55, was redesignated as Code Section 36-80-30, and Code Section 36-80-29, as enacted by Ga. L. 2023, p.

569, § 3/SB 62, was redesignated as Code Section 36-80-31.

36-80-31. Transporting homeless outside of jurisdiction.

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

(1) "Drop off" means the act of transporting an individual to a location different from the location where the party transporting such individual assumed custody, control, or care of or provided treatment to such individual, and shall include but not be limited to directly providing or funding the transportation of such individual to such different location.

(2) "Homeless individual" means a person who has no access to or can reasonably be expected not to have access to either traditional or permanent housing which can be considered safe, sanitary, decent, and affordable.

(b) No county, municipal corporation, political subdivision, local authority, or other local governmental unit shall drop off an individual known to be a homeless individual outside its jurisdiction unless:

(1) Such drop-off location is in the county where such homeless individual was a resident prior to coming under the custody, control, or care of or receiving treatment from such local government or local authority; or

(2) Such a drop off is at a facility or with a person, business, or organization that has agreed to accept such homeless individual.

(c) A county, municipal corporation, political subdivision, local authority, or other local governmental unit that violates this Code section shall be liable to any state or local governmental entity for any costs incurred by such entity in providing services for a homeless individual as a result of such violation.

History.

Code 1981, § 36-80-31, enacted by Ga. L. 2023, p. 569, § 3/SB 62, effective July 1, 2023.

Effective date.

This Code section became effective July 1, 2023.

Code Commission notes.

Ga. L. 2023, p. 535, § 3/HB 254, Ga. L. 2023, p. 546, § 1/SB 55, and Ga. L. 2023, p. 569, § 3/SB 62 each enacted a Code Section 36-80-29. Pursuant to Code Section 28-9-5, in 2023, Code Section 36-80-29, as enacted by Ga. L. 2023, p. 546, § 1/SB 55, was redesignated as Code Section 36-80-30, and Code Section 36-80-29, as enacted by Ga. L. 2023, p. 569, § 3/SB 62, was redesignated as Code Section 36-80-31.

CHAPTER 81

BUDGETS AND AUDITS

Article 1

Local Government Budgets and Audits

Sec.

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Administrative rules and regulations. The Life Sciences Facilities Fund Loan Program Description, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Affairs, Rule 110-25-1-.01 et seq.

RESEARCH REFERENCES

ALR.

Negotiability of county, municipal, school, state, or town warrants, 36 A.L.R. 949.

Negotiability of municipal bonds as affected by reference to fund from which they are to be paid, 42 A.L.R. 1027.

ARTICLE 1

LOCAL GOVERNMENT BUDGETS AND AUDITS

Administrative rules and regulations. Uniform Charts of Accounts, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Rule 110-15-1-.01 et seq.

36-81-1. Legislative intent.

The intent of this article is to provide minimum budget, accounting, and auditing requirements for local governments so as to provide local taxpayers with an opportunity to gain information concerning the purposes for which local revenues are proposed to be spent and are actually spent and to assist local governments in generally improving local financial management practices while maintaining, preserving, and encouraging the principle of home rule over local matters. It is the further intent of this article to provide a mechanism through which appropriate information may be collected to assist state and local policy makers in carrying out their lawful responsibilities. It is also the intent of this article to provide for the collection and reporting of information so as to assist local taxpayers and local policy makers in understanding and evaluating local government service delivery and operations.

History.
Ga. L. 1980, p. 1738, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1997, p. 1575, § 1.

36-81-2. Definitions.

As used in this article, the term:

(1) "Budget" means a plan of financial operation embodying an estimate of proposed expenditures during a budget period and the proposed means of financing them.

(2) "Budget officer" means that local government official charged with budget preparation and administration for the local government. The official title of the local government budget officer shall be as provided by local law, charter, ordinance, or appropriate resolution of the governing authority.

(3) "Budget ordinance," "ordinance," or "resolution" means that governmental action which appropriates revenues and fund balances for specified purposes, functions, or activities for a budget period.

(4) "Budget period" means the period for which a budget is proposed or a budget ordinance or resolution is adopted.

(5) "Capital projects fund" means a fund used to account for financial resources to be used for the acquisition or construction of

major capital facilities other than those financed by resources from proprietary type activities which are accounted for in enterprise funds or those financed with funds held by the local government in a trustee capacity.

(6) "Debt service fund" means a fund used to account for the accumulation of resources for and the payment of general long-term debt principal and interest.

(7) "Enterprise fund" means a fund used to account for operations that are financed and operated in a manner similar to private business enterprises where the intent of the governing authority is that the costs of providing goods and services to the general public on a continuing basis be financed or recovered primarily through user charges or where the governing authority has decided that periodic determination of revenues earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes. As used in this paragraph, the term "costs" means expenses, including depreciation.

(8) "Fiduciary fund" means those trust and agency funds used to account for assets held by a local government in a trustee capacity or as an agent for individuals, private organizations, other governmental units, or other funds.

(9) "Fiscal year" means the period for which a budget is proposed or a budget ordinance or resolution is adopted for the local government's general fund, each special revenue fund, if any, and each debt service fund, if any.

(10) "Fund" means a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which is segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

(11) "General fund" means the fund used to account for all financial resources except those required to be accounted for in another fund.

(12) "Governing authority" means that official or group of officials responsible for governance of the unit of local government.

(13) "Internal service fund" means a fund used to account for the financing of goods or services provided by one department or agency to other departments or agencies of the governmental unit or to other governmental units on a cost-reimbursement basis.

(14) "Legal level of control" means the lowest level of budgetary detail at which a local government's management or budget officer

may not reassign resources without approval of the governing authority. The legal level of control shall be, at a minimum, expenditures for each department for each fund for which a budget is required. This does not preclude the governing authority of a local government from establishing a legal level of control at a more detailed level of budgetary control than the minimum required legal level of control.

(15) "Special revenue fund" means a fund used to account for the proceeds of specific revenue sources, other than those for major capital projects or those held by the government in a trustee capacity, that are legally restricted to expenditure for specified purposes.

(16) "Unit of local government," "unit," or "local government" means a municipality, county, consolidated city-county government, or other political subdivision of the state. Such terms do not include any local school district or board of education. As used in this paragraph, the term "county" includes any county officer who is paid in whole or in part on a salary basis and over whom the county governing authority exercises budgetary authority.

History.

Ga. L. 1980, p. 1738, § 3; Ga. L. 1984, p. 22, § 36; Ga. L. 1987, p. 3, § 36; Ga. L. 1998, p. 1611, § 1; Ga. L. 2025, p. 1029, § 36(43)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "As used in" for "For purposes of" in paragraph (7); and substituted "As used in this paragraph, the term 'county' includes" for "For purposes of this paragraph, 'county' includes" in paragraph (16).

36-81-3. Establishment of fiscal year; requirement of annual balanced budget; adoption of budget ordinances or resolutions generally; budget amendments; uniform chart of accounts.

(a) The governing authority shall establish by ordinance, local law, or appropriate resolution a fiscal year for the operations of the local government.

(b)(1) Each unit of local government shall adopt and operate under an annual balanced budget for the general fund, each special revenue fund, and each debt service fund in use by the local government. The annual balanced budget shall be adopted by ordinance or resolution and administered in accordance with this article.

(2) Each unit of local government shall adopt and operate under a project-length balanced budget for each capital projects fund in use by the government. The project-length balanced budget shall be adopted by ordinance or resolution in the year that the project initially begins and shall be administered in accordance with this

article. The project-length balanced budget shall appropriate total expenditures for the duration of the capital project.

(3) A budget ordinance or resolution is balanced when the sum of estimated revenues and appropriated fund balances is equal to appropriations.

(4) Nothing contained in this Code section shall preclude a local government from adopting a budget for any funds used by the local government other than those specifically identified in paragraphs (1) and (2) of this subsection, including enterprise funds, internal service funds, and fiduciary funds.

(c) For each fiscal year beginning on or after January 1, 1982, each unit of local government shall adopt and utilize a budget ordinance or resolution as provided in this article.

(d) Nothing contained in this Code section shall preclude a local government from amending its budget so as to adapt to changing governmental needs during the budget period. Amendments shall be made as follows, unless otherwise provided by charter or local law:

(1) Any increase in appropriation at the legal level of control of the local government, whether accomplished through a change in anticipated revenues in any fund or through a transfer of appropriations among departments, shall require the approval of the governing authority. Such amendment shall be adopted by ordinance or resolution;

(2) Transfers of appropriations within any fund below the local government's legal level of control shall require only the approval of the budget officer; and

(3) The governing authority of a local government may amend the legal level of control to establish a more detailed level of budgetary control at any time during the budget period. Said amendment shall be adopted by ordinance or resolution.

(e) The Department of Community Affairs, in cooperation with the Association County Commissioners of Georgia and the Georgia Municipal Association, shall develop local government uniform charts of accounts. The uniform charts of accounts, including any subsequent revisions thereto, shall require approval of the state auditor prior to final adoption by the Department of Community Affairs. All units of local government shall adopt and use such initial uniform charts of accounts within 18 months following adoption of the uniform charts of accounts by the Department of Community Affairs. The department shall adopt the initial local government uniform charts of accounts no later than December 31, 1998. The department shall be authorized to grant a waiver delaying adoption of the initial uniform charts of

accounts for a period of time not to exceed two years upon a clear demonstration that conversion of the accounting system of the requesting local government, within the time period specified in this subsection, would be unduly burdensome.

(f) The department's implementation of subsection (e) of this Code section shall be subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Ga. L. 1980, p. 1738, § 4; Ga. L. 1987, p. 3, § 36; Ga. L. 1997, p. 1575, § 2; Ga. L. 1998, p. 1611, § 2; Ga. L. 2000, p. 1395, § 1.

Cross references.
Audits of counties and municipalities, § 36-60-8.
Fiscal year for state and units of state government, § 45-6-2.
Department of audits and accounts, § 50-6-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Regional development center is not subject to the minimum budget and auditing requirements set forth in O.C.G.A. Art. 1, Ch. 81, T. 36; however, a center is subject to public accountability under other provisions of state law. 1990 Op. Att'y Gen. No. 90-37.

Budget amendments. — Requirement that budget amendments be adopted by ordinance or resolution is not satisfied by the adoption of a "blanket amendment" in the local government's budget resolution. 1999 Op. Att'y Gen. No. 99-3.

Adoption of a blanket amendment in local government's budget resolution. — Requirement that amendments to the budgets of local governments be adopted by ordinance or resolution is not satisfied by the adoption of a "blanket amendment" in the local government's budget resolution. 1999 Op. Att'y Gen. No. 99-3.

RESEARCH REFERENCES

ALR.
Validity, construction, and application of state constitutional and statutory balanced budget provisions, 82 A.L.R.6th 497.

36-81-4. Appointment of budget officer; performance of duties by governing authority in absence of appointment; utilization of executive budget.

(a) Unless provided to the contrary by local charter or local Act, each local government may appoint a budget officer to serve at the will of the governing authority.

(b) In those units of local government in which there is no budget officer, the governing authority shall perform all duties of the budget officer as set forth in Code Section 36-81-5.

(c) Nothing in this Code section shall preclude the utilization of an

executive budget, under which an elected or appointed official, authorized by charter or local law and acting as the chief executive of the governmental unit, exercises the initial budgetary policy-making function, while another individual, designated as provided in this Code section as budget officer, exercises the administrative functions of budgetary preparation and control.

History.
Ga. L. 1980, p. 1738, § 5.

36-81-5. Preparation of proposed budget; submission to governing authority; public review of proposed budget; notice and conduct of budget hearing.

(a) By the date established by each governing authority, in such manner and form as may be necessary to effect this article, and consistent with the local government's accounting system, the budget officer shall prepare a proposed budget for the local government for the ensuing budget period.

(b) The proposed budget shall, at a minimum, be an estimate of the financial requirements at the legal level of control for each fund requiring a budget for the appropriate budget period and shall be in such form and detail, with such supporting information and justifications, as may be prescribed by the budget officer or the governing authority. The budget document, at a minimum, shall provide, for the appropriate budget period, a statement of the amount budgeted for anticipated revenues by source and the amount budgeted for expenditures at the legal level of control. In accordance with the minimum required legal level of control, the budget document shall, at a minimum, provide a statement of the amount budgeted for expenditures by department for each fund for which a budget is required. This does not preclude the governing authority of a local government from preparing a budget document or establishing a legal level of control at a more detailed level of budgetary control than the minimum required legal level of control.

(c) On the date established by each governing authority, the proposed budget shall be submitted to the governing authority for that body's review prior to enactment of the budget ordinance or resolution.

(d) On the day that the proposed budget is submitted to the governing authority for consideration, a copy of the budget shall be placed in a public location which is convenient to the residents of the unit of local government. The governing authority shall make every effort to provide convenient access to the residents during reasonable business hours so as to accord every opportunity to the public to review the budget prior to adoption by the governing authority. A copy of the budget shall also be made available, upon request, to the news media.

(e) A statement advising the residents of the local unit of government of the availability of the proposed budget shall be published in a newspaper of general circulation within the jurisdiction of the governing authority. The notice shall be published during the week in which the proposed budget is submitted to the governing authority. In addition, the statement shall also advise the residents that a public hearing will be held at which time any persons wishing to be heard on the budget may appear. The statement shall be a prominently displayed advertisement or news article and shall not be placed in that section of the newspaper where legal notices appear.

(f) At least one week prior to the meeting of the governing authority at which adoption of the budget ordinance or resolution will be considered, the governing authority shall conduct a public hearing, at which time any persons wishing to be heard on the budget may appear.

(g)(1) The governing authority shall give notice of the time and place of the budget hearing required by subsection (f) of this Code section at least one week before the budget hearing is held. The notice shall be published in a newspaper of general circulation within the jurisdiction of the governing authority. The statement shall be a prominently displayed advertisement or news article and shall not be placed in that section of the newspaper where legal notices appear.

(2) The notice required by paragraph (1) of this subsection may be included in the statement published pursuant to subsection (e) of this Code section in lieu of separate publication of the notice.

(h) Nothing in this Code section shall be deemed to preclude the conduct of further budget hearings if the governing body deems such hearings necessary and complies with the requirements of subsection (e) of this Code section.

History. Ga. L. 1980, p. 1738, § 6; Ga. L. 1984, p. 818, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1998, p. 1611, § 3.

36-81-6. Adoption of budget ordinance or resolution; form of budget.

(a) On a date after the conclusion of the hearing required in subsection (f) of Code Section 36-81-5, the governing authority shall adopt a budget ordinance or resolution making appropriations in such sums as the governing authority may deem sufficient, whether greater or less than the sums presented in the proposed budget. The budget ordinance or resolution shall be adopted at a public meeting which shall be advertised in accordance with the procedures set forth in subsection (e) of Code Section 36-81-5 at least one week prior to the meeting.

(b) The budget may be prepared in any form that the governing

authority deems most efficient in enabling it to make the fiscal policy decisions embodied in the budget, but such budget shall be subject to the provisions of this article.

History. Ga. L. 1980, p. 1738, § 7; Ga. L. 1984, p. 818, § 2; Ga. L. 1987, p. 3, § 36; Ga. L. 1998, p. 1611, § 4.

36-81-7. Audit of financial affairs and transactions; contents; copy to state auditor; public inspection.

(a)(1) The governing authority of each unit of local government having a population in excess of 1,500 persons according to the latest estimate of population by the United States Bureau of the Census or its successor agency or expenditures of $550,000.00 or more shall provide for and cause to be made an annual audit of the financial affairs and transactions of all funds and activities of the local government for each fiscal year of the local government.

(2) The governing authority of each local unit of government not included in paragraph (1) of this subsection shall provide for and cause to be made the audit required pursuant to paragraph (1) of this subsection not less often than once every two fiscal years. Audits performed pursuant to this paragraph shall be for both fiscal years.

(3) The governing authority of each local unit of government having expenditures of less than $550,000.00 in that government's most recently ended fiscal year may elect to provide for and cause to be made, in lieu of the biennial audit otherwise required under paragraph (2) of this subsection, an annual report of agreed upon procedures for that fiscal year. The agreed upon procedures shall include as a minimum: proof and reconciliation of cash, confirmation of cash balances, a listing of bank balances by bank, a statement of cash receipts and cash disbursements, a review of compliance with state law, and a report of agreed upon procedures. This agreed upon procedures report shall be in a format prescribed by the state auditor and shall constitute an annual audit report for purposes of and within the meaning of the requirements of subsections (d) through (g) of this Code section. The Department of Community Affairs is authorized to assist requesting local governments in preparing agreed upon procedures reports required under this paragraph and in establishing record-keeping procedures needed in preparing those reports and is further authorized to charge those local governments reasonable fees for that assistance. To the extent that the state auditor is able to perform the agreed upon procedures, the governing body may contract with the state auditor.

(4) At the option of the governing authority, an audit may be made at a lesser interval than one year.

(b) The audits of each local government shall be conducted in accordance with generally accepted government auditing standards. Each audit shall also contain a statement of any agreement or arrangement under which the local unit of government has assumed any actual or potential liability for the obligations of any governmental or private agency, authority, or instrumentality. Such statement shall include the purpose of the agreement or arrangement, shall identify the agency, authority, or instrumentality upon whose obligations the unit of local government is or may become liable, and shall state the amount of actual liability and the maximum amount of potential liability of the local government under the agreement or arrangement. To the extent that the state auditor is able to provide comparable auditing services, the governing body may contract with the state auditor.

(c) All annual audit reports of local units of government shall contain at least the following:

(1) Financial statements prepared in conformity with generally accepted governmental accounting principles, setting forth the financial condition and results of operation of each fund and activity of the local government and such financial statements shall be the representation of the local government; and

(2) The opinion of the performing auditor with respect to the financial statement; in addition to an explanation of any qualification or disclaimers contained in the opinion, such opinion shall also disclose, in accordance with generally accepted government auditing standards, any apparent material violation of state or local law discovered during the audit.

(c.1)(1) The annual audit reports of a county or consolidated city-county government shall also contain financial statements prepared in conformity with generally accepted governmental accounting principles, providing a detailed account of the supplemental official income and related expenditures of each county officer listed in Article IX, Section I, Paragraph III(a) of the Constitution, provided that such county officer is paid in whole or in part on a salary basis and over whom the county governing authority exercises budgetary authority; and such financial statements shall be the representation of such officers. Such officers shall be obligated to cooperate with the county or consolidated government in the preparation of such financial statements and audit reports and shall provide such government with all documentation the government deems necessary to prepare such financial statements or audit reports. The failure of any such officer to cooperate with or provide required documentation to a county or consolidated government shall not result in any liability applying to such government.

(2) The opinion of the performing auditor with respect to the

financial statement provided for in this subsection, in addition to an explanation of any qualifications or disclaimers contained in the opinion, shall also disclose, in accordance with generally accepted government auditing standards, any apparent material violation of state or local law discovered during the audit of the supplemental official income of such county officers.

(3) For the purpose of this subsection, the term "supplemental official income" means all funds from any source other than funds appropriated by a county or consolidated government that an individual or his or her office derives from performing duties that are within his or her official capacity as a county officer.

(d)(1) Each annual audit report of a local unit of government shall be completed and a copy of the report forwarded to the state auditor within 180 days after the close of the unit's fiscal year. In addition to the audit report, the local unit of government shall forward to the state auditor, within 30 days after the audit report due date, written comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, the written comments should include a statement describing the reason it is not. In the case of units provided for in paragraph (2) of subsection (a) of this Code section, the audit reports for both fiscal periods shall be submitted within 180 days after the close of each second fiscal year and the written comments shall be submitted within 30 days after the audit report due date.

(2) The state auditor shall review the audit report and written comments submitted to the auditor's office to ensure that it meets the requirements for audits of local governments. If the state auditor finds the requirements for audits of local governments have not been complied with, the state auditor shall within 60 days of receipt of the audit or the written comments notify the governing authority and the auditor who performed the audit and shall submit to them a list of deficiencies to be corrected. A copy of this notification shall also be sent by the state auditor to each member of the General Assembly whose senatorial or representative district includes any part of the unit of local government.

(3) If the state auditor has not received any required audit or written comments by the date specified in paragraph (1) of this subsection, the state auditor shall within 30 days of such date notify the unit of local government that the audit has not been received as required by law. A copy of this notification shall also be sent by the state auditor to each member of the General Assembly whose senatorial or representative district includes any part of the unit of local government.

(4) The state auditor, for good cause shown by those local units in which an audit is in the process of being conducted or will promptly

be conducted, may waive the requirement for completion of the audit within 180 days. Such waiver shall be for an additional period of not more than 180 days and no such waiver shall be granted for more than two successive years to the same unit of local government.

(5) No state agency shall make or transmit any state grant funds to any local government which has failed to provide all the audits required by law within the preceding five years.

(e) A copy of the report and of any comments made by the state auditor pursuant to paragraph (2) of subsection (d) of this Code section shall be maintained as a public record for public inspection during the regular working hours at the principal office of the local government. Those units of local government not having a principal office shall provide a notification to the public as to the location of and times during which the public may inspect the report.

(f) Upon a failure, refusal, or neglect to have an annual audit made, or a failure to file a copy of the annual audit report with the state auditor, or a failure to correct auditing deficiencies noted by the state auditor, the state auditor shall cause a prominent notice to be published in the legal organ of, and any other newspapers of general circulation within, the unit of local government. Such notice shall be a prominently displayed advertisement or news article and shall not be placed in that section of the newspaper where legal notices appear. Such notice shall be published twice and shall state that the governing authority of the unit of local government has failed or refused, as the case may be, to file an audit report or to correct auditing deficiencies, as the case may be, for the fiscal year or years in question. Such notice shall further state that such failure or refusal is in violation of state law.

(g) The state auditor may waive the requirement of correction of auditing deficiencies for a period of one year from the required audit filing date, provided evidence is presented that substantial progress is being made towards removing the cause of the need for the waiver. No such waiver for the same set of deficiencies shall be granted for more than two successive years to the same local government.

History.

Ga. L. 1980, p. 1738, § 8; Ga. L. 1984, p. 818, §§ 3, 4; Ga. L. 1987, p. 349, § 1; Ga. L. 1993, p. 717, § 1; Ga. L. 1994, p. 1083, §§ 2-6; Ga. L. 1995, p. 10, § 36; Ga. L. 2004, p. 585, § 2; Ga. L. 2019, p. 569, § 1/HB 456; Ga. L. 2024, p. 789, § 1/HB 1149, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, deleted "Beginning with the local government fiscal year which ends between July 1, 1994, and June 30, 1995," from the beginning of paragraph (a)(1); and added subsection (c.1).

Cross references.

Audits of counties and municipalities, § 36-60-8.

Fiscal year for state and units of state government, § 45-6-2.

Department of audits and accounts, § 50-6-1 et seq.

Editor's notes.

Ga. L. 1994, p. 1083, § 6, not codified by

the General Assembly until 1995, provides: "No state agency shall make or transmit any state grant funds to any local government which has failed to provide all the audits required by law within the preceding five years." Such language was codified in 1995 at subparagraph (d)(5) of Code Section 36-8-7 in Ga. L. 1995, p. 10, § 36.

36-81-8. Annual local government finances reports and local independent authority indebtedness reports; assistance by Department of Community Affairs; community indicators report.

(a) As used in this Code section, the term "local independent authority" means each local public body corporate and politic created in and for a county, municipality, consolidated government, or combination thereof, which is authorized to issue bonds under the Constitution and laws of this state.

(b)(1)(A) Each unit of local government shall submit an annual report of local government finances to the Department of Community Affairs. The report shall include the revenues, expenditures, assets, and debts of all funds and agencies of the local government, and other such information as may be reasonably requested by the department. Such annual report shall further identify the total amount of speeding fine revenue collected by the local government.

(B) Each unit of local government which levies a tax pursuant to Article 3 of Chapter 13 of Title 48 shall also submit a schedule of all revenues therefrom which are expended for the promotion of tourism, conventions, and trade shows or any other tourism related purpose which is specified under Code Section 48-13-51. Such schedule shall identify both the project or projects involved and the contracted entity involved in each such expenditure.

(2) Each local independent authority shall submit an annual report of indebtedness to the Department of Community Affairs. Such report shall include the revenues, expenditures, assets, and debts of all funds of the local independent authority and shall describe any actions taken by such local independent authority to incur indebtedness.

(3) The local government finances report and the local independent authority indebtedness report shall be filed on forms promulgated by the department and shall be submitted within the requested time periods established by the department.

(c) The department shall have the authority to require local governments and local independent authorities to submit the reports as

provided for in subsection (b) of this Code section as a condition of such local government or local independent authority receiving state appropriated funds from the department. Furthermore, a local government authority or a local independent authority shall not incur debt or credit obligations until such time as it meets such reporting requirement. Failure to comply with the reporting requirement shall have no adverse effect on any outstanding debt or credit obligation of any local government authority or local independent authority. Upon the receipt of the report of local government finance from a local government or the report of local independent authority debt from a local independent authority, the department is authorized to release any state appropriated grant funds that may be due at such time to the local government or the local independent authority.

(d) The department's implementation of subsections (b) and (c) of this Code section shall be subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; and the department is specifically directed to promulgate the forms provided for in subsection (b) of this Code section in the manner provided for promulgation of rules under Chapter 13 of Title 50.

(e) Utilizing information contained in audit reports of local governments filed with the state auditor, the report of county or municipal finances filed with the Department of Community Affairs, and other available state or federal information of public record, the Department of Community Affairs shall prepare annually a report on local government finances. Utilizing information contained in reports of indebtedness returned to the Department of Community Affairs, the Department of Community Affairs shall prepare annually a report on indebtedness of local independent authorities. The local government finances report shall be filed on January 15 of each year, beginning January 15, 1985, and the local independent authority indebtedness report shall be filed on January 15 of each year, beginning January 1, 1990, with the Governor, the Speaker of the House of Representatives, the President of the Senate, the chairman of the House Ways and Means Committee, the chairman of the House State Planning and Community Affairs Committee, the chairman of the Senate Finance Committee, and the chairman of the Senate State and Local Governmental Operations Committee, as well as with the chief elected official or chief appointed official of each local unit of government and each local independent authority and member of the General Assembly upon request.

(f) The local government finances report and the local independent authority indebtedness report shall be organized, within the limits of available resources, in such a manner as to allow for reasonable comparative analysis of local government revenues and expenditures

and for reasonable comparative analysis of local independent authority debt.

(g) The department, in addition to its other duties, shall assist local units of government and local independent authorities in fulfilling the requirements of this article. The department shall coordinate its technical assistance efforts with the state auditor, the University System of Georgia, the Association County Commissioners of Georgia, the Georgia Municipal Association, and the Georgia Society of Certified Public Accountants and should coordinate with any other organizations interested and currently active in local government financial management so as to ensure that coordination of training and assistance is maintained. The department may contract or subcontract with other public or private agencies to provide assistance to local units of government or local independent authorities.

(h) The department, either in conjunction with the local government finances report or separately, shall prepare a community indicators report for each local unit of government having annual expenditures of $250,000.00 or more as indicated pursuant to the most recent Report of Local Government Finances. The community indicators report shall include data on local government services, administration, and community characteristics. The department shall have the authority to require local governments to submit reports on local government services and operations as a condition of such local government receiving state appropriated funds from the department. Such reports shall be obtained utilizing the local government finance survey as provided in subsection (b) of this Code section and the local government operations survey collected by the department. The department shall develop the community indicators report in cooperation with the Association County Commissioners of Georgia and the Georgia Municipal Association and shall prepare the report on or before December 31, 1998, and annually thereafter.

History.

Ga. L. 1980, p. 1738, § 9; Ga. L. 1982, p. 3, § 36; Ga. L. 1984, p. 818, §§ 5, 6; Ga. L. 1986, p. 10, § 36; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 1393, § 1; Ga. L. 1989, p. 908, § 1; Ga. L. 1992, p. 6, § 36; Ga. L. 1995, p. 10, § 36; Ga. L. 1997, p. 1575, § 3; Ga. L. 2004, p. 403, § 4; Ga. L. 2009, p. 303, § 11/HB 117; Ga. L. 2015, p. 1064, § 1/SB 134; Ga. L. 2018, p. 158, § 2/HB 257.

Cross references.

Department of Community Affairs generally, § 50-8-1 et seq.

Editor's notes.

Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

Administrative rules and regulations.

Report of Local Government Finances, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Office of Coordinated Planning, Rule 110-3-1-.01 et seq.

Grants of the OneGeorgia Authority, Official Compilations of the Rules and Regulations of the State of Georgia, Rule 413-1-.01 et seq.

36-81-8.1. (Effective until January 1, 2026.) Grant certification forms; filing with state auditor; forfeiture of funds for noncompliance; no exemption from liability.

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

(1) "Subrecipient" means an entity that receives a grant of state funds from the Governor's emergency fund or from a special project appropriation through a local government and shall also mean an entity which in turn receives all or any portion of such grant funds from a subrecipient.

(2) "Unit of local government" means, for purposes of this Code section and notwithstanding paragraph (16) of Code Section 36-81-2, a:

(A) Municipality, county, consolidated government, county school district, independent school district, other political subdivision of the state, any public agency or authority of any of the foregoing, or any combination of any of the foregoing;

(B) Regional commission;

(C) Public authority created by local Act or local constitutional amendment of the General Assembly; or

(D) Public authority created by general law which applies to an area of less than the entire state and which requires activation by a county or municipal government.

(b) Each grant of state funds to a recipient unit of local government from the Governor's emergency fund or from a special project appropriation in an amount greater than $5,000.00 shall be conditioned upon the receipt by the state auditor of a properly completed grant certification form. The form shall be designed by the state auditor and shall be distributed with each covered grant as required by this Code section. The grant certification form shall require the certification by the recipient unit of local government and by the unit of local government auditor that the grant funds were used solely for the express purpose or purposes for which the grant was made. Such form shall be filed with the state auditor in conjunction with the annual audit required under Code Section 36-81-7 or 50-6-6 or any other applicable Code section for each year in which such grant funds are expended or remain unexpended by the unit of local government. A recipient unit of local government which is not otherwise subject to the annual audit requirements specified in this subsection shall file a grant certification form with the state auditor no later than December 31 of each year in

which such grant funds are expended or remain unexpended. For grant funds to subrecipients, the certification by the unit of local government auditor required by this subsection may also be made by an in-house or internal auditor of the unit of local government who meets the education requirements contained in subparagraph (b)(3)(A) of Code Section 43-3-9. The cost of performing any audit required by this subsection or paragraph (1) of subsection (d) of this Code section shall be an eligible expense of the grant. However, the amount charged shall not exceed 2 percent of the amount of the grant or $250.00 per required audit, whichever is less. The unit of local government to whom the grant is made may deduct the cost of any such audit from the funds disbursed to the subrecipient.

(c) Where the grant of state funds is for $5,000.00 or less, the grant shall require submission to the state auditor of a properly completed grant certification form as required by subsection (b) of this Code section except that only the unit of local government need certify that the grant funds were used solely for the express purpose or purposes for which the grant was made. However, where such grant is to a subrecipient, the grant shall require submission to the unit of local government of a notarized affidavit executed by the executive director, president, chairperson, chief executive officer, or other responsible party representing the subrecipient, by whatever name or title, to whom the grant funds are disbursed. The affidavit shall certify under oath that the funds were used solely for the express purpose or purposes for which the grant was made. Such affidavit shall be submitted annually for each year that grant funds are expended or remain unexpended according to a schedule established by the unit of local government and shall be made on a form designed by the state auditor and distributed with each covered grant as required by this Code section.

(d)(1) Notwithstanding subsection (b) or (c) of this Code section, the Governor, the Appropriations Committee of the House of Representatives, or the Appropriations Committee of the Senate shall have the right and authority to direct and require any recipient unit of local government to obtain or perform an audit of any grant of state funds from the Governor's emergency fund or from a special project appropriation, regardless of the amount thereof.

(2) Notwithstanding subsection (b) or (c) of this Code section, a recipient unit of local government shall have the right or authority to obtain or perform an audit of any grant of state funds to a subrecipient from the Governor's emergency fund or from a special project appropriation, regardless of the amount thereof.

(e) The failure to comply with the requirements of this Code section shall result in a forfeiture of a state grant and the return to the state of

any such grant funds which have been received by the unit of local government. In the case of a state grant awarded to a subrecipient, the subrecipient shall be responsible for the return to the state of any such grant funds if it is determined that the funds were not used for the express purpose or purposes for which the grant was made. A grant recipient or subrecipient shall be ineligible to receive funds from the Governor's emergency fund or from a special project appropriation until all unallowed expenditures are returned to the state, except that a recipient unit of local government shall not be ineligible for such funds where a subrecipient has not used funds it received for the express purpose or purposes for which the grant was made.

(f) No subrecipient shall be considered an agent of the unit of local government or be indemnified or held harmless by the unit of local government for any negligence, misfeasance, or malfeasance of the subrecipient, and a recipient unit of local government shall not be liable for any expenditure of state grant funds by a subrecipient.

History.

Code 1981, § 36-81-8.1, enacted by Ga. L. 1998, p. 1611, § 5; Ga. L. 2003, p. 811, § 1; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2006, p. 718, § 1/SB 202; Ga. L. 2008, p. 181, § 16/HB 1216; Ga. L. 2014, p. 136, § 2-2/HB 291.

Delayed effective date.

Code Section 36-81-8.1 is set out twice in this Code. This version is effective until January 1, 2026. For version effective January 1, 2026, see the following version.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1998, "Governor's" was substituted for "governor's" in the first sentence of paragraph (a)(1).

Pursuant to Code Section 28-9-5, in 2006, "Public" was substituted for "Any public" at the beginning of subparagraphs (a)(2)(C) and (a)(2)(D), and "Code Section 36-81-7 or 50-6-6" was substituted for "Code Sections 36-81-7, 50-6-6," in the fourth sentence of subsection (b).

36-81-8.1. (Effective January 1, 2026.) Grant certification forms; filing with state auditor; forfeiture of funds for noncompliance; no exemption from liability.

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

(1) "Subrecipient" means an entity that receives a grant of state funds from the Governor's emergency fund or from a special project appropriation through a local government and shall also mean an entity which in turn receives all or any portion of such grant funds from a subrecipient.

(2) "Unit of local government" means, for purposes of this Code section and notwithstanding paragraph (16) of Code Section 36-81-2, a:

(A) Municipality, county, consolidated government, county school district, independent school district, other political subdivision of the state, any public agency or authority of any of the foregoing, or any combination of any of the foregoing;

(B) Regional commission;

(C) Public authority created by local Act or local constitutional amendment of the General Assembly; or

(D) Public authority created by general law which applies to an area of less than the entire state and which requires activation by a county or municipal government.

(b) Each grant of state funds to a recipient unit of local government from the Governor's emergency fund or from a special project appropriation in an amount greater than $5,000.00 shall be conditioned upon the receipt by the state auditor of a properly completed grant certification form. The form shall be designed by the state auditor and shall be distributed with each covered grant as required by this Code section. The grant certification form shall require the certification by the recipient unit of local government and by the unit of local government auditor that the grant funds were used solely for the express purpose or purposes for which the grant was made. Such form shall be filed with the state auditor in conjunction with the annual audit required under Code Section 36-81-7 or 50-6-6 or any other applicable Code section for each year in which such grant funds are expended or remain unexpended by the unit of local government. A recipient unit of local government which is not otherwise subject to the annual audit requirements specified in this subsection shall file a grant certification form with the state auditor no later than December 31 of each year in which such grant funds are expended or remain unexpended. For grant funds to subrecipients, the certification by the unit of local government auditor required by this subsection may also be made by an in-house or internal auditor of the unit of local government who meets the education requirements contained in paragraph (3) of subsection (b) of Code Section 43-3-9. The cost of performing any audit required by this subsection or paragraph (1) of subsection (d) of this Code section shall be an eligible expense of the grant. However, the amount charged shall not exceed 2 percent of the amount of the grant or $250.00 per required audit, whichever is less. The unit of local government to whom the grant is made may deduct the cost of any such audit from the funds disbursed to the subrecipient.

(c) Where the grant of state funds is for $5,000.00 or less, the grant shall require submission to the state auditor of a properly completed grant certification form as required by subsection (b) of this Code section except that only the unit of local government need certify that the grant funds were used solely for the express purpose or purposes for which the grant was made. However, where such grant is to a subrecipient, the grant shall require submission to the unit of local government of a notarized affidavit executed by the executive director, president, chairperson, chief executive officer, or other responsible

party representing the subrecipient, by whatever name or title, to whom the grant funds are disbursed. The affidavit shall certify under oath that the funds were used solely for the express purpose or purposes for which the grant was made. Such affidavit shall be submitted annually for each year that grant funds are expended or remain unexpended according to a schedule established by the unit of local government and shall be made on a form designed by the state auditor and distributed with each covered grant as required by this Code section.

(d)(1) Notwithstanding subsection (b) or (c) of this Code section, the Governor, the Appropriations Committee of the House of Representatives, or the Appropriations Committee of the Senate shall have the right and authority to direct and require any recipient unit of local government to obtain or perform an audit of any grant of state funds from the Governor's emergency fund or from a special project appropriation, regardless of the amount thereof.

(2) Notwithstanding subsection (b) or (c) of this Code section, a recipient unit of local government shall have the right or authority to obtain or perform an audit of any grant of state funds to a subrecipient from the Governor's emergency fund or from a special project appropriation, regardless of the amount thereof.

(e) The failure to comply with the requirements of this Code section shall result in a forfeiture of a state grant and the return to the state of any such grant funds which have been received by the unit of local government. In the case of a state grant awarded to a subrecipient, the subrecipient shall be responsible for the return to the state of any such grant funds if it is determined that the funds were not used for the express purpose or purposes for which the grant was made. A grant recipient or subrecipient shall be ineligible to receive funds from the Governor's emergency fund or from a special project appropriation until all unallowed expenditures are returned to the state, except that a recipient unit of local government shall not be ineligible for such funds where a subrecipient has not used funds it received for the express purpose or purposes for which the grant was made.

(f) No subrecipient shall be considered an agent of the unit of local government or be indemnified or held harmless by the unit of local government for any negligence, misfeasance, or malfeasance of the subrecipient, and a recipient unit of local government shall not be liable for any expenditure of state grant funds by a subrecipient.

History.

Code 1981, § 36-81-8.1, enacted by Ga. L. 1998, p. 1611, § 5; Ga. L. 2003, p. 811, § 1; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2006, p. 718, § 1/SB 202; Ga. L. 2008, p. 181, § 16/HB 1216; Ga. L. 2014, p. 136, § 2-2/HB 291; Ga. L. 2025, p. 296, § 2-1/HB 148, effective January 1, 2026.

Delayed effective date.

Code Section 36-81-8.1 is set out twice in this Code. This version is effective January 1, 2026. For version effective until January 1, 2026, see the preceding version.

Amendments.

The 2025 amendment, effective January 1, 2026, substituted "paragraph (3) of subsection (b) of Code Section 43-3-9" for "subparagraph (b)(3)(A) of Code Section 43-3-9" in the sixth sentence of subsection (b).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1998, "Governor's" was substituted for "governor's" in the first sentence of paragraph (a)(1).

Pursuant to Code Section 28-9-5, in 2006, "Public" was substituted for "Any public" at the beginning of subparagraphs (a)(2)(C) and (a)(2)(D), and "Code Section 36-81-7 or 50-6-6" was substituted for "Code Sections 36-81-7, 50-6-6," in the fourth sentence of subsection (b).

36-81-9. Effect of article on other laws generally.

This article shall not be construed to repeal or conflict with any law providing budgetary, fiscal, or auditing procedures more restrictive than those in this article.

History.

Ga. L. 1980, p. 1738, § 10; Ga. L. 1987, p. 3, § 36.

JUDICIAL DECISIONS

O.C.G.A. Art. 1, Ch. 81, T. 36 did not repeal by implication a 1961 local law requiring a county board of commissioners to publish "a monthly report or statement in detail of the expenses and disbursements of the funds" of the county and to publish a full statement of the amount of money that was owed by the county and to whom. Eley v. Greene County Bd. of Comm'rs, 258 Ga. 562, 372 S.E.2d 231, 1988 Ga. LEXIS 410 (1988).

36-81-10. Effect of article on right to make expenditures and raise revenues; effect on home rule powers.

This article shall not be construed so as to prohibit local governments from making authorized expenditures for any lawful purpose or from raising revenues in any manner otherwise authorized by law. It is the specific intent of the General Assembly in adopting this article that local units of government shall continue to have and to exercise their home rule powers as provided by law.

History.

Ga. L. 1980, p. 1738, § 2; Ga. L. 1987, p. 3, § 36.

36-81-11. Budget for implementing security plans subject to approval by the governing authority.

The development and implementation of a security plan and all related technology pursuant to paragraph (10) of subsection (a) of Code Section

15-16-10 shall be subject to the annual budget approved for the office of the sheriff by the governing authority.

History.
Code 1981, § 36-81-11, enacted by Ga. L. 2006, p. 560, § 3/SB 462.

Cross references.
Duties of sheriff in implementing security plan, § 15-16-10.

ARTICLE 2

AUDITS AS CONDITION FOR RECEIPT OF STATE ASSISTANCE

36-81-20. Audits accepted by state; additional audits; state's audit authority.

(a) Whenever a state agency or a state department requires a unit of local government to perform an audit or whenever a state agency or a state department would perform an audit of a unit of local government as a condition for such unit of local government having received a grant of state money or services, the state agency or state department shall, except as provided in subsections (b) and (c) of this Code section, accept any audit which meets the requirements of the federal Single Audit Act of 1984 if such audit includes those moneys or services granted by the state and includes the reporting requirements of any applicable state law or of any state agency.

(b) Notwithstanding subsection (a) of this Code section, a state agency shall be authorized to conduct any additional audits necessary to carry out its duties and responsibilities as set forth in state law or regulation, and nothing in this Code section shall authorize any local government or unit or agency thereof to constrain in any manner any such state agency from performing any such additional audit.

(c) This Code section shall not limit the authority of state agencies to conduct audits and evaluations of state financial assistance programs or to enter into contracts for the conduct of such audits and evaluations and shall not limit the authority of the state auditor or any state audit official.

History.
Code 1981, § 36-81-20, enacted by Ga. L. 1986, p. 758, § 1.

U.S. Code.
The federal Single Audit Act of 1984, referred to in subsection (a), is codified at 31 U.S.C. § 7501 et seq.

CHAPTER 82

BONDS

Article 1

General Provisions

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36-82-1. Election for bonded debt; right to sell bonds at discount; advertisements as binding statements of intention; use of surpluses; meetings open to public; refunding.
36-82-2. Voting in election for bonded debt; returns and declaration of election result.
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36-82-4.2. Expenditure of bond funds for purposes other than stated in public bond notice.
36-82-5. Destruction of unsold bonds authorized.
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36-82-9. Certification requirement for pension obligation bonds; requirement for reserve fund.
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Article 2

Validation of Bonds

Part 1

General Provisions

Sec.
36-82-20. Notice of election or resolution favoring issuance of bonds or refunding bonds.
36-82-21. Petition to superior court to show cause; service of petition and order; answers.
36-82-22. Notice of superior court hearing on show cause order.
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36-82-24. Effect of judgment of validation.
36-82-25. Entry of reference to judgment of validation on bonds; use of entry as evidence.
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36-82-27. Procedure upon failure of district attorney or Attorney General to file petition with superior court generally.
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36-82-46. Applicability of Code Sections 36-82-22 and 36-82-25.

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36-82-47. Payment of costs of proceedings.

Article 3

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36-82-60. Short title.
36-82-61. Definitions.
36-82-62. Powers as to undertakings and revenue bonds generally.
36-82-63. Adoption of resolution authorizing undertaking and issuance of revenue bonds.
36-82-64. Issuance of revenue bonds generally; form; terms; signatures; interim receipts; negotiability; nontaxability.
36-82-65. Covenants in resolution authorizing issuance of bonds; article and resolution as enforceable contract with bondholders.
36-82-66. Governmental liability for payment of bonds; recitation on bond.
36-82-67. Right of bondholder or trustee to apply for receivership upon default in payment on bond; procedure for appointment.
36-82-68. Powers and duties of receiver generally.
36-82-69. Limitations on authority of receiver and supervising court.
36-82-70. Supervision of receiver by court.
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36-82-72. Construction of Code Sections 36-82-67 through 36-82-71 and this Code section.
36-82-73. Proceedings for validation of revenue bonds generally.
36-82-74. Notice to district attorney or Attorney General of resolution authorizing revenue bonds.
36-82-75. Duty of district attorney or Attorney General to file petition; order to show cause; service of petition and order; answer.
Sec.
36-82-76. Notice of hearing on validation.
36-82-77. Hearing and judgment on validation; parties to proceedings; right of appeal; review of valuation of existing undertakings.
36-82-78. Effect of judgment of validation.
36-82-79. Entry of reference to judgment on validated bonds; use of entry as evidence; clerk's fee.
36-82-80. Payment of costs of proceedings.
36-82-81. Procedure when district attorney or Attorney General fails to file petition.
36-82-82. Effect of judgment of validation upon failure to file petition.
36-82-83. Validation of revenue bonds of certain hospital authorities.
36-82-84. Applicability of article to common carriers of passengers for hire.
36-82-85. Construction of article generally; applicability of certain other provisions of law.

Article 4

Bonds

36-82-100. Expenditure of bond proceeds; auditing.

Article 5

Regulation of Interest Rates for Bonds and Obligations Other Than General Obligation Bonds

36-82-120. Purpose of article.
36-82-121. Definitions.
36-82-122. Exemption of bonds from Constitution and laws of Georgia regulating interest rates; fixing of rates of interest by resolution or ordinance.
36-82-123. Repeal of regulations as to interest rates contained in other laws.
36-82-124. Construction of article.

Article 6

Form and Services Connected with Creation of Repayment Obligations

Sec.
36-82-140. Use of facsimile signatures and seals; contracts with financial institutions to perform certain repayment functions; evidence of repayment obligations.
36-82-141. Records of ownership, registration, transfer, and exchange of repayment obligations not public records.
36-82-142. Construction of article.

Article 7

Regulation of Bonds and Obligations Issued by Development Authorities

36-82-160. [Reserved] Requirements for filing; forms; exemptions.

Article 8

Georgia Allocation System

36-82-180. Short title.
36-82-181. Legislative purpose.
36-82-182. Definitions.
36-82-183. Powers of department.
36-82-184. Determination of state ceiling; records required.
36-82-185. Application for notice of allocation; receipt of application; issue of notice; confirmation of bond issue; certificates under Federal Code.
36-82-186. Economic development share.
36-82-187. Application for economic development share and competitive pool allocation; priority of and approval of application; carrying over; time and amount limitation.
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36-82-190. Reservations from housing share.
36-82-191. Applications for single-family bond projects; issue of notice; confirmation; exploration.
36-82-192. Requirements for applications for qualified residential rental projects; periods for notices of allocation; expiration dates for notices; confirmation of issuance required.
36-82-193. Flexible share for 1990.
36-82-194. Application for flexible pool allocation; issue of notice; confirmation; expiration.
36-82-195. Policy guidelines for making allocations.
36-82-196. Factors to consider in applying policy guidelines.
36-82-197. Transfer of fund from economic development share or applicable reservation component of housing share to the flexible share.
36-82-198. Flexible share carryforward funds.
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Article 9

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36-82-220. Definitions.
36-82-221. Sponsoring governmental unit requirement.
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Article 10

Commercial Paper Notes from Government

36-82-240. Definitions.
36-82-241. Governed by general provisions on commercial paper; issuance of security by governmental entity; requirements of governing body renewal and reissuance of commercial paper.

Article 11

Interest Rate Management Agreements

36-82-250. Definitions.
36-82-251. Qualified interest rate man-

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agement agreements authorized.
36-82-252. Plan required; annual review of plan and report.
36-82-253. Requirements for plans; renewal or termination; provisions and limitations regarding obligation for payment; credit enhancement and liquidity agreements.
36-82-254. Required information in annual financial statements.
36-82-255. Applicability of Georgia law; jurisdiction.
36-82-256. Applicability to prior contracts.

Cross references.
Revenue obligations generally, Ga. Const. 1983, Art. IX, Sec. VI.

Issuance of bonds for purposes of building, equipping, or purchasing sites for school buildings, § 20-2-430 et seq.

RESEARCH REFERENCES

ALR.
What included in term "bonds" in will, 35 A.L.R.2d 1095.

ARTICLE 1

GENERAL PROVISIONS

JUDICIAL DECISIONS

Article is enabling Act. — Since Ga. Const. 1945, Art. VII, Sec. VII, Para. I (see now Ga. Const. 1983, Art. IX, Sec. V, Para. I), concerning the incurring of debts by a municipality, is not self-executing, the General Assembly passed an enabling Act (this article), putting this provision into operation. McKnight v. City of Decatur, 200 Ga. 611, 37 S.E.2d 915, 1946 Ga. LEXIS 307 (1946).

It seems manifest that county board of education is proper authority contemplated under provisions of this article to call, manage, consolidate, and declare the result of an election held for the purpose of incurring bonded indebtedness for building and equipping schoolhouses. Nelms v. Stephens County Sch. Dist., 201 Ga. 274, 39 S.E.2d 651, 1946 Ga. LEXIS 456 (1946) (decided prior to enactment of "Georgia Election Code," T. 21, Ch. 3; see O.C.G.A. Art. 1, T. 36, Ch. 82.).

OPINIONS OF THE ATTORNEY GENERAL

School bond election called by county board of education may be held concurrently with general election. 1965 Op. Att'y Gen. No. 65-9.

RESEARCH REFERENCES

ALR.
Validity, within authorized debt, tax, or voted limit, of bond issue in excess of amount permitted by law, 175 A.L.R. 823.

36-82-1. Election for bonded debt; right to sell bonds at discount; advertisements as binding statements of intention; use of surpluses; meetings open to public; refunding.

(a) When any county, municipal corporation, or political subdivision desires to incur any bonded debt, as permitted by the Constitution of Georgia, the election required shall be called and held in accordance with this Code section and Code Sections 36-82-2 through 36-82-4.

(b) The officers charged with levying taxes, contracting debts, and the like for the county, municipal corporation, or political subdivision shall give notice for not less than 30 days immediately preceding the day of the election in the newspaper in which sheriff's advertisements for the county are published, notifying the qualified voters that on the day named an election will be held to determine the question of whether bonds shall be issued by the county, municipal corporation, or political subdivision. The notice shall specify the principal amount of the bonds to be issued, the purpose for which the bonds are issued, the interest rate or rates which such bonds are to bear, and the amount of principal to be paid in each year during the life of the bonds. The notice, in the discretion of the issuing body, in lieu of specifying the rate or rates of interest which the bonds are to bear, may state that the bonds, when issued, will bear interest at a rate not exceeding a maximum per annum rate of interest specified in the election notice or, in the event the bonds are to bear different rates of interest for different maturity dates, that none of such rates will exceed the maximum rate specified in the election notice.

(c) Nothing contained in this Code section shall be construed as prohibiting or restricting the right of the issuing body to sell bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in the election notice.

(d) Every legal advertisement of a bond election shall contain a reference that any brochures, listings, or other advertisements issued by the governing body of any county, municipality, or other political subdivision of this state or by any other person, firm, corporation, or association with the knowledge and consent of the governing body of such county, municipality, or other political subdivision of this state shall be deemed to be a statement of intention of the governing body of such county, municipality, or other political subdivision of this state concerning the use of the bond funds; and such statement of intention shall be binding on the governing body of such county, municipality, or other political subdivision of this state in the expenditure of any such bond funds or interest received from such bond funds which have been

invested, unless the governing body of such county, municipality, or other political subdivision of this state uses such bond funds for the retirement of bonded indebtedness, in the manner provided for in this Code section; and such statement of intention shall be set forth in the resolution pursuant to which such bonds are issued. Bond funds and interest received from such bond funds which have been invested shall be expended in the manner in which advertised and for the purpose stated in such statement of intention. The governing body of such county, municipality, or other political subdivision of this state may, by a two-thirds' vote, declare any project which has been established pursuant to any such statement of intention to be unnecessary. In that event, the governing body of such county, municipality, or other political subdivision of this state shall use such bond funds for the payment of all or any part of the principal and interest on any bonded indebtedness of such county, municipality, or other political subdivision of this state then outstanding. Surpluses from the overestimated projects, including interest received on bond funds of such projects, shall be used first to complete underestimated projects and all remaining funds received from interest and overestimated projects shall be used for other projects or improvements which the governing body of such county, municipality, or other political subdivision of this state may deem necessary and which are encompassed within the language of the statement of purpose in the election notice. Any meetings of any governing bodies at which any bond fund allocation is made shall be open to the public. Such meetings shall be announced to the news media in advance and shall be open to the news media.

(e)(1) It is expressly provided that any county, municipality, or other political subdivision of this state may provide for the refunding of all or any part of the outstanding bonded indebtedness of such county, municipality, or political subdivision without the necessity of a referendum therefor if the governing authority of such county, municipality, or political subdivision adopts a resolution or ordinance authorizing the issuance of general obligation refunding bonds for such purpose, provided the following conditions are met:

(A) The term of the refunding bonds shall not extend beyond the final maturity date of the bonds being refunded;

(B) The rate of interest borne by the refunding bonds shall not exceed the rate of interest borne by the bonds being refunded;

(C) The principal amount of the refunding bonds may only exceed the principal amount of the bonds being refunded to the extent necessary to effectuate a refund and to allow the reduction of the total principal and interest requirements over the remaining term of the bonds being refunded; and

(D) The proceeds derived from the sale of the refunding bonds,

together with the earnings and increments derived therefrom, if any, will be sufficient to provide for the payment of the principal of, interest, and premium, if any, on the bonds being refunded and shall be deposited in an irrevocable trust fund created for that purpose.

(2) Such refunding bonds so authorized to be issued in compliance with the conditions set forth above, when issued, shall be construed and deemed to be issued in lieu of such original debt being so refunded, and the original debt upon the creation of the irrevocable trust fund and the deposit of the requisite proceeds shall not constitute a debt within the meaning of Article IX, Section V, Paragraph I of the Constitution of Georgia, but the refunding bonds shall constitute a debt within the meaning of Article IX, Section V, Paragraph I of the Constitution of Georgia and shall count against the limitation on debt measured by the 10 percent of assessed value of taxable property as expressed therein.

(f) Any person who violates this Code section shall be guilty of a misdemeanor; provided, however, that nothing contained in this Code section shall be construed so that a violation thereof shall affect the validity of any bonds issued under this Code section.

History.

Ga. L. 1878-79, p. 40, § 1; Code 1882, § 508i; Civil Code 1895, § 377; Civil Code 1910, § 440; Code 1933, § 87-201; Ga. L. 1960, p. 1032, § 1; Ga. L. 1968, p. 1007, § 1; Ga. L. 1976, p. 1091, § 1; Ga. L. 1981, p. 1581, § 1; Ga. L. 1982, p. 2107, § 43; Ga. L. 1984, p. 22, § 36; Ga. L. 1984, p. 1362, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 886, § 1; Ga. L. 1992, p. 2052, § 1; Ga. L. 1995, p. 355, § 1; Ga. L. 2002, p. 1473, § 1; Ga. L. 2014, p. 216, § 1/HB 834; Ga. L. 2025, p. 1029, § 36(44)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that" for "however," in subsection (f).

Cross references.

Further provisions regarding authorization of bonded debt, § 21-2-45.1.

Editor's notes.

Ga. L. 1984, p. 1362, § 8, not codified by the General Assembly, provides: "The provisions of this Act [which amended this Code section] shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this Act may be inconsistent with the provisions of the Georgia Constitution under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution or the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this Act shall control."

Law reviews.

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Analysis

General Consideration
Sufficiency of Notice
Special and General Laws

General Consideration

Section must be strictly complied with. — In order to render election legal, provisions of this section must be strictly complied with. Bowen v. Mayor of Greenesboro, 79 Ga. 709, 4 S.E. 159, 1887 Ga. LEXIS 288 (1887); Mayor of Athens v. Hemerick, 89 Ga. 674, 16 S.E. 72, 1892 Ga. LEXIS 423 (1892); Ponder v. Mayor of Forsyth, 96 Ga. 572, 23 S.E. 498, 1895 Ga. LEXIS 136 (1895); Smith v. Mayor of Dublin, 113 Ga. 833, 39 S.E. 327, 1901 Ga. LEXIS 395 (1901); Berrien County v. Paulk, 150 Ga. 829, 105 S.E. 491, 1921 Ga. LEXIS 405 (1921); Allen v. City of Atlanta, 166 Ga. 28, 142 S.E. 262, 1928 Ga. LEXIS 206 (1928).

Election not invalid because of disregard of directory provisions. — Bond election should not be declared invalid on account of a disregard of merely directory provisions of election laws when such would not render an election for municipal officers invalid. Brumby v. City of Marietta, 132 Ga. 408, 64 S.E. 321, 1909 Ga. LEXIS 120 (1909).

Section 9-13-141 does not affect this section. — Former Civil Code 1895, § 5458 (see now O.C.G.A. § 9-13-141), relating to the publication of notices of sales and orders by certain public officers and others, did not repeal or modify that portion of former Civil Code 1895, § 377 (see now O.C.G.A. § 36-82-1), which required that notice of an election called for the purpose of determining whether bonds shall be issued by a county shall be published for a space of 30 days next preceding the day of the election. Davis v. Dougherty County, 116 Ga. 491, 42 S.E. 764, 1902 Ga. LEXIS 147 (1902).

Denial by election to issue school bonds does not impair right of taxation. Ayers v. McCalla, 95 Ga. 555, 22 S.E. 295, 1894 Ga. LEXIS 589 (1894).

County has no authority to enter into executory contract. — There is no authority of law for a county to enter into an executory contract for the sale of bonds which, at the time of the contract, the county is not authorized to issue. For a breach of such an undertaking an action for damages will not lie against the county. Robinson-Humphrey Co. v. Wilcox County, 129 Ga. 104, 58 S.E. 644, 1907 Ga. LEXIS 315 (1907).

No authority to call election when work lawfully begun. Hogan v. State, 133 Ga. 675, 133 Ga. 875, 67 S.E. 268, 1910 Ga. LEXIS 87 (1910).

When statute has not been complied with, the issuance of bonds may be restrained by injunction. Bowen v. Mayor of Greenesboro, 79 Ga. 709, 4 S.E. 159, 1887 Ga. LEXIS 288 (1887); Mayor of Athens v. Hemerick, 89 Ga. 674, 16 S.E. 72, 1892 Ga. LEXIS 423 (1892); Mayor of Perry v. Norwood, 99 Ga. 300, 25 S.E. 648, 1896 Ga. LEXIS 371 (1896).

Unnecessary to publish authority of mayor to call election. — It is not necessary to publish the ordinance, or resolution, by which the mayor was authorized to order an election to be held upon the question whether or not such bonds should be issued, provided the notice required by law was duly published. Heilbron v. Mayor of Cuthbert, 96 Ga. 312, 23 S.E. 206, 1895 Ga. LEXIS 68 (1895).

No authority to issue bonds for past indebtedness. Mayor of Macon v. Jones, 122 Ga. 455, 50 S.E. 340, 1905 Ga. LEXIS 238 (1905).

When separate submissions required. — If it can be said that the proposed improvements are not naturally related or connected, then it is clear that separate submissions are required; if, on the other hand, the several parts of the project are plainly so related that, united, the parts form but one rounded whole, it is equally clear that the parts may be grouped together and submitted as one proposition. Miles v. State, 96 Ga. App. 610, 101 S.E.2d 173, 1957 Ga. App. LEXIS 647 (1957).

Issue of bonds in installments. — Nothing in the Constitution or this section is inconsistent with authorization of an issue of bonds in installments and the levy of the tax for the payment of each installment in the year of the bond's issue. Brady v. City of Atlanta, 17 F.2d 764, 1927 U.S. App. LEXIS 3040 (5th Cir. 1927).

Sufficiency of Notice

Requirements as to notice mandatory. — Law requiring notice to be given in a certain way is mandatory, and a failure to comply with the law vitiates the election, if objection is raised at the proper time and in the proper way. Irvin v. Gregory, 86 Ga. 605, 13 S.E. 120, 1891 Ga. LEXIS 30 (1891); Davis v. Dougherty County, 116 Ga. 491, 42 S.E. 764, 1902 Ga. LEXIS 147 (1902).

Failure to use explicit language treated as irregularity. — Though the notice of the election provided for by an Act may not be in the clearest and most unequivocal terms, when the terms of the notice were such as to show that the question was necessarily to be passed upon in the election, the failure to use more explicit language in this respect (the notice as to all other matters being sufficient) will, after the election has taken place and after the bonds, in pursuance of its result, have been issued and sold and the bonds' proceeds applied as required by the Act, be treated as a mere irregularity not invalidating the bonds, and one of which it is too late for a taxpayer who participated in the election and who had knowledge of all the facts to complain. Brand v. Town of Lawrenceville, 104 Ga. 486, 30 S.E. 954, 1898 Ga. LEXIS 347 (1898).

Inadvertently omitting last publication treated as mere irregularity. — When the advertisement prescribed was published once a week for four weeks, and the last publication was inadvertently omitted but the other three were duly made, the omission may be treated as a mere irregularity, if more than two-thirds of the qualified voters actually voted, and if the result has been acquiesced in until after action has been taken on the faith thereof by which substantial rights have arisen. Irvin v. Gregory, 86 Ga. 605, 13 S.E. 120, 1891 Ga. LEXIS 30 (1891).

Ordinance not meeting requirements of this section void. — If notice be given under an ordinance prescribing the items of the notice and the ordinance does not meet the requirements set forth in this section, both the ordinance and the notice are void and of no effect. Wilkins v. City of Waynesboro, 116 Ga. 359, 42 S.E. 767, 1902 Ga. LEXIS 103 (1902); Shinall v. City of Cartersville, 144 Ga. 219, 87 S.E. 290, 1915 Ga. LEXIS 140 (1915); Scott Sch. Dist. v. Carter, 28 Ga. App. 412, 111 S.E. 216, 1922 Ga. App. LEXIS 558 (1922).

Amount of bonds to be issued and for what purpose. — Notice which provides that a given amount should be used for the purpose of building a school, and another amount for the improvement of the water plant, and the surplus, if any, to be used by the mayor and council in such a manner as the mayor and council might see fit, does not meet the legal requirements of a notice which shall specify "what amount of bonds are to be issued, and for what purpose." Smith v. Mayor of Dublin, 113 Ga. 833, 39 S.E. 327, 1901 Ga. LEXIS 395 (1901).

Need to state amount of debt to be incurred. — Even if no legislation is necessary to authorize a municipal corporation to hold an election to determine whether a debt other than a bonded indebtedness shall be incurred, an election held pursuant to an ordinance and notice which does not state the amount of the debt to be incurred will not be sufficient to authorize the execution of a contract incurring an indebtedness. City Council v. Dawson Waterworks Co., 106 Ga. 696, 32 S.E. 907, 1899 Ga. LEXIS 740 (1899).

Degree of specificity of bond purpose. — When the order and notice of election stated that the proceeds were used in improving and constructing the public roads on a certain county naming the roads to be improved and the order in which the roads were to be worked, such statement is sufficient under this section requiring that the purpose for which the bonds were to be issued should be stated. Moody v. Board of Comm'rs, 29 Ga. App. 21, 113 S.E. 103, 1922 Ga. App. LEXIS 22 (1922).

Notice of bond election was not subject to the criticism that the notice indicated that the bonds were to be voted for the purpose of providing funds for two or more distinct purposes, when the purposes stated were all related to providing additions and improvements to school facili-

Sufficiency of Notice (Cont'd)

ties in the county. Miles v. State, 96 Ga. App. 610, 101 S.E.2d 173, 1957 Ga. App. LEXIS 647 (1957).

Publication in paper used by sheriff. — Notice of election for issuance of bonds must be in paper in which sheriff publishes the sheriff's advertisements. Coffee v. Ragsdale, 112 Ga. 705, 37 S.E. 968, 1901 Ga. LEXIS 69 (1901); Scott Sch. Dist. v. Carter, 28 Ga. App. 412, 111 S.E. 216, 1922 Ga. App. LEXIS 558 (1922).

Requirement of publication for 30 days. — If the publication was made only twice, on January 21 and February 4, and the election was held on February 5, this was not a compliance with the requirements of the law. Bowen v. Mayor of Greenesboro, 79 Ga. 709, 4 S.E. 159, 1887 Ga. LEXIS 288 (1887).

When it appeared that an election was held on Saturday, January 23, and that notice thereof had been published in the proper newspaper once a week for six weeks, beginning on Friday, December 18, and ending on Friday, January 22, since the notice was inserted the first time at least 30 days before the date of the election and as nearly that precise number of days immediately preceding such date as was possible under the circumstances, the fact that the publication began more than 30 days prior to such date was immaterial and afforded taxpayers no cause for attacking the validity of the notice. Clark v. Union Sch. Dist., 36 Ga. App. 80, 135 S.E. 318, 1926 Ga. App. LEXIS 769 (1926).

Publication of Act does not comply with requirements as to notice. — Fact that a local Act was published before the day of the election, and that the notice prescribed the amount of the bonds, the interest thereon, and when the bonds were to be paid off, was not a sufficient compliance with this section; nor was the fact that, out of 189 voters, only 17 voted against the measure, a sufficient answer to the illegality of the notice. Bowen v. Mayor of Greenesboro, 79 Ga. 709, 4 S.E. 159, 1887 Ga. LEXIS 288 (1887).

Notice affecting custodian of funds. — Bank as custodian of the proceeds of county bonds is chargeable with the notice given under this section as to the purpose of the bond issue and must not permit the funds to be used for other purposes. Bank of Chatsworth v. Hagedorn Constr. Co., 162 Ga. 488, 134 S.E. 310, 1926 Ga. LEXIS 221 (1926).

Ordinance not meeting requirements of this section void. Allen v. City of Atlanta, 166 Ga. 28, 142 S.E. 262, 1928 Ga. LEXIS 206 (1928).

Reduction of amount before validation. — When the election was regular as to all the requirements except that the amount exceeded the constitutional limit, the judge erred in reducing the amount of the bonds issued to a sum within such limit and then declaring the issuance of such bonds would be allowed. Berrien County v. Paulk, 150 Ga. 829, 105 S.E. 491, 1921 Ga. LEXIS 405 (1921).

When petition did not present question whether notice was illegal because amount was unconstitutional, injunction would not lie to restrain the authorities from issuing a less and proper amount. Heilbron v. Mayor of Cuthbert, 96 Ga. 312, 23 S.E. 206, 1895 Ga. LEXIS 68 (1895).

When intervenors did not raise point that bonds were in excess of constitutional limit the intervenors' cannot, in the intervenors' bill of exceptions, assign this as error. Sewell v. City of Tallapoosa, 145 Ga. 19, 88 S.E. 577, 1916 Ga. LEXIS 161 (1916).

Amount of interest. — Specifying that interest is to be paid annually is not sufficient; failure to specify the amount to be paid renders the notice defective. Mayor of Athens v. Hemerick, 89 Ga. 674, 16 S.E. 72, 1892 Ga. LEXIS 423 (1892); Mayor of Perry v. Norwood, 99 Ga. 300, 25 S.E. 648, 1896 Ga. LEXIS 371 (1896); City of Thomasville v. Thomasville Elec. Light & Gas Co., 122 Ga. 399, 50 S.E. 169, 1905 Ga. LEXIS 222 (1905).

Exact gross sum of interest not necessary. — It is not essential to the validity of the notice that the notice should state the precise gross sum, in dollars and cents, to be annually paid as interest; the facts actually stated furnishing a basis by which a calculation could be easily and readily made showing the exact amount of interest to be paid.

Ponder v. Mayor of Forsyth, 96 Ga. 572, 23 S.E. 498, 1895 Ga. LEXIS 136 (1895).

Notice need not specify price of bonds. — Notice is not invalid because the price at which the bonds are to be sold is not stated therein. Wimberly v. County of Twiggs, 116 Ga. 50, 42 S.E. 478, 1902 Ga. LEXIS 21 (1902).

Notice silent as to collection of annual tax. — Fact that the notice of the bond election was silent as to the collection of the annual tax affords no reason why the bonds should not be validated. Woodall v. Town of Adel, 122 Ga. 1, 122 Ga. 301, 50 S.E. 102, 1905 Ga. LEXIS 185 (1905); Oliver v. City of Elberton, 124 Ga. 64, 52 S.E. 15, 1905 Ga. LEXIS 645 (1905).

Advertisement taken as best evidence of intentions of fund use. — Advertisement, a copy of which was attached to a petition as an exhibit, was the best evidence of the intention of the school board with respect to the use of the bond funds. In the absence of allegations of facts showing that the board had a secret, undisclosed intention to use the funds for some purpose other than that indicated by the advertisement or facts showing the deliberate perpetration of a fraud on the voters by the board, this advertisement must be taken as the best evidence of the board's intention with respect to the use of these funds. Miles v. State, 96 Ga. App. 610, 101 S.E.2d 173, 1957 Ga. App. LEXIS 647 (1957).

Special and General Laws

Local Act prescribing different manner of election is void as conflicting with general law. County of Dougherty v. Boyt, 71 Ga. 484, 1883 Ga. LEXIS 203 (1883).

Special law not void when the law merely prescribes additional requirements. — Special law which is void is one in conflict with a general law, and not one in harmony with the special and prescribing additional matters in regard to the election not in conflict with the general law. A special law providing that notice be published in an official gazette is construed in regard as to the general law as to what notice should contain. Farmer v. Mayor of Thomson, 133 Ga. 94, 65 S.E. 180, 1909 Ga. LEXIS 159 (1909).

Election under local Act must follow section. — Election under local Act making provision that in case of a school district the board of trustees of that district shall call the election on the question of whether the trustees shall incur a bonded debt to build and equip a schoolhouse must be concluded as provided by former Civil Code 1910, § 440 et seq. (see now O.C.G.A. § 36-82-1 et seq.). Jennings v. New Bronwood Sch. Dist., 156 Ga. 15, 118 S.E. 560, 1923 Ga. LEXIS 185 (1923).

Local law concerning registration applies only to elections specified. — Local law for the registration of voters in a given county which declares it unlawful to vote at any election without having first registered, and then proceeds to require registration biennially in those years in which elections are held for Governor, members of Congress and of the General Assembly applies only to elections for the officers designated, leaving the general law to operate upon elections under this section. Kaigler v. Roberts, 89 Ga. 476, 15 S.E. 542, 1892 Ga. LEXIS 390 (1892).

Local Act concerning registration only for election of officers. — When an Act contemplates a system of registration for only one election annually, and consequently that system is confined to the election of municipal officers at an election held to determine the question of issuing bonds, there is no statutory requirement upon the municipal authorities to order registration as a preliminary to this election. Howell v. Mayor of Athens, 91 Ga. 139, 16 S.E. 966, 1892 Ga. LEXIS 536 (1892).

OPINIONS OF THE ATTORNEY GENERAL

County school bond referendum. — County school board is empowered to authorize the calling of a school bond referendum which the county election

superintendent shall then call by publishing the appropriate notice. 1985 Op. Att'y Gen. No. 85-18.

Bond referendum may be held on date of presidential preference primary, but the bond referendum should be placed on a separate ballot so that voters need not request a party ballot to vote only in the referendum. 1975 Op. Att'y Gen. No. 75-132.

Appropriate use of bond proceeds and savings generated by bond refundings. — Georgia Constitution and Georgia statutes do not provide any latitude to use bond proceeds for additional capital expenditures whether or not the proceeds are spent on projects which may have been approved by the voters at the time of the original bond referendum. Accordingly, all proceeds generated at closing of the refunding issue should be spent on the costs of the refunding or used to pay principal, interest, and premiums on the refunded debt. Furthermore, a new tax levy appropriately sized to retire the new refunding bonds should be provided for prior to issuance of the refunding bonds. If any excess proceeds result from the new tax levy, such excess proceeds shall not be available for transfer to capital projects until all refundings are repaid. 1994 Op. Att'y Gen. No. 94-8.

RESEARCH REFERENCES

Am. Jur. 2d.

64 Am. Jur. 2d, Public Securities and Obligations, §§ 99 et seq., 112 et seq., 128.

C.J.S.

20 C.J.S., Counties, § 354 et seq. 64A C.J.S., Municipal Corporations, § 2054 et seq.

ALR.

Change in law as to municipal bonds as affecting bonds previously authorized or voted, but not issued, 19 A.L.R. 1055.

Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

Sale of municipal or other public bonds at less than par or face value, 91 A.L.R. 7; 162 A.L.R. 396.

Effect of inclusion in call for election, or in proposal for bond issue submitted to people, of unauthorized method of payment or retirement, 93 A.L.R. 362.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voters, 97 A.L.R. 442.

Mistake, ambiguity, or omission in statement as to indebtedness, in call for election or proposal for bond issue, as affecting validity of election or bonds issued pursuant thereto, 116 A.L.R. 1258.

Statement regarding cost of proposed public improvement in ballot for special election in that regard, 117 A.L.R. 892.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein, 119 A.L.R. 190.

Rights and obligations arising out of bid for municipal bond issue, 139 A.L.R. 1047.

Constitutional or statutory requirement of prior approval by electors of issuance of bonds or incurring of indebtedness, by municipality, county, or state, as applicable to bonds or other instruments not creating indebtedness, 146 A.L.R. 604.

Validity, within authorized debt, tax, or voted limit, of bond issue in excess of amount permitted by law, 175 A.L.R. 823.

Validity of submission of proposition to voters at bond election as affected by inclusion of several structures or units, 4 A.L.R.2d 617.

Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters, 10 A.L.R.2d 559.

36-82-2. Voting in election for bonded debt; returns and declaration of election result.

The election provided for in Code Section 36-82-1 shall be held at all the voting or election precincts within the limits of the county, municipal

corporation, or political subdivision and shall be held by the same persons, in the same manner, and under the same rules and regulations that elections for officers of the county, municipal corporation, or political subdivision are held. The returns shall be made to the officers calling or ordering the election. Such officers, in the presence of and together with the several managers, who shall bring up the returns, shall consolidate the returns and declare the result.

History.
Ga. L. 1878-79, p. 40, § 2; Code 1882, § 508j; Civil Code 1895, § 378; Civil Code 1910, § 441; Code 1933, § 87-202.

JUDICIAL DECISIONS

Independent issues cannot be submitted as single question. — When several distinct and independent propositions for the issuing of bonds by a municipality are submitted to the qualified voters of a town or city, provision should be made in the submission for a separate vote upon each. They cannot be lawfully combined and submitted to the voters as a single question. Rea v. City of LaFayette, 130 Ga. 771, 61 S.E. 707, 1908 Ga. LEXIS 419 (1908).

When contract entered into was submitted with other distinct propositions to the voters in an unauthorized manner, the contract may be declared void at the instance of the city. Americus Ry. & Light Co. v. Mayor of Americus, 136 Ga. 25, 70 S.E. 578, 1911 Ga. LEXIS 402 (1911).

Question of establishing school and incurring debt submitted at same time. — Question of establishing and maintaining school by local taxation and of authorizing town to incur a debt by issuing bonds for purpose of purchasing school property may be submitted to the qualified voters of the town at one and the same election, if the Act passed for this purpose be so framed as to accomplish this end. Brand v. Town of Lawrenceville, 104 Ga. 486, 30 S.E. 954, 1898 Ga. LEXIS 347 (1898).

Issue foreign to the matter of debt cannot be submitted to voters with a question of creating the debt, although the question as to the establishment of the enterprise for which the debt is to be incurred may be submitted with the question of incurring the debt. Cain v. Smith, 117 Ga. 902, 44 S.E. 5, 1903 Ga. LEXIS 389 (1903).

Joint canvass of returns by mayor, councilmen, and managers. — When on the day succeeding the election the mayor and councilmen, duly assembled, called into the meeting the managers of the election and jointly with them canvassed the returns and declared the result of the election, and in pursuance of such Act the mayor and councilmen passed a resolution reciting the declaration of the result in the manner indicated, this was a sufficient compliance with this section in regard to a joint declaration of the result of such election, and, consequently, a copy of the resolution was admissible upon proceedings to validate the bonds. Sewell v. City of Tallapoosa, 145 Ga. 19, 88 S.E. 577, 1916 Ga. LEXIS 161 (1916).

Irregularity in registering voters. — If there was some irregularity in the manner of registering a few voters, but it did not appear that such persons voted in the election, or that the persons were in fact not qualified to register, or that such irregularity affected the result, this furnished no cause for declaring the election void, and refusing to validate bonds authorized thereby. Brumby v. City of Marietta, 132 Ga. 408, 64 S.E. 321, 1909 Ga. LEXIS 120 (1909).

Violation of directory provisions of city charter concerning influencing voters. — Violation of directory provisions of a city charter (concerning influencing voters) by some persons and a failure to enforce them by the election managers did not operate to invalidate

the entire bond election, it not appearing that the result would have been otherwise had there been a compliance with such provisions. Brumby v. City of Marietta, 132 Ga. 408, 64 S.E. 321, 1909 Ga. LEXIS 120 (1909).

Consolidated returns prima facie correct. — When the duly elected managers of a municipal election held in a city, for the purpose of determining whether or not bonds should be issued for municipal purposes, submitted the consolidated returns to the mayor and general council of such city, "and consolidated and the result declared," showing that the election resulted in favor of bonds, such consolidation was prima facie correct. Brown v. City of Atlanta, 152 Ga. 283, 109 S.E. 666, 1921 Ga. LEXIS 78 (1921).

OPINIONS OF THE ATTORNEY GENERAL

Bond elections must be held in strict conformity with laws governing the elections. 1962 Ga. Op. Att'y Gen. 194.

Election concurrent with general election. — School bond election called by county board of education may be held concurrently with general election. 1965 Op. Att'y Gen. No. 65-9.

County superintendent of elections is proper person to conduct a school bond referendum and should certify the returns to the county board of education. 1985 Op. Att'y Gen. No. 85-18.

Bond referendum may be held on date of presidential preference primary, but the bond referendum should be placed on a separate ballot that voters need not request a party ballot to vote only in the referendum. 1975 Op. Att'y Gen. No. 75-132.

Ballots in school bond elections shall be furnished and election managers appointed by county board of education. 1950-51 Ga. Op. Att'y Gen. 44.

RESEARCH REFERENCES

Am. Jur. 2d.

64 Am. Jur. 2d, Public Securities and Obligations, § 119 et seq.

C.J.S.

64A C.J.S., Municipal Corporations, § 2054 et seq.

ALR.

Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

36-82-3. Issuance of bonds upon favorable election vote; ordinance or resolution authorizing refunding bonds; issuance, content, and form of refunding bonds.

(a) When notice has been given and the election has been held, in accordance with Code Section 36-82-2, if the requisite majority of those qualified voters of the county, municipality, or political subdivision voting at the election vote for bonds, then the authority to issue the bonds in accordance with Article IX, Section V, Paragraph I or II of the Constitution of Georgia is given to the proper officers of the county, municipality, or political subdivision.

(b) The ordinance or resolution of the governing body of the county, municipality, or other political subdivision of this state authorizing the issuance of general obligation refunding bonds in accordance with the terms and conditions of subsection (f) of Code Section 36-82-1 may be

adopted at a regular or special meeting by a majority of the members of the governing body and, unless otherwise provided therein, such resolution or ordinance shall take effect immediately and need not be laid over or published or posted.

(c) General obligation refunding bonds may be issued in one or more series; may bear such date or dates; may mature at such time or times, and bear interest at such rate or rates per annum, payable at such time or times, subject to the limitations contained in subsection (f) of Code Section 36-82-1, pertaining to the final maturity date and maximum interest rate for such refunding bonds; may be payable in such medium of payment at such place or places; may be in such denomination or denominations; may be in such form, either coupon or registered; may carry such registration, conversion, and exchangeability privileges; may be subject to such terms of redemption, with or without a premium; may be executed in such manner; and may contain such terms, covenants, and conditions as the ordinance or resolution authorizing the issuance of such refunding bonds may provide. All general obligation refunding bonds issued under this article bearing the signature of officers in office on the date of the signing thereof shall be valid and binding, notwithstanding that before delivery thereof and payment therefor such officers whose signatures appear thereon shall have ceased to be officers of the governmental body issuing the bonds. Pending the preparation of the definitive bonds, interim receipts, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds to be issued under this article. Such refunding bonds and interim receipts shall be negotiable for all purposes. Such refunding bonds shall be and are declared to be nontaxable for any and all purposes.

History.

Ga. L. 1878-79, p. 40, § 3; Code 1882, § 508k; Civil Code 1895, § 379; Civil Code 1910, § 442; Code 1933, § 87-203; Ga. L. 1983, p. 3, § 57; Ga. L. 1984, p. 1362, § 2.

Editor's notes.

Ga. L. 1984, p. 1362, § 8, not codified by the General Assembly, provides: "The provisions of this Act [which amended this Code section] shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this Act may be inconsistent with the provisions of the Georgia Constitution under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution or the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this Act shall control."

JUDICIAL DECISIONS

Authority to issue bonds. — Former Civil Code 1910, § 442 (see now O.C.G.A. § 36-82-3) gave express authority to issue bonds when the notice required by former Civil Code 1910, § 440 (see now O.C.G.A. § 36-82-1) was given and the election held in accordance with former Civil Code 1910, § 441 (see now O.C.G.A. § 36-82-2). Cowart v. City of Waycross, 159 Ga. 589, 126 S.E. 476, 1925 Ga. LEXIS 28 (1925).

This section must be given effect, subject to the change as made by Ga. Const. 1945, Art. VII, Sec. VII, Para. V (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I), in reference to the proportion of qualified voters necessary to authorize a bond issue; and no further enabling Act is necessary. McKnight v. City of Decatur, 200 Ga. 611, 37 S.E.2d 915, 1946 Ga. LEXIS 307 (1946).

County may issue bonds only when Constitution and laws complied with. — County may issue bonds to be paid for with funds derived from public taxation, and procure a judgment of the court confirming and validating the bonds, only when the Constitution and laws of the state have been fully complied with. Richter v. Chatham County, 146 Ga. 218, 91 S.E. 35, 1916 Ga. LEXIS 669 (1916).

Provision for annual tax must be made before bonds sold. — After the bonds have been validated, a provision for an annual tax must be made before the bonds can be sold and the debt be thereby actually incurred. Woodall v. Town of Adel, 122 Ga. 1, 122 Ga. 301, 50 S.E. 102, 1905 Ga. LEXIS 185 (1905); Oliver v. City of Elberton, 124 Ga. 64, 52 S.E. 15, 1905 Ga. LEXIS 645 (1905).

Past indebtedness. — Voters cannot authorize a bond issued for past indebtedness of a municipality. The voters must pass on the debt to be incurred. Mayor of Macon v. Jones, 122 Ga. 455, 50 S.E. 340, 1905 Ga. LEXIS 238 (1905).

Bonds may be payable in gold or lawful money. — It is lawful to make the proposed bonds "payable in gold, or lawful money of the United States, at the option of the holder." Heilbron v. Mayor of Cuthbert, 96 Ga. 312, 23 S.E. 206, 1895 Ga. LEXIS 68 (1895).

OPINIONS OF THE ATTORNEY GENERAL

School bond issue requires assent consisting of simply majority of those qualified voters in school bond election. 1963-65 Ga. Op. Att'y Gen. 769.

RESEARCH REFERENCES

Am. Jur. 2d.

64 Am. Jur. 2d, Public Securities and Obligations, §§ 125 et seq., 150.

C.J.S.

64A C.J.S., Municipal Corporations, § 2062 et seq.

ALR.

Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

Negotiability of municipal bonds as affected by reference to fund from which they are to be paid, 42 A.L.R. 1027.

Right to call governmental bonds in advance of their maturity, 109 A.L.R. 988.

Effect of delay after authorization by voters on power of governmental unit to issue bonds, 135 A.L.R. 768.

Validity, within authorized debt, tax, or voted limit, of bond issue in excess of amount permitted by law, 175 A.L.R. 823.

Rescission of vote authorizing school district or other municipal bond issue, expenditure, or tax, 68 A.L.R.2d 1041.

36-82-4. Action for collection of bonds by holders.

When the bonds become due, the owners thereof, if necessary, may enforce their collection by action in the proper court.

History.

Ga. L. 1878-79, p. 40, § 5; Code 1882, § 508m; Civil Code 1895, § 381; Civil Code 1910, § 444; Code 1933, § 87-205.

JUDICIAL DECISIONS

Promissory note given by municipal corporation is invalid even in the hands of a bona fide endorsee for value before the note became due and although all but one of the notes had been paid this does not prevent the corporation from setting up the illegality of the contract in defense to a suit on the note. Town of Wadley v. Lancaster, 124 Ga. 354, 52 S.E. 335, 1905 Ga. LEXIS 712 (1905).

RESEARCH REFERENCES

Am. Jur. 2d.

64 Am. Jur. 2d, Public Securities and Obligations, §§ 290, 358 et seq., 364.

C.J.S.

64A C.J.S., Municipal Corporations, § 2111 et seq.

ALR.

Negotiability of municipal bonds as affected by reference to fund from which they are to be paid, 42 A.L.R. 1027.

Priority or preference as between different issues of bonds of municipalities or political subdivisions, absent express provisions in that regard, 108 A.L.R. 1018.

When limitations begin to run against actions on public securities or obligations to be paid out of special or particular fund, 50 A.L.R.2d 271.

36-82-4.1. Advertisement of bond elections in certain counties; use of bond funds.

(a) In addition to the requirements of Code Sections 36-82-1 through 36-82-4 governing elections for the issuance of bonds, in all counties of this state having a population of not less than 400,000 nor more than 500,000 according to the United States decennial census of 1990 or any future such census, every legal advertisement of a bond election shall contain a reference that any brochures, listings, or other advertisements issued by the governing body in such counties, or by any other person, firm, corporation, or association with the knowledge and consent of the governing body, shall be deemed to be a statement of intention of the governing body concerning the use of the bond funds; and such statement of intention shall be binding on the governing body and shall limit the expenditure of any such bond funds to the purpose specified in such statement of intention, unless the governing body uses such bond funds for the retirement of bonded indebtedness in the manner provided by subsection (b) of this Code section. Such statement of intention shall also be set forth in the resolution pursuant to which such bonds are issued.

(b) The governing body in the counties specified in subsection (a) of this Code section may, by a two-thirds' vote, declare any project which has been proposed pursuant to a statement of intention provided for in subsection (a) of this Code section to be unnecessary. In that event, the governing body shall use such bond funds for the payment of all or any part of the principal and interest on any bonded indebtedness of such county then outstanding.

(c) In the counties specified in subsection (a) of this Code section,

interest received from bond funds which have been invested and surpluses from the overestimated projects shall be used first to complete underestimated projects; and all remaining funds received from interest and overestimated projects shall be used for other projects or improvements which the governing body in such counties may deem necessary and which are encompassed within the language of the statement of purpose in the election notice. Any meetings of any governing bodies at which any bond fund allocation is made shall be open to the public. Such meetings shall be announced to the news media in advance and shall be open to the news media.

(d) In the counties specified in subsection (a) of this Code section, 90 percent of the net proceeds received from sale of the bonds less:

(1) Amounts allocated to the payment of bond issuance expenses;

(2) Amounts allocated for purchase of furnishings and equipment;

(3) Amounts allocated for contingencies; and

(4) Amounts allocated for work to be performed by employees of the issuing entity and materials and equipment therefor

shall be obligated for payment pursuant to a contract or contracts within 36 months from the date of issuance and delivery of such bonds. The remaining bond proceeds shall either be obligated pursuant to a contract or contracts or actually expended within 48 months from the date of issuance and delivery of such bonds. Any bond proceeds not expended or obligated within 48 months from the date of issuance and delivery of such bonds shall be paid to the sinking fund for the retirement of the bonds issued. For purposes of this subsection, land which is being acquired through condemnation proceedings shall be considered obligated for payment pursuant to a contract in an amount equal to the sum of moneys deposited with the court pursuant to a special master or other appropriate judicial proceedings. The provisions of this subsection shall apply to all general obligation bonds issued and delivered on or after December 1, 1986.

History.

Code 1933, § 87-201.1, enacted by Ga. L. 1981, p. 1439, § 1; Ga. L. 1982, p. 3, § 36; Ga. L. 1988, p. 1921, § 1; Ga. L. 1992, p. 1232, § 1.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1988, a colon was added at the end of the introductory paragraph of subsection (d).

36-82-4.2. Expenditure of bond funds for purposes other than stated in public bond notice.

(a) When, subsequent to the issuance of any bonds pursuant to the provisions of this article, the governing authority of any county,

municipal corporation, or political subdivision adopts by a two-thirds' majority vote a resolution declaring that:

(1) A portion of the bond funds remains after the purpose stated in the notice required by subsection (b) of Code Section 36-82-1 has been achieved or accomplished;

(2) The purpose stated in such notice is no longer necessary; or

(3) Circumstances have changed such that the expenditure of all or part of such bond funds is no longer practicable or feasible,

the governing authority shall be authorized to expend such bond funds, including interest, for purposes of a nature substantially similar to the purpose stated in such notice or to reduce the bonded indebtedness of the county, municipality, or political subdivision.

(b) Not sooner than ten days prior to expending bond funds as provided in subsection (a) of this Code section, the governing authority shall cause to be published once in the official county organ a copy of the resolution adopted pursuant to subsection (a) of this Code section, which resolution shall set forth the reason the bond funds were not expended for the original purpose and shall state the purpose for which such funds will be expended. In addition, the governing authorities shall cause a copy of such resolution to be sent by registered or certified mail or statutory overnight delivery to any trustee for bondholders or other paying agent.

History. Code 1981, § 36-82-4.2, enacted by Ga. L. 1990, p. 1441, § 1; Ga. L. 2000, p. 1589, § 3.

OPINIONS OF THE ATTORNEY GENERAL

Construction of school administration, maintenance, and storage facilities. — Proceeds of general obligation bonds issued under O.C.G.A. §§ 20-2-430 and 20-2-431 may not be used for school administration, maintenance, and storage facilities, but bonds may be issued for such purposes upon compliance by the county school board with the notice and purpose requirements set forth in O.C.G.A. Ch. 82, T. 36. 1998 Op. Att'y Gen. No. 98-12.

36-82-5. Destruction of unsold bonds authorized.

When any county, municipality, or political subdivision of this state has issued bonds under the authority of Article IX, Section V, Paragraph I, II, or III of the Constitution of Georgia and laws passed in pursuance thereof and when, after the bond issue is authorized and the bonds are printed, any of the bonds authorized and printed are not sold for any reason, the governing authorities of the county, municipality, or political subdivision may destroy the unsold bonds in the manner and under the conditions set out in Code Section 36-82-6.

History.
Ga. L. 1941, p. 426, § 1; Ga. L. 1983, p. 3, § 57; Ga. L. 1984, p. 1362, § 3.
Editor's notes.
Ga. L. 1984, p. 1362, § 8, not codified by the General Assembly, provides: "The provisions of this Act [which amended this Code section] shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this Act may be inconsistent with the provisions of the Georgia Constitution under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution or the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this Act shall control."

36-82-6. Procedure for destruction of unsold bonds.

(a) The governing authorities of the county, municipal corporation, or political subdivision shall publish a notice, once a week for four consecutive weeks, in the newspaper in which county advertisements are usually published in the county or in the county in which the municipal corporation or political subdivision is located. The notice shall indicate that the unsold bonds will be destroyed at the time and at the place in the county, municipal corporation, or political subdivision stated in the notice.

(b) If no objection is filed by a taxpayer of the county, municipal corporation, or political subdivision with the clerk of the superior court of the county or of the county in which the municipal corporation or political division is located, at least five days before the date stated in the notice, or if such objection is filed and the judge of the superior court, after hearing, determines the objection to be without merit, the judge of the superior court shall order the unsold bonds destroyed by fire at the time and place stated in the notice or at the time and place stated in the order of the court.

(c) The judge shall also name two disinterested witnesses, who are neither officers nor employees of the county, municipal corporation, or political subdivision, to attend the destruction of the bonds, whose affidavits, filed with the clerk of the superior court, shall be prima-facie evidence that the bonds have been destroyed. The affidavits of the witnesses shall be preserved as records of the office of the clerk of the superior court. The witnesses shall be compensated for their services in the amount of $5.00 each.

(d) All costs of such proceedings shall be paid by the county, municipal corporation, or political subdivision, except where an objection filed is determined to be without merit, in which case costs of the pleadings, hearings, and judgment on the objection shall be taxed against the person objecting.

History.
Ga. L. 1941, p. 426, § 2.

36-82-7. Authorized investments for bond proceeds.

The proceeds of any bonds issued by any county, municipal corporation, school district, or other political subdivision of this state or any portion thereof or any authority or other public body corporate and politic created under the Constitution or laws of this state may, from time to time, be placed for investment and reinvestment in the local government investment pool created in Chapter 83 of this title by the governing authorities of the county, municipal corporation, school district, political subdivision, authority, or body or be invested and reinvested by the governing authorities of the county, municipal corporation, school district, political subdivision, authority, or body in the following securities, and no others:

(1) Bonds or obligations of such county, municipal corporation, school district, political subdivision, authority, or body or bonds or obligations of this state or other states or of other counties, municipal corporations, and political subdivisions of this state;

(2) Bonds or other obligations of the United States or of subsidiary corporations of the United States government which are fully guaranteed by such government;

(3) Obligations of and obligations guaranteed by agencies or instrumentalities of the United States government, including those issued by the Federal Land Bank, Federal Home Loan Bank, Federal Intermediate Credit Bank, Bank for Cooperatives, and any other such agency or instrumentality now or hereafter in existence; provided, however, that all such obligations shall have a current credit rating from a nationally recognized rating service of at least one of the three highest rating categories available and have a nationally recognized market;

(4) Bonds or other obligations issued by any public housing agency or municipal corporation in the United States, which such bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipal corporation in the United States which are fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(5) Certificates of deposit of national or state banks located within this state which have deposits insured by the Federal Deposit Insurance Corporation and certificates of deposit of federal savings and loan associations and state building and loan or savings and loan associations located within this state which have deposits insured by the Savings Association Insurance Fund of the Federal Deposit

Insurance Corporation or the Georgia Credit Union Deposit Insurance Corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds. The portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation, or the Georgia Credit Union Deposit Insurance Corporation, if any, shall be secured by deposit, with the Federal Reserve Bank of Atlanta, Georgia, or with any national or state bank or federal savings and loan association or state building and loan or savings and loan association located within this state or with a trust office within this state, of one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess: direct and general obligations of this state or other states or of any county or municipal corporation in this state, obligations of the United States or subsidiary corporations included in paragraph (2) of this Code section, obligations of the agencies and instrumentalities of the United States government included in paragraph (3) of this Code section, or bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in paragraph (4) of this Code section;

(6) Securities of or other interests in any no-load, open-end management type investment company or investment trust registered under the Investment Company Act of 1940, as from time to time amended, or any common trust fund maintained by any bank or trust company which holds such proceeds as trustee or by an affiliate thereof so long as:

(A) The portfolio of such investment company or investment trust or common trust fund is limited to the obligations referenced in paragraphs (2) and (3) of this Code section and repurchase agreements fully collateralized by any such obligations;

(B) Such investment company or investment trust or common trust fund takes delivery of such collateral either directly or through an authorized custodian;

(C) Such investment company or investment trust or common trust fund is managed so as to maintain its shares at a constant net asset value; and

(D) Securities of or other interests in such investment company or investment trust or common trust fund are purchased and redeemed only through the use of national or state banks having corporate trust powers and located within this state; and

(7) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other

similar banking arrangements with a bank or trust company having capital and surplus aggregating at least $50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least $50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys.

History.

Ga. L. 1947, p. 1173, § 1; Ga. L. 1969, p. 961, § 1; Ga. L. 1976, p. 400, § 1; Ga. L. 1982, p. 3, § 36; Ga. L. 1985, p. 1461, § 1; Ga. L. 1987, p. 334, § 1; Ga. L. 1991, p. 338, § 1; Ga. L. 1992, p. 6, § 36; Ga. L. 2010, p. 404, § 2/SB 369.

Cross references.

Authorized investments of counties, municipalities, and other entities, generally, § 36-83-4.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1987, a comma was inserted following the second "authority" in the introductory language.

JUDICIAL DECISIONS

Use of bond money to buy bonds approved when insufficient to build project. — County board of education does not abuse the board's discretion, when the board determines that it would be impossible to build a schoolhouse with the amount of bond money on hand, in using the money to buy more bonds. Williams v. Ragsdale, 205 Ga. 274, 53 S.E.2d 339, 1949 Ga. LEXIS 345 (1949).

RESEARCH REFERENCES

Am. Jur. 2d.

64 Am. Jur. 2d, Public Securities and Obligations, § 95.

C.J.S.

64A C.J.S., Municipal Corporations, § 2075.

ALR.

Constitutionality, construction, and application of statute empowering municipal corporation to issue bonds the proceeds of which shall be invested in municipal securities, 108 A.L.R. 736.

36-82-7.1. Assessment and collection of tax to pay refunding bonds.

Any county, municipality, or other political subdivision of this state shall at or before the issuance and delivery of any general obligation refunding bonds provide for the assessment and collection of an annual tax sufficient in amount to pay the principal and interest on such refunding bonds as same become due and payable, all as is provided in Article IX, Section V, Paragraph VI of the Constitution of Georgia.

History.
Code 1981, § 36-82-7.1, enacted by Ga. L. 1984, p. 1362, § 4.
Editor's notes.
Ga. L. 1984, p. 1362, § 8, not codified by the General Assembly, provides as follows: "The provisions of this Act [which enacted this Code section] shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this Act may be inconsistent with the provisions of the Georgia Constitution under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution or the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this Act shall control."

36-82-8. Deduction of sinking fund in computing bonded indebtedness.

All amounts collected and held in a sinking fund pursuant to Article IX, Section V, Paragraph VI of the Constitution of Georgia, irrevocably pledged and appropriated to the retirement of the outstanding bonded indebtedness for which they are collected, which can be legally used for no other purpose, shall be deductible from total bonded debt in computing the constitutional limitation on the bonded indebtedness of a political subdivision of this state under Article IX, Section VII of the Constitution of Georgia.

History.
Ga. L. 1958, p. 203, § 1; Ga. L. 1983, p. 3, § 57.

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 3 et seq.
C.J.S.
64A C.J.S., Municipal Corporations, § 2092 et seq.
ALR.
Liability of officer for loss of sinking fund through failure of bank, 25 A.L.R. 1358.
Constitutional provisions against impairment of obligations of contract as applied to sinking funds for retirement of municipal or other public bonds, 115 A.L.R. 220.

36-82-9. Certification requirement for pension obligation bonds; requirement for reserve fund.

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

(1) "Annual savings" means the difference between the annual debt service payments on pension obligation bonds and the annual required contribution to fund the unfunded actuarial accrued liability of the pension fund.

(2) "Level debt structure" means the establishment of a bond repayment schedule that requires equal annual debt service payments, including both principal and interest, over the life of the debt issue.

(3) "Pension obligation bond" means a bond issued as a general obligation bond in accordance with the provisions of this chapter, the proceeds of which are deposited with the government's retirement system administrator to liquidate, in whole or in part, the government's unfunded accrued actuarial liability to the government's retirement plan.

(b) No political subdivision shall issue any pension obligation bond unless the state auditor has certified that such bonds comply fully with the provisions of this Code section.

(c) All pension obligation bonds shall:

(1) Be general obligation bonds subject to the provisions of the Constitution of the State of Georgia and this chapter relating to general obligation bonds;

(2) Be included as a component of the total debt of the political subdivision subject to the debt limits provided in Article IX, Section V of the Constitution of the State of Georgia;

(3) Be issued on a competitive basis;

(4) Specify a level debt structure; and

(5) Specify a maturity not longer than 20 years.

(d) An amount not less than 5 percent of the annual savings shall be deposited into a reserve fund as protection against changes that might impact the future financial condition of the pension system.

(e) Neither the political subdivision issuing pension obligation bonds nor any department, agency, authority, retirement system, or pension fund of such political subdivision shall purchase the pension obligation bonds so issued.

History.
Code 1981, § 36-82-9, enacted by Ga. L. 2001, p. 810, § 1.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2001, Code Section 36-82-9, as enacted by Ga. L. 2001, p. 1033, § 1, was redesignated as Code Section 36-82-10.

Law reviews.
For note on the 2001 enactment of this Code section, see 18 Ga. St. U.L. Rev. 193 (2001).

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

36-82-10. Reporting requirements.

(a) As used in this Code section, the term "political subdivision" means any municipality, county, local government authority, board, or commission empowered to enter into debt. Such term shall not include any state agency or state authority.

(b) A political subdivision which issues general obligation bonds,

revenue bonds, or any other bonds, notes, certificates of participation, or other such obligations of that political subdivision in an amount exceeding $1 million shall file a report with the Department of Community Affairs which contains the following:

(1) Name of issuer;

(2) Whether the issue is a new issue or a refinancing or refunding;

(3) Total amount issued;

(4) Term of issue;

(5) Detailed description of purpose or purposes;

(5.1) Whether the issue is a general obligation bond, revenue bond, or other bond, note, certificate of participation, or other obligation;

(6) Name of underwriter;

(7) Proceeds used for bond issuance costs, including underwriters' discount as reported on Line 24 of the United States Department of Treasury's Internal Revenue Service Form 8038-G;

(8) Name of bond counsel;

(9) Interest rate; and

(10) True or net interest costs.

Such information shall be reported to the Department of Community Affairs in accordance with Code Section 36-81-8.

History.

Code 1981, § 36-82-10, enacted by Ga. L. 2001, p. 1033, § 1; Ga. L. 2006, p. 1021, § 1/HB 1012; Ga. L. 2012, p. 775, § 36/HB 942.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2001, Code Section 36-82-9, as enacted by Ga. L. 2001, p. 1033, § 1, was redesignated as Code Section 36-82-10.

ARTICLE 2

VALIDATION OF BONDS

JUDICIAL DECISIONS

Duties of superior court judge set forth. — Under the provisions of this article, a superior court judge's duties are simply to hear and determine all questions of law and fact in a proceeding brought by the solicitor general (now district attorney) in the name of the state and against the county or municipality or political subdivision to validate their proposed bonds. In such a proceeding the sole issue is whether the proceeding by the county or municipality or other political subdivision for the issuance of such bond was legal, that is, whether all the provisions of the law have been complied with. Clinkscales v. State, 102 Ga. App. 670, 117 S.E.2d 229, 1960 Ga. App. LEXIS 716 (1960).

RESEARCH REFERENCES

ALR.

Constitutionality, construction, application, and effect of statute requiring judicial approval before issuance or sale of municipal or county bonds or obligations, 87 A.L.R. 706; 102 A.L.R. 90.

Printing, lithographing, or other mechanical signature on public bonds, coupons, or other public pecuniary obligation, 94 A.L.R. 768.

Part 1

General Provisions

36-82-20. Notice of election or resolution favoring issuance of bonds or refunding bonds.

(a) When any county, municipality, or political subdivision desiring to incur any bonded debt, as prescribed in Article IX, Section V, Paragraphs I and II of the Constitution of Georgia, holds an election or passes a resolution in accordance with the provisions of the Constitution and laws of this state controlling and regulating such elections or the passage of such resolutions and the returns of such election or resolution show prima facie that the election or resolution is in favor of the issuance of the bonds, the officer or officers of the county, municipality, or political subdivision charged by law with the duty of declaring the result of the election or resolution, within six months after so declaring the result of the election or of the passage of the resolution, shall notify the district attorney of the judicial circuit in which the county, municipality, or political subdivision is located, in writing, of the fact that an election was held or that a resolution was passed and that the election or resolution was in favor of the issuance of the bonds. The service of the notice shall be personal upon the district attorney; in the event that he is absent from the circuit, the notice shall be served in person upon the Attorney General.

(b) It is expressly provided that when the governing body of any county, municipality, or political subdivision desiring to issue refunding bonds as provided by Article IX, Section V, Paragraph III of the Constitution of Georgia shall have adopted a resolution or ordinance authorizing the issuance of refunding bonds, the proper officer or officers of such county, municipality, or political subdivision, within six months after the adoption of such resolution or ordinance authorizing the issuance of such refunding bonds, shall notify the district attorney of the judicial circuit in which such county, municipality, or political subdivision is located, in writing, of the fact that the requirements pertaining to the issuance of general obligation refunding bonds have been met and that the issuance of such refunding bonds has been authorized by a resolution or ordinance duly adopted by the governing

body of such county, municipality, or political subdivision and shall furnish the district attorney with a certified copy of such resolution or ordinance authorizing the issuance of such refunding bonds. The service of such notice shall be personal upon the district attorney; in the event that he is absent from the circuit, the notice shall be served in person upon the Attorney General.

History.

Ga. L. 1897, p. 82, § 1; Civil Code 1910, § 445; Ga. L. 1920, p. 63, § 1; Code 1933, § 87-301; Ga. L. 1946, p. 80, § 1; Ga. L. 1961, p. 168, § 1; Ga. L. 1983, p. 3, § 57; Ga. L. 1984, p. 1362, § 5.

Editor's notes.

Ga. L. 1984, p. 1362, § 8, not codified by the General Assembly, provides: "The provisions of this Act [which amended this Code section] shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this Act may be inconsistent with the provisions of the Georgia Constitution under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution or the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this Act shall control."

Law reviews.

For article discussing the impact on bond issues of challenges to voting procedures, see 15 Ga. St. B. J. 15 (1978).

JUDICIAL DECISIONS

This section is not unconstitutional on the ground that it makes no provision for a trial by jury in reference to the matters for the investigation of which provision is therein made. Lippitt v. City of Albany, 131 Ga. 629, 63 S.E. 33, 1908 Ga. LEXIS 168 (1908).

This section is not unconstitutional on the grounds that the statute deprives citizens of property without due process of law by excluding further investigation as to validity of the bonds after judgment of confirmation and validation. Lippitt v. City of Albany, 131 Ga. 629, 63 S.E. 33, 1908 Ga. LEXIS 168 (1908).

This section does not violate Ga. Const. 1877, Art. VII, Sec. VII, Para. I (see now Ga. Const. 1983, Art. IX, Sec. V, Para. I), as there is no merit in the contention that the statute seeks to confer power to incur debts without the consent of two-thirds (now majority) of the voters by the authorizing of confirmation bonds which have not received the required vote. Lippitt v. City of Albany, 131 Ga. 629, 63 S.E. 33, 1908 Ga. LEXIS 168 (1908).

Limited unconstitutionality. — Insofar as former Civil Code 1910, § 445 et seq. (see now O.C.G.A. § 36-82-20 et seq.), authorized the judge of the superior court to hear and determine the proceeding in a county other than that so fixed by the Constitution, the statute was invalid and must yield to the constitutional requirement on that subject. Ray v. City of Lavonia, 141 Ga. 626, 81 S.E. 884, 1914 Ga. LEXIS 82 (1914).

Constitutionality. — When the constitutionality of former Civil Code 1910, § 445 et seq. (see now O.C.G.A. § 36-82-20 et seq.) was not raised in a lower court, it was not considered in the Supreme Court. Edwards v. Town of Guyton, 140 Ga. 553, 79 S.E. 195, 1913 Ga. LEXIS 180 (1913).

Purpose of section. — Purpose of this section is to provide a method by which it should be judicially investigated and determined whether the law, constitutional and statutory, has been complied with, so as to declare bonds referred to therein valid before their issuance. Lippitt v. City of Albany, 131 Ga. 629, 63 S.E. 33, 1908 Ga. LEXIS 168 (1908).

Provisions of this section are mandatory and must be strictly complied

with. State v. Chatham County, 103 Ga. App. 390, 119 S.E.2d 120, 1961 Ga. App. LEXIS 949 (1961).

Validation upon substantial compliance. — When the record discloses the fact that all the requirements in relation to notice and providing for an election to determine whether bonds should be issued were either literally or substantially complied with, judgment validating such bonds is affirmed. Wimberly v. County of Twiggs, 116 Ga. 50, 42 S.E. 478, 1902 Ga. LEXIS 21 (1902).

Absence of payment provision. — It is not incumbent upon the court to inquire into the question as to whether provision for payment has been made in conformity with the requirements of the Constitution. The bonds are not to be issued until after they are validated. If nothing appears as to what provision is to be made with reference to payment of the bonds, it will be presumed that if provision has not already been made it will be made in accordance with the Constitution and laws. Wilkins v. City of Waynesboro, 116 Ga. 359, 42 S.E. 767, 1902 Ga. LEXIS 103 (1902); Oliver v. City of Elberton, 124 Ga. 64, 52 S.E. 15, 1905 Ga. LEXIS 645 (1905).

No validation if payment unlawful. — If when the application is made to validate the issue of bonds it appears to the judge, either from the pleadings or otherwise, that the authorities of the municipality or county do not intend to make provision for the payment of the bonds in the manner required by the Constitution, the judge should not render a judgment validating the issue of bonds. Wilkins v. City of Waynesboro, 116 Ga. 359, 42 S.E. 767, 1902 Ga. LEXIS 103 (1902); Oliver v. City of Elberton, 124 Ga. 64, 52 S.E. 15, 1905 Ga. LEXIS 645 (1905).

Notice should be served as required by statute. — Notice which this section requires to be given to the solicitor general (now district attorney) by the officers charged by law with the duty of declaring the result of an election held by any county, municipality, or division for the purpose of incurring any bonded indebtedness as therein provided, must be served upon the solicitor general (now district attorney) in the manner therein prescribed and within the time therein specified, and should notify the solicitor general (now district attorney) that an election for the issuance of bonds was held in the county, municipality, or division, and that the election was in favor of the issuance of such bonds; and it is not necessary to the validity of such notice that a copy of the resolution authorizing the election be incorporated in the notice or attached thereto. Rich v. Brinson Consol. Sch. Dist., 28 Ga. App. 530, 112 S.E. 164, 1922 Ga. App. LEXIS 661 (1922).

When notice properly served, bonds should be validated. — When a notice of an election held for the purpose of incurring a bonded indebtedness was properly served upon the solicitor general (now district attorney) and gave to that officer the necessary notice required by law, and had attached thereto what purported to be a true and correct copy of the resolution passed by the proper authorities ordering the election, and which copy was referred to in the notice given to the solicitor general (now district attorney), it was not error, upon the hearing of an intervention to the proceeding to validate the bonds authorized by the election, for the trial judge, over the objection of the intervenors, to allow the officers giving the notice to amend the notice by withdrawing or striking the attached copy of the resolution authorizing the election and substituting in lieu thereof another copy, alleged to be a true and correct copy of the resolution authorizing the election. Rich v. Brinson Consol. Sch. Dist., 28 Ga. App. 530, 112 S.E. 164, 1922 Ga. App. LEXIS 661 (1922).

Single proceeding may be had to validate several series of bonds. — When there are three series of bonds to be issued, each for a separate purpose, a single proceeding may be maintained to validate the bonds, the items being submitted separately. Sewell v. City of Tallapoosa, 145 Ga. 19, 88 S.E. 577, 1916 Ga. LEXIS 161 (1916).

Bonds may be valid notwithstanding refusal to validate. — Judgment refusing to validate bonds not being based on the invalidity of the

bonds is not the equivalent of a judgment declaring the bonds illegal. Bonds may be valid and binding notwithstanding a refusal of the court to confirm and validate. Tyson v. McIntosh County, 147 Ga. 233, 93 S.E. 407, 1917 Ga. LEXIS 138 (1917); Harrell v. Whigham, 147 Ga. 558, 94 S.E. 994, 1918 Ga. LEXIS 29 (1918).

Fact that judgment of validation void has no effect on bonds legally issued. — Even if the proceedings to validate bonds were void, the sale of the bonds issued in conformity with former Civil Code 1910, § 441 et seq. (see O.C.G.A. §§ 36-82-2 et seq. and 36-82-20), would not be enjoined merely because the judgment of validation was void. Durrence v. City of Statesboro, 147 Ga. 175, 93 S.E. 88, 1917 Ga. LEXIS 108 (1917); Tyson v. McIntosh County, 147 Ga. 233, 93 S.E. 407, 1917 Ga. LEXIS 138 (1917).

Extent of power of superior court. — In a proceeding to validate bonds, it is within the power and jurisdiction of the superior court upon proper pleadings and sufficient evidence, to pass upon the validity of any votes cast in the election, and to eliminate such votes as are shown by the pleadings and the evidence to be illegal. King v. County Bd. of Educ., 174 Ga. 685, 164 S.E. 52, 1932 Ga. LEXIS 122 (1932).

Unlawful use of bonds. — Fact that the city may intend to use the proceeds of the bonds in an unlawful manner, the bonds being voted for a lawful purpose, is not a ground for refusing to validate. Gracen v. Mayor of Savannah, 142 Ga. 141, 82 S.E. 453, 1914 Ga. LEXIS 626 (1914).

Refusal of validation no remedy for unlawful use of proceeds. — If the public authorities should seek to use in an unlawful manner, or for an unlawful purpose, the proceeds of the bonds thus authorized, the remedy is not by a refusal to validate the bonds for the purpose for which the bonds were authorized. Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456, 1968 Ga. App. LEXIS 1272 (1968).

Validation not collusive because uncontested. — Validation is not held to be collusive because the validation is uncontested for a complaining citizen has the right to become a party and contest the validation. Farmer v. Mayor of Thomson, 133 Ga. 94, 65 S.E. 180, 1909 Ga. LEXIS 159 (1909).

Introduction of evidence. — There is no law which would prevent any party to proceeding from introducing evidence which would establish existence of facts necessary to validation of bonds. Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456, 1968 Ga. App. LEXIS 1272 (1968).

Rights of taxpayers who failed to make themselves parties. — When an election, held to determine whether municipal bonds should be issued, resulted in favor of such issuance, and the bonds were duly validated in accordance with these provisions, the citizens and taxpayers who could have made themselves parties to the proceedings to validate the bonds, but failed to do so, were concluded by the judgment rendered, and could not thereafter enjoin the collection of a tax to pay the interest and part of the principal falling due, on the ground that some of the bonds were for a purpose not authorized by the Constitution. Jenkins v. Mayor of Savannah, 165 Ga. 121, 139 S.E. 863, 1927 Ga. LEXIS 321 (1927).

Sufficiency of petition. — Petition to validate bonds must set forth a strict compliance with the law by: service of the notice required by this section; the name of the political subdivision seeking to issue the bonds; the purpose for which the bonds are to be issued; the principal amount of the bonds; what interest the bonds are to bear, or the maximum per annum rate of interest specified in the election notice; and the amount of principal to be paid annually. Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456, 1968 Ga. App. LEXIS 1272 (1968).

Burden of proof in action to validate bonds. — It was incumbent upon the petitioner in an action to validate bonds to make out a prima facie case by proving each of the substantial and material allegations set forth in former Civil Code 1910, §§ 441 and 445 (see now O.C.G.A. §§ 36-82-2 and 36-82-20) as necessary allegations of the

petition. When this was done the burden is cast upon the defendant, or upon a proper party as intervenor, to set up and establish any other fact which by aliunde proof would render the bond election invalid. King v. County Bd. of Educ., 42 Ga. App. 563, 156 S.E. 710, 1931 Ga. App. LEXIS 56 (1931), aff'd, 174 Ga. 685, 164 S.E. 52, 1932 Ga. LEXIS 122 (1932).

OPINIONS OF THE ATTORNEY GENERAL

Discussion of the hiring of private law firms by political subdivisions for the purposes of validating and providing opinions as to the legality of state and municipal bonds. 1963-65 Ga. Op. Att'y Gen. 590.

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 332.
C.J.S.
64A C.J.S., Municipal Corporations, § 2062 et seq.
ALR.
Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

36-82-21. Petition to superior court to show cause; service of petition and order; answers.

(a) Within 20 days from the date of the service upon the district attorney or the Attorney General of notice of the fact that an election was held or a resolution passed and that the election or resolution was in favor of the issuance of the bonds, the district attorney or the Attorney General shall prepare and file a petition in the office of the clerk of the superior court of the county in which the election was held or the resolution was passed, directed to the superior court of the county, in the name of the state, and against the county, municipality, or political subdivision desiring to issue bonds under the election or resolution. The petition shall set forth the service of the notice, the name of the county, municipality, or political subdivision seeking to issue the bonds, the principal amount of the bonds to be issued, the purpose for which the bonds are issued, the interest rate or rates which the bonds are to bear, and the amount of principal to be paid in each year during the life of the bonds and shall state that the election or resolution is prima facie in favor of the issuance of the bonds. The petition, in lieu of specifying the rate or rates of interest which the bonds are to bear, may set forth the wording which was used with respect to interest in the notice which was published calling the election to authorize the issuance of the bonds. The district attorney or the Attorney General shall obtain, from the judge of the court, an order requiring the county, municipality, or political subdivision, by its proper officers, to appear at such time and place, either in term or at chambers, within 20 days from the filing of the petition, as the judge of the court may direct, and to show cause, if any exists, why the bonds should not

be confirmed and validated. The petition and order shall be served in the manner provided by law for the service of petitions upon counties, municipalities, or political subdivisions. The officers of the county, municipality, or political subdivision shall make sworn answers to such petition at or before the date set in the order for the hearing.

(b) Within 20 days from the date of the service upon the district attorney or the Attorney General of notice of the fact that a resolution or ordinance was adopted by the governing body of the county, municipality, or other political subdivision authorizing the issuance of refunding bonds, the district attorney or the Attorney General shall prepare and file a petition in the office of the clerk of the superior court of the county in which the county, municipality, or other political subdivision desiring to issue refunding bonds is located, directed to the superior court of the county, in the name of the state, and against the county, municipality, or political subdivision desiring to issue refunding bonds under the resolution or ordinance. The petition shall set forth the service of the notice, the name of the county, municipality, or political subdivision seeking to issue the refunding bonds, the maximum principal amount of the refunding bonds to be issued, the interest rate or rates which the bonds are to bear, and also setting forth the principal amount of outstanding bonded indebtedness to be refunded, the amount of principal to be paid in each year over the remaining life of the bonds to be refunded, the interest rate or rates per annum said outstanding bonds which are to be refunded bear and a certified copy of the resolution or ordinance so adopted authorizing the issuance of the refunding bonds shall be attached to the petition and made a part thereof. The petition, in lieu of specifying the rate or rates of interest which the refunding bonds are to bear, may state that the refunding bonds when issued will bear interest at a rate or rates not exceeding a maximum rate per annum. The district attorney or the Attorney General shall obtain, from the judge of the court, an order requiring the county, municipality, or political subdivision, by its proper officers, to appear at such time and place, either in term or at chambers, within 20 days from the filing of the petition, as the judge of the court may direct, and to show cause, if any exists, why the refunding bonds should not be confirmed and validated. The petition and order shall be served in the manner provided by law for the service of petitions upon counties, municipalities, or political subdivisions. The officers of the county, municipality, or political subdivision shall make sworn answers to such petition at or before the date set in the order for the hearing.

History.

Ga. L. 1897, p. 82, § 2; Civil Code 1910, § 446; Ga. L. 1920, p. 63, § 2; Code 1933, § 87-302; Ga. L. 1960, p. 1034, § 1; Ga. L. 1961, p. 168, § 2; Ga. L. 1984, p. 1362, § 6.

Editor's notes.

Ga. L. 1984, p. 1362, § 8, not codified by the General Assembly, provides: "The provisions of this Act [which amended this Code section] shall be liberally construed to effect the purposes hereof, and insofar

as the provisions of this Act may be inconsistent with the provisions of the Georgia Constitution under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution or the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this Act shall control."

JUDICIAL DECISIONS

Provision for time of hearing directory. — Provision of this section, which prescribes the time within which the judge of the superior court shall fix the hearing on the petition to validate an issue of municipal bonds, and the time within which the judge shall hear and determine the same is directory only. Spencer v. City of Columbus, 150 Ga. 312, 103 S.E. 464, 1920 Ga. LEXIS 159 (1920); Perkins v. Norristown (42) Sch. Dist., 151 Ga. 414, 107 S.E. 42, 1921 Ga. LEXIS 271 (1921).

Provision as to time of filing petition mandatory. — Provision requiring the solicitor general (now district attorney) to file the petition within 20 days from date of service upon the solicitor general (now district attorney) was not merely directory, but mandatory. Roff v. Town of Calhoun, 110 Ga. 806, 36 S.E. 214, 1900 Ga. LEXIS 638 (1900).

No right to file petition after 20 days. — Solicitor general (now district attorney) has no authority, after the expiration of 20 days from the date of the service upon the solicitor general (now district attorney) of the notice provided for by Ga. L. 1987, p. 82, § 1 (see now O.C.G.A. § 36-82-20), relating to "the confirming and validating of" bonds, to file the petition prescribed by Ga. L. 1987, p. 82, § 2 (see now O.C.G.A. § 36-82-21), and such a petition, if filed too late, cannot be made the basis of any valid judicial action. Roff v. Town of Calhoun, 110 Ga. 806, 36 S.E. 214, 1900 Ga. LEXIS 638 (1900).

Sufficiency of petition. — It is necessary, of course, to state the facts, and this should be done with sufficient particularity to meet the requirements of good pleading. A petition which fails to show, except by a bare conclusion, that the election resulted prima facie in favor of the issuance of the bonds is fatally defective and subject to general demurrer (now motion to dismiss). Edwards v. City of Clarkesville, 35 Ga. App. 306, 133 S.E. 45, 1926 Ga. App. LEXIS 704 (1926).

Necessary elements in petition. — Petition to validate bonds must show that an election was held pursuant to the provisions of Article 1 of this chapter and that the result of the election was prima facie in favor of issuance of the bonds. Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456, 1968 Ga. App. LEXIS 1272 (1968).

Unnecessary allegations. — Petition need not set out any details relating to the required number of voters. Spencer v. City of Clarkesville, 129 Ga. 627, 59 S.E. 274, 1907 Ga. LEXIS 533 (1907), overruled on other grounds, Harrell v. Whigham, 141 Ga. 322, 80 S.E. 1010, 1914 Ga. LEXIS 191 (1914); Davis v. Orland Consol. Sch. Dist., 152 Ga. 76, 108 S.E. 466, 1921 Ga. LEXIS 9 (1921).

This section does not require that petition should allege that amount of bonds is within constitutional limitation as to the debt to be incurred by a municipal corporation or political division. Such matter, however, may be urged by an intervenor on the trial. If the intervenor should urge such matter, the burden is upon the intervenor to plead and prove the matter. Sewell v. City of Tallapoosa, 145 Ga. 19, 88 S.E. 577, 1916 Ga. LEXIS 161 (1916).

It is not necessary that a list of voters and tally sheets of an election should be set out in or attached to a petition. Stephens v. School Dist. No. 3, 154 Ga. 275, 114 S.E. 197, 1922 Ga. LEXIS 349 (1922).

Law does not require an allegation as to publication of the notice to the voters, or as to the furnishing of the list of the registered voters (it being sufficient merely to show the number of such voters), or as to the city's indebtedness not

exceeding the limit allowed by the Constitution. Edwards v. City of Clarkesville, 35 Ga. App. 306, 133 S.E. 45, 1926 Ga. App. LEXIS 704 (1926).

Proceeding, brought by a solicitor general (now district attorney) to validate bonds to be issued by a school district in a county of this state, need only allege facts to meet the requirements of this section and it is therefore unnecessary that the solicitor general (now district attorney) allege that the school district was one "in which a local tax is now or may hereafter be levied for school purposes," or is a school district "in a county now levying a local tax." These matters are matters of defense to the validation proceeding. Hardrick v. State, 53 Ga. App. 299, 185 S.E. 577, 1936 Ga. App. LEXIS 72 (1936).

Misnomer of the municipality in petition to validate bonds does not vitiate judgment of confirmation, when it appears that the officers of the municipality acknowledged service of the petition and answered the petition under oath in its true corporate name, and the judgment of validation also sets forth the proper corporate name of the municipality. Rhodes v. City of Louisville, 121 Ga. 551, 49 S.E. 681, 1904 Ga. LEXIS 228 (1904).

Omission of statement of principal and interest from petition. — When the petition under this section omitted to state how much principal and interest was to be paid annually and when the bonds were to be paid in full, but no objection was made in that proceeding to the sufficiency of the petition, and attached to the answer of the city as an exhibit was a copy of the ordinance providing for the issuance of the bonds, which showed the facts referred to above, so that it appeared from the record that provision on that subject was made, after judgment of validation the omission of the allegation above mentioned from the petition of the solicitor general (now district attorney) will not serve to render the entire proceeding void, or to authorize an injunction to prevent the payment of the bonds. Thomas v. City of Blakely, 141 Ga. 488, 81 S.E. 218, 1914 Ga. LEXIS 14 (1914).

Issuance of order prior to filing petition. — Provisions of this section are satisfied if the notice is served and the petition is filed and the order nisi obtained within the several times specified, notwithstanding the issuance of the order nisi may have preceded the filing of the petition in the office of the clerk of the superior court. Durrence v. City of Statesboro, 147 Ga. 175, 93 S.E. 88, 1917 Ga. LEXIS 108 (1917).

Validation within jurisdiction of superior court. — Proceeding to validate bonds embraces justiciable questions within the jurisdiction of the superior court. Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456, 1968 Ga. App. LEXIS 1272 (1968).

Venue in county in which bonds are situated. — Venue of a statutory proceeding to validate municipal bonds is in the county in which the bonds are situated. Ray v. City of Lavonia, 141 Ga. 626, 81 S.E. 884, 1914 Ga. LEXIS 82 (1914); Murray v. City of Tifton, 143 Ga. 301, 84 S.E. 967, 1915 Ga. LEXIS 406 (1915).

Fixing of hearing in another county of circuit. — Under the provision of this section, touching the validation of bonds, that, on due application, the judge of the superior court shall require the proper officers to show cause, "at such time and place . . . as the judge of said court may direct, why said bonds should not be confirmed and validated," it was held that the fixing, by the judge, of the place for the hearing in another county of the judicial circuit than that where the election was held was not beyond the terms of the Act. Farmer v. Mayor of Thomson, 133 Ga. 94, 65 S.E. 180, 1909 Ga. LEXIS 159 (1909).

Hearing on day not named in notice. — When, prior to the hearing of a proceeding for the validation of county bonds under the provisions of this section the required statutory publication giving notice of the date of hearing has been duly made, the fact that the hearing was had before the judge on a day other than that named in the published notice does not render the judgment illegal, when it further appears that the case was regularly continued by the court from the day named in the publication to the day on which the hearing was had. Wimberly v. County of Twiggs, 116 Ga. 50, 42 S.E. 478, 1902 Ga. LEXIS 21 (1902); Moody v. Board

of Comm'rs, 29 Ga. App. 21, 113 S.E. 103, 1922 Ga. App. LEXIS 22 (1922).

By whom notice given. — Petition was not subject to demurrer (now motion to dismiss) because the notice to the solicitor general (now district attorney) was not given by the proper officer. This notice must be given by the officer or officers charged with declaring the result of the election. Stephens v. School Dist. No. 3, 154 Ga. 275, 114 S.E. 197, 1922 Ga. LEXIS 349 (1922).

Burden of proof in action to validate bonds. — It was incumbent upon the petitioner in an action to validate bonds to make out a prima facie case by proving each of the substantial and material allegations set forth in former Civil Code 1910, §§ 445 and 446 (see now O.C.G.A. §§ 36-82-20 and 36-82-21) as necessary allegations of the petition. When this was done the burden was cast upon the defendant, or upon a proper party as intervenor, to set up and establish any other fact which by aliunde proof would render the bond election invalid. King v. County Bd. of Educ., 42 Ga. App. 563, 156 S.E. 710, 1931 Ga. App. LEXIS 56 (1931), aff'd, 174 Ga. 685, 164 S.E. 52, 1932 Ga. LEXIS 122 (1932).

Burden is on state to prove material facts which are requisite to obtain validation. Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456, 1968 Ga. App. LEXIS 1272 (1968).

When unqualified trustees act as de facto officers. — When a school district is divided by the board of education of the county by proper resolution, and no new trustees are elected or qualified for that district from which another district is created, but the trustees of the original district continue to act therefor, and call an election for the purpose of determining whether bonds will be issued for the purpose of building and equipping a schoolhouse, and the election results in favor of the bonds, and the trustees give the proper notice to the solicitor (now district attorney), the trustees are acting in the matter as de facto officers and the trustees' acts cannot be attacked as null and void in the proceeding to validate the bonds. Hardrick v. State, 53 Ga. App. 299, 185 S.E. 577, 1936 Ga. App. LEXIS 72 (1936).

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 336 et seq.

36-82-22. Notice of superior court hearing on show cause order.

Prior to the hearing provided for in Code Section 36-82-21, the clerk of the superior court of the county in which the hearing is to be held shall publish in a newspaper, once during each of the two successive weeks immediately preceding the week in which the hearing is to be held, a notice to the public that on the day specified in the order providing for the hearing the same will be heard. Such newspaper shall be the official organ of the county in which the sheriff's advertisements appear.

History.
Ga. L. 1897, p. 82, § 6; Civil Code 1910, § 450; Code 1933, § 87-303; Ga. L. 1966, p. 76, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1933, § 87-302 are included in the annotations for this Code section.

Object of publication is to inform

citizens, whose interests are to be affected, of the time when the case is set to be heard. Wimberly v. County of Twiggs, 116 Ga. 50, 42 S.E. 478, 1902 Ga. LEXIS 21 (1902).

Substantial compliance with notice sufficient. — Substantial compliance with the provision as to notice is sufficient, and when notice specified "Town of Louisville" instead of City of Louisville this was sufficient. Rhodes v. City of Louisville, 121 Ga. 551, 49 S.E. 681, 1904 Ga. LEXIS 228 (1904).

By what clerk notice published. — Injunction will not be granted when notice is published by the clerk of the court where the municipality is situated, on the ground that the clerk of another county where order nisi was made returnable should have published the notice. Farmer v. Mayor of Thomson, 133 Ga. 94, 65 S.E. 180, 1909 Ga. LEXIS 159 (1909).

Effect of continuance. — When it appears that the case was regularly continued by the court from the day named in the publication to the day on which the hearing was had, the fact that the hearing was on a day other than that named in the publication does not make the judgment illegal. Wimberly v. County of Twiggs, 116 Ga. 50, 42 S.E. 478, 1902 Ga. LEXIS 21 (1902); Oliver v. City of Elberton, 124 Ga. 64, 52 S.E. 15, 1905 Ga. LEXIS 645 (1905); Crawley v. State, 150 Ga. 86, 102 S.E. 898, 1920 Ga. LEXIS 48 (1920).

This section does not require teste. Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456, 1968 Ga. App. LEXIS 1272 (1968).

Proper date to present objection to validation. — When a judge fixed a certain date as the day for the hearing on the question of validating a proposed bond issue, and for providential reasons failed to hold court on that day but recessed it until four days later, and upon calling the case on this date a qualified objector presented an objection, it was error to refuse to allow such otherwise qualified objector to present such objections merely because the objector had not presented the objections on the date originally fixed for the hearing. Horton v. Downs Consol. Sch. Dist., 59 Ga. App. 77, 200 S.E. 469, 1938 Ga. App. LEXIS 449 (1938) (decided under former Code 1933, § 87-302).

RESEARCH REFERENCES

Am. Jur. 2d.

64 Am. Jur. 2d, Public Securities and Obligations, § 338.

ALR.

Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

36-82-23. Hearing and judgment on show cause order; parties to proceedings; appeal.

Within the time prescribed in the order or such further time as he may fix, the judge of the superior court shall proceed to hear and determine all questions of law and of fact in the case and shall render judgment thereon. Any citizen of this state who is a resident of the county, municipality, or political subdivision desiring to issue the bonds may become a party to the proceedings at or before the time set for the hearing. Any party to the proceedings who is dissatisfied with the judgment of the court confirming and validating the issuance of the bonds or refusing to confirm and validate the issuance of the bonds may appeal from the judgment under the procedure provided by law in cases of injunction. No appeal may be taken by any person who was not a party at the time the judgment appealed from was rendered.

History.

Ga. L. 1897, p. 82, § 3; Civil Code 1910, § 447; Code 1933, § 87-304; Ga. L. 1946, p. 726, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 279, § 4; Ga. L. 1966, p. 76, § 2.

Law reviews.

For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

JUDICIAL DECISIONS

Court can determine validity of votes. — In a proceeding to validate bonds, it is within the power and jurisdiction of the superior court, upon proper pleadings and sufficient evidence, to pass upon the validity of any votes cast in the election, and to eliminate such votes as are shown by the pleadings and the evidence to be illegal. Turk v. Royal, 34 Ga. App. 717, 131 S.E. 119, 1925 Ga. App. LEXIS 513 (1925).

Generally, there can be but one action to validate either certificates or bonds; in either case all interventions would be heard in the validation proceedings, and the allegation that a declaratory judgment is necessary to avoid a multiplicity of actions is a conclusion of the pleader, contrary to the statutory provisions pertaining to validation of revenue anticipation certificates or bonds. Liner v. City of Rossville, 212 Ga. 664, 94 S.E.2d 862, 1956 Ga. LEXIS 487 (1956).

Burden on state to prove material facts. — When statutory proceedings were brought for the purpose of validating bonds under former Civil Code 1910, §§ 446 and 447 (see now O.C.G.A. §§ 36-82-21 and 36-82-23), and were contested by citizens who became parties thereto and deny the truth of the substantial allegations of the petition, the burden was on the state to prove the material facts which were requisite to obtain validation. Harrell v. Town of Whigham, 141 Ga. 322, 80 S.E. 1010, 1914 Ga. LEXIS 191 (1914); Stephens v. School Dist. No. 3, 154 Ga. 275, 114 S.E. 197, 1922 Ga. LEXIS 349 (1922); Moody v. Board of Comm'rs, 29 Ga. App. 21, 113 S.E. 103, 1922 Ga. App. LEXIS 22 (1922); Clay v. Austell Sch. Dist., 35 Ga. App. 109, 132 S.E. 127, 1926 Ga. App. LEXIS 571 (1926).

Burden of proof on state even when solicitor general (now district attorney) alleges facts sufficient to warrant validation of bonds and answers filed by defendant admits facts alleged. Harrell v. Town of Whigham, 141 Ga. 322, 80 S.E. 1010, 1914 Ga. LEXIS 191 (1914); Jennings v. New Bronwood Sch. Dist., 156 Ga. 15, 118 S.E. 560, 1923 Ga. LEXIS 185 (1923).

Final judgment prerequisite to bill of exceptions. — When an answer filed by intervenors is dismissed as being insufficient to prevent validation, but the order of dismissal provides merely that the petitioners "may take an order confirming and validating," it does not constitute a final judgment confirming and validating the issuance of the bonds from which a bill of exceptions will lie as provided by this section. Veal v. Deepstep Consol. Sch. Dist., 34 Ga. App. 67, 128 S.E. 223, 1925 Ga. App. LEXIS 39 (1925).

Proper date to present objection to validation. — When a judge fixed a certain date as the day for the hearing on the question of validating a proposed bond issue, and for providential reasons failed to hold court on that day but recessed the court until four days later, and upon calling the case on this date a qualified objector presented an objection, it was error to refuse to allow such otherwise qualified objector to present the objections merely because the objector had not presented the objection on the date originally fixed for the hearing. Horton v. Downs Consol. Sch. Dist., 59 Ga. App. 77, 200 S.E. 469, 1938 Ga. App. LEXIS 449 (1938).

Petition that judgment be reopened. — When, upon a petition duly filed praying for the validation of certain county bonds, all the proceedings appeared on their face to have been regular, including the notice provided for by law, and the court rendered a judgment validating the bonds, and, 16 days thereafter and after the court had adjourned, certain persons filed a petition merely alleging that the people were

taxpayers and asking that the order validating the bonds be vacated or reopened, and that the people be heard on the question as to the regularity or irregularity of the election held to authorize the bonds, the court did not err in dismissing the petition, on the ground that it came too late. Ballard v. Morgan County, 24 Ga. App. 371, 100 S.E. 763, 1919 Ga. App. LEXIS 672 (1919).

Injunction refused when writ of error not timely. — After the validation of certain municipal bonds, no writ of error to the judgment validating the bonds having been sued out within the time prescribed by law, it was not error for the court below to refuse to enjoin the issuance of those bonds. Holton v. City of Camilla, 134 Ga. 560, 68 S.E. 472, 1910 Ga. LEXIS 270 (1910); Edwards v. Town of Guyton, 140 Ga. 553, 79 S.E. 195, 1913 Ga. LEXIS 180 (1913).

Assigning error as to amount. — Intervenors cannot for the first time, in their bill of exceptions, successfully assign error to the judgment on the ground that it did not affirmatively appear that the proposed bond issue was within the constitutional limitation of amount. Sewell v. City of Tallapoosa, 145 Ga. 19, 88 S.E. 577, 1916 Ga. LEXIS 161 (1916).

Judgment conforms to pleading when judgment contains same recitals. — Judgment validating bonds conformed to the pleadings upon which based, when the judgment contained the same recitals as pleadings as to character and amount of bonds raised. Sewell v. City of Tallapoosa, 145 Ga. 19, 88 S.E. 577, 1916 Ga. LEXIS 161 (1916).

Sufficiency of allegations of fraud. — When it does not appear that the county attorney made any misrepresentation as to any fact or facts concerning the hearing, or the postponement thereof, or waived the filing of any objections, or promised to continue the hearing, and it appearing from the petition that the petitioners knew of the time legally set for the validation proceeding, and the only conclusion to be drawn being that through their laches and negligence the petitioners failed to file objections, the petition does not allege facts sufficient to show such fraud as would warrant the setting aside of the judgment. Swicord v. Grady County, 24 Ga. App. 522, 101 S.E. 395, 1919 Ga. App. LEXIS 895 (1919).

RESEARCH REFERENCES

Am. Jur. 2d.

64 Am. Jur. 2d, Public Securities and Obligations, §§ 347, 350.

C.J.S.

64A C.J.S., Municipal Corporations, § 2081 et seq.

ALR.

Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

36-82-24. Effect of judgment of validation.

In the event that no appeal is filed within the time prescribed by law or, if an appeal is filed, that the judgment is affirmed on appeal, the judgment of the superior court confirming and validating the issuance of the bonds shall be forever conclusive upon the validity of the bonds against the county, municipality, or political subdivision.

History.

Ga. L. 1897, p. 82, § 4; Civil Code 1910, § 448; Code 1933, § 87-305; Ga. L. 1966, p. 76, § 3.

JUDICIAL DECISIONS

Illegal use of funds does not relieve liability. — Fact that funds derived from sale of school bonds may have been improperly used by trustees does not relieve taxpayers from liability to innocent bondholders. Page v. Sansom, 184 Ga. 623, 192 S.E. 203, 1937 Ga. LEXIS 585 (1937).

When bonds had been duly validated, and the defendants failed to intervene in proceeding to validate bonds, the defendant's could not be heard to attack the validity of act under which bonds were issued on the ground that the act was unconstitutional. Gowran v. Wood, 171 Ga. 433, 156 S.E. 21, 1930 Ga. LEXIS 377 (1930).

RESEARCH REFERENCES

Am. Jur. 2d.

64 Am. Jur. 2d, Public Securities and Obligations, § 351 et seq.

C.J.S.

64A C.J.S., Municipal Corporations, § 2081.

ALR.

Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

Rescission of vote authorizing school district or other municipal bond issue, expenditure, or tax, 68 A.L.R.2d 1041.

36-82-25. Entry of reference to judgment of validation on bonds; use of entry as evidence.

Bonds issued under this part shall have stamped or written thereon, by the proper officers of the county, municipality, or political subdivision issuing the bonds or their agents or servants, the words "Validated and confirmed by judgment of the superior court," along with the date when the judgment was rendered and the court in which it was rendered, which entry shall be signed by the clerk of the superior court in which the judgment was rendered. Such entry shall be original evidence of the fact of such judgment and shall be received as original evidence in any court in this state.

History.

Ga. L. 1897, p. 82, § 5; Civil Code 1910, § 449; Code 1933, § 87-306.

JUDICIAL DECISIONS

Statutes do not require any particular form or any specific statement in bonds issued by any county. Touchton v. Echols County, 211 Ga. 85, 84 S.E.2d 81, 1954 Ga. LEXIS 510 (1954).

No mandamus to certify instrument not in conformity. — It is the duty of the clerk of the superior court to sign a validation certificate and attach the seal of the clerk's office to all county bonds regularly validated. The law contemplates, however, that a certification by the clerk shall speak the truth, and the clerk may not be required by a mandamus, or otherwise, to certify an instrument that does not conform to the records in the clerk's office. Touchton v. Echols County, 211 Ga. 85, 84 S.E.2d 81, 1954 Ga. LEXIS 510 (1954).

RESEARCH REFERENCES

C.J.S.
64A C.J.S., Municipal Corporations, § 2076.

36-82-26. Payment of costs of judicial validation proceedings.

The costs of the proceedings shall be paid in any event by the county, municipality, or political subdivision desiring to issue the bonds.

History.
Ga. L. 1897, p. 82, § 7; Civil Code 1910, § 451; Code 1933, § 87-307.

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 354.

36-82-27. Procedure upon failure of district attorney or Attorney General to file petition with superior court generally.

When any county, municipality, or political subdivision of the state has held an election for the issuance of bonds and notice has been duly served on the district attorney or the Attorney General under authority of such county, municipality, or other political subdivision, for the purpose of securing a judicial validation of such bonds, but the district attorney or Attorney General has failed to proceed within the time specified by Code Section 36-82-21, it shall be competent for the county, municipality, or other political subdivision to represent such facts in writing to the court, and to represent further that the failure has been without fault on the part of the county, municipality, or other political subdivision. In such case it shall be the duty of the court and it shall have the power and authority to inquire into the facts and, upon being satisfied that the failure has not arisen from any fault or neglect on the part of the county, municipality, or other political subdivision, to issue an order authorizing and directing the district attorney or the Attorney General to proceed within ten days to file the petition authorized by Code Section 36-82-21. Thereafter, the proceedings shall be heard in the same manner as would have been followed had the petition been duly and promptly filed in the first instance.

History.
Ga. L. 1920, p. 110, § 1; Code 1933, § 87-308.

36-82-28. Effect of judgment of validation upon failure to file petition.

Where proceedings are had as provided in Code Section 36-82-27 and result in a judgment validating the bonds, the bonds shall be held and deemed to be as fully and completely validated to all intents and purposes as though the proceedings had been had originally as provided by law and the judgment of validation shall be finally and completely conclusive in like manner as is now provided by Code Section 36-82-25.

History.
Ga. L. 1920, p. 110, § 2; Code 1933, § 87-309.

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 351 et seq.
ALR.
Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

Part 2

Validation by Holder of Bonds Issued by Counties or Municipalities Subsequent to Adoption of Constitution of 1877

RESEARCH REFERENCES

ALR.
Estoppel of municipal corporation or other political subdivision by recitals in its bonds to dispute their validity as affected by the character of the owner of bonds as an original holder or a transferee, 86 A.L.R. 1129.

36-82-40. Authorization and procedure generally.

The holder of any outstanding bond or bonds of any county, municipality, or political subdivision in this state issued subsequently to the adoption of the Constitution of 1877, the validating of which is not otherwise provided for by Code Sections 36-82-1 through 36-82-6 and Part 1 of this article, shall have the right to have the same validated in the manner provided in this part.

History.
Ga. L. 1908, p. 72, § 1; Civil Code 1910, § 453; Code 1933, § 87-401.
Law reviews.
For article discussing the impact on bond issues of challenges to voting procedures, see 15 Ga. St. B. J. 15 (1978).

RESEARCH REFERENCES

ALR.
Validity, within authorized debt, tax, or voted limit, of bond issue in excess of amount permitted by law, 175 A.L.R. 823.

36-82-41. Furnishing of indemnity bond by holder.

The holder of any bond or bonds described in Code Section 36-82-40 who desires to have the same validated shall first enter into an obligation with sufficient security to indemnify the county, municipality, or political subdivision issuing the bond or bonds desired to be validated against all court costs and other expenses incident to the validating proceedings, the sufficiency of the surety on such obligation to be approved by the executive officer or officers of the county, municipality, or political subdivision.

History.
Ga. L. 1908, p. 72, § 2; Civil Code 1910, § 454; Code 1933, § 87-402.

36-82-42. Petition by holder to district attorney or Attorney General.

The holder of any bond or bonds described in Code Sections 36-82-40 and 36-82-41, having given indemnity against cost, may present to the district attorney of the circuit in which the county, municipality, or political subdivision which issued such bond or bonds is located or to the Attorney General in the event the district attorney is absent from the circuit, a petition setting forth a description of the bond or bonds sought to be validated, stating the date of issue, the rate of interest, the number and denomination of all bonds issued, and the time and place for payment of principal and interest, with a full copy of all resolutions and other proceedings authorizing the issue of the bonds, and indicating any and all other facts showing the authority of the county, municipality, or political subdivision to issue such bonds and the purpose for which they were issued.

History.
Ga. L. 1908, p. 72, § 3; Civil Code 1910, § 455; Code 1933, § 87-403.

36-82-43. Petition by district attorney or Attorney General to superior court; order to show cause; service of petition and order; answer.

Within 20 days from the date on which the petition of the holder of any bond or bonds is presented to the district attorney or to the Attorney General such officer shall prepare and file, in the office of the clerk of the superior court of the county which issued the bonds or in the county in which the municipality or political subdivision which issued the

bonds is located, a petition directed to the superior court of the county, in the name of the state and against the county, municipality, or political subdivision issuing the bonds, setting forth all the facts stated in the petition presented to him as provided in Code Section 36-82-42, the name of the county, municipality, or political subdivision which issued the bonds, the amount of bonds issued, for what purpose they were issued, a full description of the bonds, the authority under which they were issued, and the number of outstanding bonds. He shall obtain from the judge of the superior court of the county an order requiring the county, municipality, or political subdivision to show cause, by the proper officer or officers, at such time and place within 20 days from the filing of the petition as the judge of the court may direct, why the bonds described in the petition should not be confirmed and validated. The petition and order shall be served in the manner provided by law for the service of petitions upon counties, municipalities, or political subdivisions. The officer or officers of the county, municipality, or political subdivision shall make sworn answer to the petition within the time prescribed.

History.
Ga. L. 1908, p. 72, § 4; Civil Code 1910, § 456; Code 1933, § 87-404.

JUDICIAL DECISIONS

When place of hearing fixed in another county, judgment a nullity. — When the judge of the superior court of the county in which the bonds were to be issued, upon a petition filed by the solicitor general (now district attorney) fixed the place of hearing at a point in another county, giving notice of the time and place of hearing, the court was without jurisdiction to pass judgment validating the bonds, and a judgment validating the bonds was a mere nullity. Tyson v. McIntosh County, 147 Ga. 233, 93 S.E. 407, 1917 Ga. LEXIS 138 (1917).

Affidavit by one member of board of education sufficient for petition. — When a petition to validate bonds to be issued by a county board of education is filed by the solicitor general (now district attorney), it is not necessary that the answer to such petition by the board of education, required by this section, be sworn to by each member of the board, but the affidavit of one member of the board is sufficient. King v. County Bd. of Educ., 42 Ga. App. 563, 156 S.E. 710, 1931 Ga. App. LEXIS 56 (1931), aff'd, 174 Ga. 685, 164 S.E. 52, 1932 Ga. LEXIS 122 (1932).

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, §§ 339 et seq., 356 et seq.

36-82-44. Hearing and judgment; parties to proceedings; appeal.

Within the time prescribed in the order or such further time as he may fix, the judge of the superior court shall proceed to hear and determine all questions of law and fact in the case and shall render judgment thereon. Any citizen of this state who is resident in the county, municipality, or political subdivision desiring to issue the bonds may become a party to the proceedings at or before the time set for the hearing. Any party thereto who is dissatisfied with the judgment of the court confirming and validating the issuance of the bonds or refusing to confirm and validate the issuance of the bonds may appeal from the judgment under the procedure provided by law in cases of injunction. Only a party to the proceedings at the time the judgment appealed from is rendered may appeal from the judgment.

History.
Ga. L. 1908, p. 72, § 5; Civil Code 1910, § 457; Code 1933, § 87-405; Ga. L. 1946, p. 726, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 279, § 5; Ga. L. 1966, p. 76, § 4.

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 345 et seq.
ALR.
Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

36-82-45. Effect of judgment of validation.

If no appeal is filed within the time prescribed by law or if an appeal is filed and the judgment is affirmed on appeal, the judgment of the superior court confirming and validating the bonds shall be forever conclusive upon the validity of the bonds against the county, municipality, or political subdivision.

History.
Ga. L. 1908, p. 72, § 6; Civil Code 1910, § 458; Code 1933, § 87-406; Ga. L. 1966, p. 76, § 5.

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 351 et seq.
ALR.
Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

36-82-46. Applicability of Code Sections 36-82-22 and 36-82-25.

Code Sections 36-82-22 and 36-82-25, providing for a notice of proceeding to validate and proof of validation, are made applicable in

all proceedings to validate bonds under Code Sections 36-82-40 through 36-82-45.

History.
Ga. L. 1908, p. 72, § 7; Civil Code 1910, § 459; Code 1933, § 87-407.

RESEARCH REFERENCES

ALR.
Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

36-82-47. Payment of costs of proceedings.

All the costs of the proceedings shall be paid by the holder or holders requesting the validation of the bonds.

History.
Ga. L. 1908, p. 72, § 8; Civil Code 1910, § 460; Code 1933, § 87-408.

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 354.

ARTICLE 3

REVENUE BONDS

Cross references.
Constitutional provisions, Ga. Const. 1983, Art. IX, Sec. VI.

Law reviews.
For article discussing extraterritorial provision of utility services by municipality, see 12 Ga. L. Rev. 1 (1977).

JUDICIAL DECISIONS

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General Consideration
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General Consideration

Courts bound by constitutional provision. — Under Ga. Const. 1945, Art. VII, Sec. VII, Para. V (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I), the grant of such broad powers to municipalities as are contained in the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) is authorized, and by that the courts are bound and have nothing to do with the reasonableness, wisdom, policy, or expediency of the law. Lipscomb v.

General Consideration (Cont'd)

Cumming, 211 Ga. 55, 84 S.E.2d 3, 1954 Ga. LEXIS 476 (1954).

Issuance of bonds not unconstitutional. — When it appeared that revenue anticipation bonds were to be issued by a town for improvement of waterworks under the authority and in accordance with the method prescribed by Ga. Const. 1945, Art. VII, Sec. VII, Para. V (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I), and the laws incorporated therein by reference thereto, the proposed issuance of the revenue anticipation bonds, the proceeding for validation, and the judgment of validation were not contrary to any provisions of the Constitution. Thigpen v. Town of Davisboro, 81 Ga. App. 610, 59 S.E.2d 522, 1950 Ga. App. LEXIS 954 (1950).

Acts restricting rights granted under article inoperative. — Since the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), adopted in Ga. Const. 1945, Art. VII, Sec. VII, Para. V (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I), is a part of the charter of every municipality, any acts of the General Assembly tending to restrict the power of a municipality to exercise rights granted thereunder are inoperative for this purpose. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672, 1955 Ga. App. LEXIS 462 (1955).

Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) sets out general law by which counties, municipalities, and other political subdivisions may raise revenue for projects contemplated. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672, 1955 Ga. App. LEXIS 462 (1955).

Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) does not purport to be general law exhaustive of purposes for which revenue bonds or certificates may be issued and this is not violative of the Constitutional provision that laws of a general nature shall have uniform operation throughout the state, and no special law shall be enacted in any case for which provisions have been made by an existing general law (Ga. Const. 1945, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I)). Sigman v. Brunswick Port Auth., 214 Ga. 332, 104 S.E.2d 467, 1958 Ga. LEXIS 417 (1958).

Effect of contradictory local legislation. — General Assembly intended that every municipality should have exactly the same power to do all of the acts authorized by the Revenue Bond Law of 1937 (O.C.G.A. Art. 3, Ch. 82, T. 36) as adopted by Ga. Const. 1945, Art. VII, Sec. VII, Para. I (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I), and the constitutional provisions being a part of the charter of a municipality, it necessarily follows that it has the authority to proceed thereunder regardless of other and alternate, or even contradictory, plans which might have been contained in local legislation. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672, 1955 Ga. App. LEXIS 462 (1955).

Article is part of municipal charter. — When the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) and the Constitution of 1945 were adopted, the provisions of each as to revenue bonds became a part of the charter of every municipality. Lipscomb v. Cumming, 211 Ga. 55, 84 S.E.2d 3, 1954 Ga. LEXIS 476 (1954); Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672, 1955 Ga. App. LEXIS 462 (1955).

Certificates not debts within constitutional limitations. — Revenue anticipation bonds issued under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) do not subject the political subdivision issuing the bonds to any pecuniary liability thereon and are, therefore, not debts against such political subdivision within the meaning of the constitutional provision limiting such indebtedness (Ga. Const. 1945, Art. VII, Sec. VII, Para. I (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I)). Fort Oglethorpe v. Catoosa County, 80 Ga. App. 188, 55 S.E.2d 753, 1949 Ga. App. LEXIS 802 (1949).

Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) is designed to provide for self-liquidating projects and revenue bonds therein contemplated are not to be a charge against the general credit of the county or municipality. The liability is to be satisfied only from revenues pro-

duced by the undertaking and, under the specific terms of the statute, the political division will never be required to aid in its retirement with funds derived from any other source, and is in fact prohibited from doing so. Reed v. City of Smyrna, 201 Ga. 228, 39 S.E.2d 668, 1946 Ga. LEXIS 463 (1946).

Origin of funds as affecting public or private status. — Fact that the funds proposed to be used are to be derived from the sale of revenue anticipation bonds does not deprive the funds of the character of "public funds," use of which for private purpose or enterprise is prohibited. Beazley v. De Kalb County, 210 Ga. 41, 77 S.E.2d 740, 1953 Ga. LEXIS 479 (1953).

Contracts

Provisions of the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) did not render meaningless the mandate of former Code 1933, § 69-202 (see now O.C.G.A. § 36-30-3), forbidding councils from binding their successors. The express statutory authority for a municipality to contract with the bondholders as to specified future utility rates did not extend to contracts with the wholesaler of electrical power. Johnson v. State, 107 Ga. App. 16, 128 S.E.2d 651, 1962 Ga. App. LEXIS 554 (1962).

Covenants against disposing of undertaking enforceable. — Covenants against leasing or otherwise disposing of an undertaking, revenues of which were pledged in accordance with the contract between a governing authority and its bondholders under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), constitute a contract between such governing body and each bondholder which was enforceable by the latter under the provisions of Ga. L. 1937, p. 761, § 6 (see now O.C.G.A. § 36-82-65). Hicks v. State, 99 Ga. App. 302, 108 S.E.2d 187, 1959 Ga. App. LEXIS 842 (1959).

Specific Projects

Creation of water district and system outside city approved. — Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) defines a "municipality" (now "governmental body") to be any county, city, or town. It authorizes any such municipality to create a water district and to construct, operate, and maintain a water system which may be located wholly within or wholly without the municipality, or partially within and partially without the municipality. City of Trenton v. Dade County, 75 Ga. App. 326, 43 S.E.2d 432, 1947 Ga. App. LEXIS 536 (1947).

No cause of action to enjoin city from furnishing water outside city limits. — Petition which seeks to enjoin city from constructing a water line and furnishing water to customers because the customers are located outside the corporate limits of the city fails to state a cause of action. Lipscomb v. Cumming, 211 Ga. 55, 84 S.E.2d 3, 1954 Ga. LEXIS 476 (1954).

Bonds issued to extend existing system of improvements approved. — Under the provisions of the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) and the constitutional sanction thereof (Ga. Const. 1945, Art. VII, Sec. VII, Para. V (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I)), revenue anticipation bonds may be issued by a municipality to extend an existing system of municipal improvements by pledging the entire revenue of the whole system to the payment thereof, subject to the rights of holders of prior issues, without prorating the values of the existing and the new facilities, and pledging only the revenue of such new facilities according to their proportion to the total value. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672, 1955 Ga. App. LEXIS 462 (1955).

Government center and retardation center bonds confirmed and validated. See Building Auth. v. State, 253 Ga. 242, 321 S.E.2d 97, 1984 Ga. LEXIS 893 (1984).

Issuing certificates for construction of warehouse not authorized. — Under the restrictive provisions of Ga. Const. 1945, Art. VII, Sec. VII, Para. V (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I), that governmental subdivisions of the state shall issue revenue anticipation bonds only to provide funds for such facilities and undertakings as are "specifically authorized and enumerated" by Acts there

Specific Projects (Cont'd)

referred to, a county is not authorized to issue such revenue bonds for the acquisition or construction and equipping of warehouses to be used in the conduct of a general storage warehouse business, which is ordinarily carried on by private enterprise. Such an undertaking is not properly included within the definition of the word "terminal" as used in the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), and not "specifically authorized and enumerated" therein. Beazley v. De Kalb County, 210 Ga. 41, 77 S.E.2d 740, 1953 Ga. LEXIS 479 (1953).

Contract with engineering company not payable from general funds. — Liability against a municipality arising out of and by virtue of any contract made by such municipality with an engineering company, entered into pursuant to the provisions of Ga. Const. 1945, Art. VII, Sec. VII, Para. V (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I), and the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), is not an indebtedness of the municipality which can be paid and satisfied out of the general tax fund or other general funds of the municipality. City of Royston v. Littrell Eng'g Co., 87 Ga. App. 903, 75 S.E.2d 678, 1953 Ga. App. LEXIS 878 (1953).

Procedure

Superior rights not gained by prior proceeding to validate certificates. — There is nothing contained in the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) which expressly or by necessary implication gives that municipality which institutes proceedings first for the validation of its bonds, and the confirmation of the security for the payment thereof, superior rights over another municipality which may file proceedings to validate and confirm the security for its bonds subsequently thereto; this is true although the two proposed districts may embrace the same area or portions of the same area. City of Trenton v. Dade County, 75 Ga. App. 326, 43 S.E.2d 432, 1947 Ga. App. LEXIS 536 (1947).

Conclusiveness of judgment validating revenue bonds. — Judgment validating revenue bonds, unless excepted to within the time provided by law, is conclusive upon all questions made, or that might have been made, prior to the judgment of validation, including the constitutionality of the statute under which the proceedings are had. Dawson v. Hospital Auth., 212 Ga. 146, 91 S.E.2d 12, 1956 Ga. LEXIS 280 (1956).

Defect in service waived by appearance. — When the mayor and counsel of a municipality appear, file an answer, and acknowledge service of a petition for validating revenue bonds, any defect in the service of the petition on the mayor and counsel is held to be waived by appearance and pleading. Dade County v. State, 75 Ga. App. 330, 43 S.E.2d 434, 1947 Ga. App. LEXIS 537 (1947).

Written notice by attorney on solicitor general (now district attorney) sufficient. — When a municipality through the municipality's proper officers, under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), employs an attorney to guide and direct the municipality generally and to prepare proceedings for the purpose of validating revenue bonds, and such attorney prepares the resolution of the municipality and serves written notice of the passage of the resolution on the solicitor general (now district attorney), such will be deemed sufficient notice to the solicitor general (now district attorney). Dade County v. State, 75 Ga. App. 330, 43 S.E.2d 434, 1947 Ga. App. LEXIS 537 (1947).

OPINIONS OF THE ATTORNEY GENERAL

Eminent domain beyond corporate city limits. — Georgia municipalities have power of eminent domain, even beyond corporate city limits, for public works financed by revenue bonds. 1981 Op. Att'y Gen. No. U81-1.

Municipalities in business only to serve public welfare. — In the absence

of special circumstances, it is not within the constitutional power of a legislature to authorize a municipal corporation (county) to engage in a business which can be and ordinarily is carried on by private enterprise, merely for the purpose of obtaining an income or deriving a profit therefrom, but it should be allowed to go into business only on the theory that thereby the public welfare will be subserved. 1965-66 Op. Att'y Gen. No. 66-176.

County cannot make donations to water and sewerage authority, but it can enter into contracts with such authority. 1970 Op. Att'y Gen. No. U70-225.

Athletic facilities approved. — Under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), the county board of education could erect athletic fields, grandstands, and stadiums with revenue bonds to be retired solely from the usage of the fields, grandstands, and stadiums. 1945-47 Ga. Op. Att'y Gen. 168.

Ambulance service. — County has no right, in absence of special or local legislation granting such right, to operate ambulance service. 1965-66 Op. Att'y Gen. No. 66-176.

Weight of advice of county attorney. — Before a county board of education should undertake to create a debt under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), the county board of education should advise with the county attorney and be governed according to the county attorney's advice and instruction. 1945-47 Ga. Op. Att'y Gen. 168.

36-82-60. Short title.

This article shall be known and may be cited as the "Revenue Bond Law."

History.

Ga. L. 1937, p. 761, § 1; Ga. L. 1957, p. 36, § 1; Ga. L. 2025, p. 1029, § 36(45)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, inserted "shall be known" near the beginning of this Code section.

Law reviews.

For article discussing the impact on bond issues of challenges to voting procedures, see 15 Ga. St. B. J. 15 (1978).

JUDICIAL DECISIONS

Constitutionality. — As applied to the establishment and maintenance of systems of waterworks by counties, the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) is not subject to attack on the ground that the law violates the constitutional provision that protection to person and property is the paramount duty of government, and shall be impartial and complete. Nor does the Constitution otherwise prohibit the General Assembly from authorizing such an undertaking by counties. The court did not err in denying an interlocutory injunction. Miller v. Head, 186 Ga. 694, 198 S.E. 680, 1938 Ga. LEXIS 646 (1938); Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942)

Certificates not to be charged against general credit. — Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) is designed to provide for self-liquidating projects and the revenue bonds therein contemplated are not to be a charge against the general credit of the county or municipality. The liability is to be satisfied only from revenues produced by the undertaking and under the specific terms of the statute, the political division will never be required to aid in its retirement with funds derived from any other source, and is in fact prohibited from doing so.

The article is not unconstitutional by virtue of violating the constitutional limitation on municipal debts in Ga. Const. 1877, Art. VII, Sec. VII, Para. I (see now Ga. Const. 1983, Art. IX, Sec. V, Para. I). Miller v. Head, 186 Ga. 694, 198 S.E. 680, 1938 Ga. LEXIS 646 (1938).

Superior rights not gained by prior proceeding to validate certificates. — There is nothing contained in the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) which expressly or by necessary implication gives that municipality which institutes proceedings first for the validation of the municipality's bonds, and the confirmation of the security for the payment thereof, superior rights over another municipality which may file proceedings to validate and conform the security for the municipality's bonds subsequently thereto; this is true although the two proposed districts may embrace the same area or portions of the same area. Dade County v. State, 202 Ga. 191, 42 S.E.2d 439, 1947 Ga. LEXIS 381 (1947).

City's proceeding to validate bonds not barred by county filing proceeding to validate bonds for overlapping water district. — When the governing body of a county has fully complied with all the provisions of the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) in the creation of a water district and caused proceedings to be filed for the validation of the county's bonds, the fact that the governing body of a city located wholly within the area embraced in the county's district has likewise fully complied with all the provisions of the law in the creation of a water district comprised only of the area located within its corporate limits, and caused proceedings to be filed to validate and confirm its bonds, does not constitute a legal reason why the city's bonds should not be validated and confirmed. Dade County v. State, 202 Ga. 191, 42 S.E.2d 439, 1947 Ga. LEXIS 381 (1947).

Standing to challenge bond validation. — Appeal filed by challengers to a trial court judgment confirming and validating a city's bond issuance was dismissed because the challengers failed to present any evidence to establish the challengers' standing under O.C.G.A. § 36-82-77(a) to become parties in the bond validation proceeding; thus, the challengers lacked standing to appeal the judgment in that proceeding. Sherman v. City of Atlanta, 317 Ga. 345, 730 S.E.2d 113, 2013 Ga. LEXIS 556 (2013).

Trial court properly dismissed a county resident's preemptive declaratory judgment action challenging the issuance of bonds for a development project on the ground that a bond validation petition under the Georgia Revenue Bond Law, O.C.G.A. § 36-82-60 et seq., in which the resident intervened was the exclusive forum for adjudication of the resident's claims. Courts are not to render declaratory judgments if other statutory remedies have been specifically provided, as was the case here, and the resident's claims were adequately addressed and adjudicated in the validation proceeding. Woodham v. City of Atlanta, 283 Ga. 95, 657 S.E.2d 528, 2008 Ga. LEXIS 136 (2008), superseded by statute as stated in Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26, 2013 Ga. LEXIS 493 (2013).

Use of local school taxes for redevelopment. — School system, development authority, and others were properly granted summary judgment in a suit challenging the allocation of school taxes because the 2008 amendments to Ga. Const. 1983, Art. IX, Sec. II, Para. VII(b) and O.C.G.A. § 36-44-9(g), governing tax allocation districts, changed the law and retroactively allowed use of local school taxes for general redevelopment purposes. Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26, 2013 Ga. LEXIS 493 (2013).

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, §§ 11, 62.

36-82-61. Definitions.

As used in this article, the term:

(1) "Governing body" means the board, commission, council, or other local legislative body of a governmental body.

(2)(A) "Governmental body" means any school district, county, or municipal corporation of this state.

(B) The term "governmental body" shall also mean and include highway districts of the state which have been or may hereafter be created as political subdivisions of the state, which shall have the same rights and powers to operate under this article as have counties, municipal corporations, and school districts. Such highway districts as political subdivisions of the state shall be limited, however, in such undertakings to the construction, acquisition, and building of highways, bridges, causeways, approaches, viaducts, tunnels, and all things incidental to the improvement of highways located within their respective districts as created by the Constitution and laws of this state.

(C) The term "governmental body" shall also mean and include state and local public authorities having corporate powers which have been or may hereafter be created by general, local, or special Act of the General Assembly. Such state or local authorities are fully empowered to issue revenue-anticipation certificates and to operate under this article in the same manner and to the same extent as counties or municipal corporations of the state are authorized to do.

(D) For the purposes of Code Sections 36-82-74 through 36-82-82, inclusive, the term "governmental body," in addition to its definitions in subparagraphs (A) through (C) of this paragraph, means a hospital authority the revenue certificates of which are required by Code Section 31-7-81 to be confirmed and validated in accordance with the procedure of this article.

(3) "Revenue" or "revenue of the undertaking" means all revenues, income, and earnings arising out of or in connection with the operation or ownership of the undertaking and, if so stated in the resolution or resolutions authorizing the issuance of obligations under this article, also means moneys received as grants from the United States of America, from this state, or from any instrumentality or agency of the foregoing in aid of such undertaking.

(4) "Undertaking" includes the following revenue-producing undertakings or any combination of two or more of such undertakings, whether now existing or hereafter acquired or constructed:

(A) Causeways, tunnels, viaducts, bridges, and other crossings;

(B) Highways, parkways, airports, docks, piers, wharves, terminals, and other facilities;

(C) Systems, plants, works, instrumentalities, and properties:

(i) Used or useful in connection with the obtaining of a water supply and the conservation, treatment, and disposal of water for public and private uses;

(ii) Used or useful in connection with the collection, treatment, and disposal of sewage, waste, and storm water; together with all parts of any such undertaking and all appurtenances thereto, including lands, easements, rights in land, water rights, contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage disposal plants, intercepting sewers, trunk connecting and other sewer and water mains, filtration works, pumping stations, and equipment;

(iii) Used or useful in connection with the collection, treatment, reuse, or disposal of solid waste; or

(iv) Used or useful in connection with buying, constructing, extending, operating, and maintaining gas or electric generating, transmission, and distribution systems together with all necessary appurtenances thereof; provided, however, that any revenue certificates issued by a governmental body with electric utility assets that have a net book value of less than $300 million to buy, construct, extend, operate, and maintain electric generating, transmission, and distribution systems shall, before being undertaken, be authorized by a majority of those voting at an election held for the purpose in the county, municipal corporation, or political subdivision affected, the election for such to be held in the same manner as is used in issuing bonds of such county, municipal corporation, or political subdivision and the said elections shall be called and provided for by officers in charge of the fiscal affairs of said county, municipal corporation, or political subdivision affected;

(D) Dormitories, laboratories, libraries, and other related facilities;

(E) Parks, golf links and fairways, tennis courts, swimming pools, playgrounds, athletic fields, grandstands and stadiums; buildings to be used for various types of sports, including baseball

and football; buildings to be constructed and used for the housing of exhibits for fairs and educational purposes; buildings to be used for the housing of livestock, horses, cattle, swine, poultry, and agricultural exhibits for exhibition purposes; the erection and construction of buildings to be used for amusement purposes or educational purposes or a combination of the two; and such buildings to be used for fairs, expositions, or exhibitions in connection therewith;

(F) Combinations of sea wall, groin, and beach erosion protection systems;

(G) Public parking areas and public parking buildings;

(H) Purchase of lands used by the United States government as army camps for the training of soldiers during the war, when and if the same is declared surplus by the United States government or its authority, provided that a county shall only be allowed to purchase lands which were within its boundaries at the time such lands were acquired by the United States government or any division of the United States government;

(I) Parking meters on streets, thoroughfares, parkways, and any avenue of traffic, such meters to be located thereon or immediately adjacent thereto for the purpose of providing space for vehicles and authorizing the use of same for parking purposes upon the payment of a charge therefor;

(J) Purchase of existing public common carriers of passengers for hire and facilities necessary, incident, or needful thereto by the use of motor buses, trackless trolleys, electric trolleys, or any other means of transportation of passengers on the streets and highways;

(K) The purchase of land and the construction thereon of facilities for lease to industries, so as to relieve abnormal unemployment conditions; and

(L) Jails and all other structures and facilities which are necessary and convenient for the operation of jails.

History.

Ga. L. 1937, p. 761, § 2; Ga. L. 1939, p. 362, § 1; Ga. L. 1949, p. 973, § 1; Ga. L. 1950, p. 20, § 1; Ga. L. 1950, p. 188, § 1; Ga. L. 1950, p. 422, § 1; Ga. L. 1951, p. 46, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 489, § 1; Ga. L. 1957, p. 410, § 1; Ga. L. 1957, p. 453, § 1; Ga. L. 1973, p. 588, § 1; Ga. L. 1980, p. 709, § 1; Ga. L. 1983, p. 839, § 1; Ga. L. 1984, p. 22, § 36; Ga. L. 1987, p. 3, § 36; Ga. L. 1995, p. 286, § 1; Ga. L. 2003, p. 862, § 2; Ga. L. 2020, p. 493, § 36/SB 429; Ga. L. 2020, p. 795, § 1/SB 43.

Law reviews.

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Construction of sewer system is clearly undertaking contemplated under the Revenue Bond Law, O.C.G.A. Art. 3, Ch. 82, T. 36. Kelley v. City of Griffin, 257 Ga. 407, 359 S.E.2d 644, 1987 Ga. LEXIS 853 (1987).

Creation of water district and system outside city approved. — Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) defines a "municipality" (now "governmental body") to be any county, city, or town of this state. It authorizes any such municipality to create a water district and to construct, operate, and maintain a water system which may be located wholly without the municipality, or partially within and partially without the municipality. City of Trenton v. Dade County, 75 Ga. App. 326, 43 S.E.2d 432, 1947 Ga. App. LEXIS 536 (1947).

Combining waterworks and sewage systems approved. — Argument that the waterworks system is a proprietary and revenue-producing function, and that the sewage system is a governmental function, and for this reason the two cannot be combined into one system, notwithstanding any authority to do so under this section, is without merit. Under Ga. Const. 1945, Art. VII, Sec. VII, Para. V (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I), it is expressly provided that water systems and sewerage systems may be combined. Reed v. City of Smyrna, 201 Ga. 228, 39 S.E.2d 668, 1946 Ga. LEXIS 463 (1946).

Word "terminal" as used in the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) means a place provided by or for any type of common carrier, including buildings and structures incidental to their services, such as shelters and enclosures for the comfort and convenience of passengers, or for the care and safety of freight pending shipment or delivery to consignee or to connecting carriers. Beazley v. De Kalb County, 210 Ga. 41, 77 S.E.2d 740, 1953 Ga. LEXIS 479 (1953).

County payments to airport authority's sinking fund as "revenue." — Under a contract between county and airport authority for use by the county of an expanded airport facility, although the county's consideration would not be paid directly to the authority, but paid to the custodian of the authority's sinking fund, the consideration did not lose its character as "revenue" for the authority and such payment scheme was not a reason to deny validation of the authority's revenue bonds. Clayton County Airport Auth. v. State, 265 Ga. 24, 453 S.E.2d 8, 1995 Ga. LEXIS 68 (1995).

Hotel/motel tax proceeds were revenue. — Hotel/motel tax funding agreement for a stadium project worked with a bond proceeds funding agreement to ensure that the stadium's tax proceeds were expended consistent with O.C.G.A. § 48-13-51(a)(5)(B), and there was no requirement that the development authority own the stadium for the tax proceeds to be considered as part of the revenue to pay for the bonds: under O.C.G.A. § 36-82-61(3), "revenue" included revenues arising out of or in connection with the operation or ownership of the stadium. Cottrell v. Atlanta Dev. Auth., 297 Ga. 1, 770 S.E.2d 616, 2015 Ga. LEXIS 179 (2015).

No law makes county commissioners individually the governing body of the county in cases of water systems financed by revenue bonds or certificates. Gwinnett County v. Archer, 102 Ga. App. 813, 118 S.E.2d 97, 1960 Ga. App. LEXIS 757 (1960).

County was proper party plaintiff in suit alleging that former commissioners paid an excessive fee to the commissioners' attorney and improperly delegated to the attorney the authority to settle with and pay other attorneys in connection with establishment of a water system financed by revenue anticipation bonds. Gwinnett County v. Archer, 102 Ga. App. 813, 118 S.E.2d 97, 1960 Ga. App. LEXIS 757 (1960).

OPINIONS OF THE ATTORNEY GENERAL

Application of section to buildings constructed for educational purposes. — While counties are authorized to issue revenue bonds in paragraph (2) of this section, and while an "undertaking" is said to include buildings constructed for educational purposes under paragraph (4), both Ga. Const. 1945, Art. VII, Sec. VII, Para. V (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I) and this section require that the funds must be for a revenue-producing facility and that the obligations be paid only from revenue produced by this revenue-producing facility. 1954-56 Ga. Op. Att'y Gen. 222.

Housing for teachers not included. — Since subparagraph (4)(E) contains no general language, despite the fact that reference is made to housing facilities for swine, cattle, etc., it does not include housing for teachers. Cattle, swine, and other domestic animals constitute only one type of personal property belonging to the school which would require housing no different than class room furniture or laboratory supplies and which would be used as an integral part of the educational operation, whereas the home or living quarters of a teacher would not fall in the same category. 1958-59 Ga. Op. Att'y Gen. 140.

General phrase "other related facilities" in subparagraph (4)(D) cannot be construed to include housing facilities for teachers. The specific subjects, i.e., "dormitories, laboratories, libraries," enumerated prior to the general phrase "other related facilities," all relate to facilities that constitute an integral part of the physical school properties for use by the students and public generally, whereas housing facilities would not be construed as a part of the school plant or for use by the public generally, notwithstanding the incidental public benefit to be derived therefrom in facilitating the employment of desirable teachers. 1958-59 Ga. Op. Att'y Gen. 140.

County cannot make donations to water and sewerage authority, but the county can enter into contracts with such authority. 1970 Op. Att'y Gen. No. U70-225.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 1, 274. 64 Am. Jur. 2d, Public Securities and Obligations, §§ 11, 62, 73 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, §§ 1 et seq., 257. 64A C.J.S., Municipal Corporations, § 2075.

36-82-62. Powers as to undertakings and revenue bonds generally.

(a) In addition to the other powers which it may have, any governmental body shall have power under this article:

(1) To acquire, by gift, purchase, or the exercise of the right of eminent domain, and to construct, to reconstruct, to improve, to better, and to extend any undertaking wholly within or wholly outside the governmental body or partially within and partially outside the governmental body; and to acquire, by gift, purchase, or the exercise of the right of eminent domain, lands, easements, rights in lands, and water rights in connection therewith. For property located within a city, the extraterritorial exercise of eminent domain

for redevelopment purposes shall be approved by resolution by the governing authority of the city. For property located in an unincorporated area of a county, the extraterritorial exercise of eminent domain for redevelopment purposes shall be approved by resolution by the governing authority of the county. Any such resolution shall be adopted under the procedures specified in Code Section 22-1-10 and shall specifically and conspicuously delineate each parcel to be affected. The requirement for approval by a governing authority under this Code section shall be in addition to any other approval required by Title 22;

(2) To operate and maintain any undertaking for its own use, for the use of public and private consumers, and for users within and outside the territorial boundaries of the governmental body;

(3) To prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished or made available by such undertaking; and, in anticipation of the collection of the revenues of the undertaking:

(A) To issue revenue bonds to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking;

(B) To issue revenue bonds at any time to refund or refinance, in whole or in part, all outstanding revenue bonds against any existing undertaking or any combination thereof or its anticipated revenue; and

(C) To issue revenue bonds at any time to refund or refinance, in whole or in part, all obligations or debt of any nature, including outstanding revenue bonds or general obligation bonds, against any existing undertaking or any combination thereof or its anticipated revenue;

(4) To pledge to the punctual payment of such bonds and interest thereon all or any part of the revenues of the undertaking (including the revenues of improvements, betterments, or extensions thereto thereafter constructed or acquired as well as the revenues of existing systems, plants, works, instrumentalities, and properties of the undertaking so improved, bettered, or extended) or of any part of the undertaking;

(5) To fix the value of existing undertakings at the time the governmental body desires to reconstruct, improve, better, or extend the undertaking and to pledge to the payment of the revenue bonds and the interest thereon issued for the undertaking under this article such part of the revenues of the undertaking as the cost of the reconstruction, improvement, betterment, or extension of the under-

taking bears to such cost plus the value of the existing undertaking before reconstruction, improvement, betterment, or extension. This paragraph shall not be construed to restrict or limit the powers granted in paragraph (4) of this Code section; and

(6) To make all contracts, execute other instruments, and do all things necessary or convenient in the exercise of the powers granted in this article, or in the performance of its covenants or duties, or in order to secure the payment of its bonds, provided that no encumbrance mortgage or other pledge of property of the governmental body shall be created thereby, that no property of the governmental body shall be liable to be forfeited or taken in payment of such bonds, and that no debt on the credit of the governmental body shall be thereby incurred in any manner for any purpose.

(b) The use of streets, thoroughfares, parkways, and avenues of traffic in a governmental body for the handling of mobile and foot traffic, the use of same for the parking of mobile equipment, and the availability of off-street parking facilities for such equipment are matters of public concern and the affording of such facilities serves the better welfare of the citizens of a governmental body and may, in the discretion of a governmental body, be considered as one revenue-producing undertaking. If any governmental body desires to acquire, construct, alter, or remodel any property for use as public parking areas or public parking buildings or both and issues revenue bonds in order to finance the acquisition, construction, alteration, or remodeling of the same in accordance with this article, the governmental body may pledge to the payment of the principal, interest, and call premium, if any, of such revenue bonds, the whole or any part of the receipts of parking meters operated by the governmental body, in addition to the revenues derived directly from such public parking areas or public parking buildings or both.

History.

Ga. L. 1937, p. 761, § 3; Ga. L. 1939, p. 362, § 2; Ga. L. 1951, p. 455, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 489, § 2; Ga. L. 1992, p. 2197, § 1; Ga. L. 2006, p. 39, § 24/HB 1313.

Editor's notes.

Ga. L. 2006, p. 39, § 1/HB 1313, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'The Landowner's Bill of Rights and Private Property Protection Act.'"

Ga. L. 2006, p. 39, § 25/HB 1313, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to petitions for condemnation filed on or after April 4, 2006.

Law reviews.

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 157 (2006).

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

Attack of unconstitutionality on ground of failure to evaluate properties cannot be made against paragraph (a)(4) of this section. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672, 1955 Ga. App. LEXIS 462 (1955).

Constitutionality of methods of repaying bonds. — If a municipality desires, a municipality may pledge the entire revenue of existing facilities, along with the revenues from improvements made thereon with funds secured by the issuance of revenue anticipation bonds, to the payment of these certificates and the interest thereon, or the municipality may value the existing facilities, and by following the formula provided in this section, eliminate from the revenue pledged for payment of the bonds that revenue derived from existing facilities on which improvements were made. By the express terms of Ga. Const. 1945, Art. VII, Sec. VII, Para. V (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I), the acts of a municipality under the above provisions of law are authorized by and contravene no provisions of the Constitution. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672, 1955 Ga. App. LEXIS 462 (1955).

Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) gives power of eminent domain to authorities such as the Clayton County Water Authority, duly created by act of the General Assembly, and there is no merit in the assertion that the condemnation of an easement for sewage lines over a person's land proceeded illegally because such authority is without authority to exercise the right of eminent domain. Johnston v. Clayton County Water Auth., 222 Ga. 39, 148 S.E.2d 417, 1966 Ga. LEXIS 391 (1966).

While the act creating the Henry County Water and Sewerage Authority (HCWSA) did not expressly grant HCWSA the power of eminent domain, the act did grant the HCWSA the power to build and maintain water systems both within and without the limits of the county, and to join the governing authority in the issuance of revenue-anticipation certificates; accordingly, the HCWSA possessed the power of eminent domain as granted under O.C.G.A. § 36-82-62(a). Ware v. Henry County Water & Sewerage Auth., 258 Ga. App. 778, 575 S.E.2d 654, 2002 Ga. App. LEXIS 1493 (2002), cert. denied, No. S03C0605, 2003 Ga. LEXIS 331 (Ga. Mar. 28, 2003).

Paragraph (a)(5) of this section by its terms in no way restricts or limits powers granted by paragraph (a)(4). Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672, 1955 Ga. App. LEXIS 462 (1955).

Section does not permit changes in contracts. — In view of the fact that this section authorized municipalities and public authorities "to make all contracts" a court could not interpret this legislation as allowing changes in contracts except in accordance with the provisions contained in such agreements. Legally binding contracts must be honored. City of Jonesboro v. Clayton County Water Auth., 136 Ga. App. 768, 222 S.E.2d 76, 1975 Ga. App. LEXIS 1483 (1975).

Power to collect fees independent. — Power of cities and counties to collect fees, tolls, or other charges from undertakings such as causeways, parking meters, and other endeavors is clearly independent of power to issue revenue bonds, otherwise a county could not operate parking meters without a revenue bond issue and could not charge for meter parking after the bonds were paid. Krause v. City of Brunswick, 242 Ga. 659, 251 S.E.2d 239, 1978 Ga. LEXIS 1318 (1978).

Although O.C.G.A. § 36-82-62 is part of Georgia's Revenue Bond Law, the power to operate and maintain an undertaking and the power to collect fees or charges from undertakings are clearly independent of the power to issue revenue bonds. McLeod v. Columbia County, 278 Ga. 242, 599 S.E.2d 152, 2004 Ga. LEXIS 537 (2004).

Revenue of existing facilities may be pledged to payment of certificates. — It is clear from this section that if a municipality desires, the municipality may pledge the entire revenue of existing facilities, along with the revenues from improvements made thereon with funds

secured by the issuance of revenue anticipation bonds, to the payment of these bonds and the interest thereon, or the municipality may value the existing facilities, and by following the formula provided in this article eliminate from the revenue pledged for payment of the bonds that revenue derived from existing facilities on which improvements were made. By the express terms of Ga. Const. 1945, Art. VII, Sec. VII, Para. V (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I), the acts of a municipality under the above provisions of law are authorized and contravene no provisions of the Constitution. Dade County v. State, 77 Ga. App. 139, 48 S.E.2d 144, 1948 Ga. App. LEXIS 511 (1948).

Bonds issued to extend existing system of improvements approved. — Under the provisions of the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) and the constitutional sanction thereof (Ga. Const. 1945, Art. VII, Sec. VII, Para. V (see now Ga. Const. 1983, Art. IX, Sec. VI, Para. I)), revenue anticipation bonds may be issued by a municipality to extend an existing system of municipal improvements by pledging the entire revenue of the whole system to the payment thereof, subject to the rights of holders of prior issues, without pro-rating the values of the existing and the new facilities and pledging only the revenue of such new facilities according to their proportion to the total value. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672, 1955 Ga. App. LEXIS 462 (1955).

Municipality has authority to operate sewage treatment facilities. Schanck v. Town of Hephzibah, 236 Ga. 530, 224 S.E.2d 354, 1976 Ga. LEXIS 932 (1976).

Improvement of waterworks approved. — When it appeared that revenue anticipation bonds were to be issued by a town for improvement of waterworks under the authority and in accordance with the method prescribed by the Constitution and the laws incorporated therein by reference thereto, the proposed issuance of the revenue anticipation bonds, the proceeding for validation, and the judgment of validation were not contrary to any provisions of the Constitution. Thigpen v. Town of Davisboro, 81 Ga. App. 610, 59 S.E.2d 522, 1950 Ga. App. LEXIS 954 (1950).

Power to exercise eminent domain outside city limits to establish city sewer system under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), and the requirement under Ga. Const. 1983, Art. IX, Sec. II, Para. III(b)(2) that the city must have a contract with the county to provide sewer services to county residents, are not mutually exclusive. Kelley v. City of Griffin, 257 Ga. 407, 359 S.E.2d 644, 1987 Ga. LEXIS 853 (1987).

OPINIONS OF THE ATTORNEY GENERAL

Power of eminent domain not limited by zoning regulations. — Municipalities have the right to use public property, located within their corporate city limits, for necessary governmental purposes, regardless of existence of any contrary zoning regulations which prohibit such usage. 1981 Op. Att'y Gen. No. U81-1.

Eminent domain beyond corporate city limits. — Georgia municipalities have power of eminent domain, even beyond corporate city limits, for public works financed by revenue bonds. 1981 Op. Att'y Gen. No. U81-1.

Municipalities need not comply with county zoning regulations when constructing waste-water and sewerage treatment facilities beyond city limits. 1981 Op. Att'y Gen. No. U81-1.

Doubtful that university may issue revenue obligations. — Legal ability of the Board of Regents of the University System of Georgia to incur debt by issuing revenue obligations is doubtful. 1988 Op. Att'y Gen. No. 88-21.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Eminent Domain, § 1 et seq. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 412 et seq., 459 et seq. 64 Am. Jur. 2d, Public Securities and Obligations, § 60 et seq.

C.J.S.

63 C.J.S., Municipal Corporations, § 1113 et seq. 64 C.J.S., Municipal Corporations, § 1326 et seq. 64A C.J.S. Municipal Corporations, § 2025 et seq.

ALR.

Power of municipality to acquire and operate ice plant, 68 A.L.R. 872.

Implied power of municipality to operate nursery, quarry, gravel pit, or other operation for production of material needed for carrying out powers expressly conferred upon it, 104 A.L.R. 1342.

Power of municipality to charge nonresidents higher fees than residents for use of municipal facilities, 57 A.L.R.3d 998.

36-82-63. Adoption of resolution authorizing undertaking and issuance of revenue bonds.

The acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking and the issuance, in anticipation of the collection of the revenues of such undertaking, of bonds to provide funds to pay the cost thereof, may be authorized under this article by resolution or resolutions of the governing body, which may be adopted at a regular or special meeting by a majority of the members of the governing body. Unless otherwise provided therein, such resolution or resolutions shall take effect immediately and need not be laid over or published or posted. The governing body, in determining such cost, may include all costs and estimated costs of the issuance of the bonds; all engineering, inspection, fiscal, and legal expenses; interest estimated to accrue during the construction period and for six months thereafter on money borrowed or which it is estimated will be borrowed pursuant to this article; and moneys not in excess of an amount equal to 15 percent of the total principal amount of each such bond issue, to establish a debt service reserve with respect to principal and interest requirements on the bonds.

History.

Ga. L. 1937, p. 761, § 4; Ga. L. 1978, p. 2062, § 1.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

Requirements of resolution. — Resolution and bonds become a contract between the municipality and bond purchasers which the latter can enforce by mandamus, and the resolution must contain the essential contractual element of definiteness and certainty with reference to the project or improvement to be built or effected. Such a resolution must reasonably show the nature, kind, and location, and such other facts as will with reasonable fullness and definiteness describe and define the undertaking

including the estimated costs thereof. Miller v. State, 83 Ga. App. 135, 62 S.E.2d 921, 1951 Ga. App. LEXIS 815 (1951).

Revenue bonds must be issued to pay for a definite undertaking, reasonable details of which must be contemplated, chosen, and planned by the governing body of the municipality. It is not absolutely necessary that an intricate and detailed set of plans be incorporated in the resolution but enough facts concerning the proposed project or improvement must appear to afford a key from which the full picture of the project or improvement may be ascertained, such as, for example, a reference to reasonably specific plans, maps, and specifications or their equivalent. Miller v. State, 83 Ga. App. 135, 62 S.E.2d 921, 1951 Ga. App. LEXIS 815 (1951).

Resolution sufficient when it refers to plans on file in clerk's office. — Validation proceeding was not subject to motion to dismiss for vagueness and indefiniteness when the resolution of the municipal authorities by which the proceeding was instituted referred to engineering plans and specifications on file in the office of the clerk of council of the city, which contained sufficient detailed information to afford a key by which the full picture of the project might be ascertained. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672, 1955 Ga. App. LEXIS 462 (1955).

Approximate fixing of costs necessary. — The very purpose of the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) is to pay for planned improvements. The approximate fixing of the costs is as vital a part of the resolution as the authorization of the bonds. They are supplemental and inseparable, and indispensable to the rights of the municipality and the municipality's citizens and to the purchasers of the certificates. Miller v. State, 83 Ga. App. 135, 62 S.E.2d 921, 1951 Ga. App. LEXIS 815 (1951).

RESEARCH REFERENCES

Am. Jur. 2d.

64 Am. Jur. 2d, Public Securities and Obligations, § 103.

C.J.S.

64A C.J.S., Municipal Corporations, § 2042 et seq.

ALR.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein, 119 A.L.R. 190.

36-82-64. Issuance of revenue bonds generally; form; terms; signatures; interim receipts; negotiability; nontaxability.

Revenue bonds may be issued under this article in one or more series; may bear such date or dates; may mature at such time or times, not exceeding 40 years from their respective dates; may bear interest at such rate or rates not exceeding 9 percent per annum, payable at such time or times; may be payable in such medium of payment at such place or places; may be in such denomination or denominations; may be in such form, either coupon or registered; may carry such registration, conversion, and exchangeability privileges; may be subject to such terms of redemption, with or without premium; may be declared or become due before the maturity date thereof; may be executed in such manner; and may contain such terms, covenants, assignments, and conditions as the resolution or resolutions authorizing the issuance of such bonds may provide. All bonds issued under this article bearing the signature of officers in office on the date of the signing thereof shall be

valid and binding, notwithstanding that before delivery thereof and payment therefor such officers whose signatures appear thereon shall have ceased to be officers of the governmental body issuing the bonds. Pending the preparation of the definitive bonds, interim receipts, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds to be issued under this article. Such bonds and interim receipts shall be negotiable for all purposes. Such bonds shall be and are declared to be nontaxable for any and all purposes.

History.

Ga. L. 1937, p. 761, § 5; Ga. L. 1960, p. 1050, § 1; Ga. L. 1967, p. 129, § 1; Ga. L. 1968, p. 1010, § 1; Ga. L. 1970, p. 23, § 1.

Cross references.

Repeal of interest rate limitations, § 36-82-123.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

Requirements of resolution. — Resolution and bonds become a contract between the municipality and bond purchasers which the latter can enforce by mandamus, and the resolution must contain the essential contractual element of definiteness and certainty with reference to the project or improvement to be built or effected. Such a resolution must reasonably show the nature, kind, and location and such other facts as will with reasonable fullness and definiteness describe and define the undertaking including the estimated costs thereof. Miller v. State, 83 Ga. App. 135, 62 S.E.2d 921, 1951 Ga. App. LEXIS 815 (1951).

Revenue bonds must be issued to pay for a definite undertaking, reasonable details of which must be contemplated, chosen, and planned by the governing body of the municipality. It is not absolutely necessary that an intricate and detailed set of plans be incorporated in the resolution but enough facts concerning the proposed project or improvement must appear to afford a key from which the full picture of the project or improvement may be ascertained, such as, for example, a reference to reasonably specific plans, maps, and specifications or their equivalent. Miller v. State, 83 Ga. App. 135, 62 S.E.2d 921, 1951 Ga. App. LEXIS 815 (1951).

RESEARCH REFERENCES

Am. Jur. 2d.

64 Am. Jur. 2d, Public Securities and Obligations, § 134 et seq.

C.J.S.

64A C.J.S., Municipal Corporations, § 2076 et seq.

ALR.

Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year, 29 A.L.R. 1109.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein, 119 A.L.R. 190.

Sale of municipal or other public bonds at less than par or face value, 162 A.L.R. 396.

36-82-65. Covenants in resolution authorizing issuance of bonds; article and resolution as enforceable contract with bondholders.

(a) Any resolution or resolutions authorizing the issuance of bonds under this article to finance, in whole or in part, the acquisition, construction, reconstruction, improvement, betterment, or extension of an undertaking may contain covenants, notwithstanding that such covenants may limit the exercise of powers conferred by this article, as to:

(1) The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of the undertaking;

(2) The use and disposition of the revenue of the undertaking;

(3) The creation and maintenance of reserves or sinking funds and the regulation, use, and disposition thereof;

(4) The purpose or purposes to which the proceeds of the sale of such bonds may be applied and the use and disposition of such proceeds;

(5) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this article shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;

(6) A fair and reasonable payment by the governmental body to the account of the undertaking for the services, facilities, or commodities furnished such governmental body or any of its departments by the undertaking;

(7) The issuance of other or additional bonds or instruments payable from or a charge against the revenue of the undertaking;

(8) The insurance to be carried thereon and the use and disposition of insurance moneys;

(9) Books of account and the inspection and audit thereof;

(10) Limitations or restrictions as to the leasing or other disposition of the undertaking while any of the bonds or the interest thereon remains outstanding and unpaid; and

(11) The continuous operation and maintenance of the undertaking.

(b) The provisions of this article and of any such resolution or resolutions shall be a contract with every holder of such bonds; and the duties of the governmental body, the governing body, and the officers of

the governmental body under this article and under any such resolution or resolutions shall be enforceable by any bondholder by mandamus or other appropriate action or proceeding at law or in equity.

History.
Ga. L. 1937, p. 761, § 6; Ga. L. 1987, p. 3, § 36.

Law reviews.
For comment on Smith v. Hospital Auth., 210 Ga. 801, 82 S.E.2d 827 (1954), see 17 Ga. B. J. 258 (1954).

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

Proceeds of bonds constitute trust fund. — When revenue anticipation bonds are provided for and validated for a particular purpose, the proceeds thereof constitute a trust fund which cannot be diverted from such purpose and applied to some other purpose. Smith v. Hospital Auth., 210 Ga. 801, 82 S.E.2d 827, 1954 Ga. LEXIS 434 (1954) (for comment, see 17 Ga. B. J. 258 (1954)).

Covenants against disposing of undertaking enforceable. — Covenants against leasing or otherwise disposing of an undertaking, revenues of which are pledged in accordance with the contract between a governing authority and the authority's bondholders under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), constitute a contract between such governing body and each bondholder which is enforceable by the latter under the provisions of this section. Hicks v. State, 99 Ga. App. 302, 108 S.E.2d 187, 1959 Ga. App. LEXIS 842 (1959).

RESEARCH REFERENCES

C.J.S.
64A C.J.S., Municipal Corporations, §§ 2042 et seq., 2092 et seq.

36-82-66. Governmental liability for payment of bonds; recitation on bond.

Revenue bonds issued under this article shall not be payable from or charged upon any funds other than the revenue pledged to the payment thereof, nor shall the governmental body issuing the same be subject to any pecuniary liability thereon. No holder or holders of any such bonds shall ever have the right to compel any exercise of the taxing power of the governmental body to pay any such bonds or the interest thereon, nor to enforce payment thereof against any property of the governmental body; nor shall any such bonds constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the governmental body. Every bond issued under this article shall contain a recital setting forth the substance of this Code section.

History.
Ga. L. 1937, p. 761, § 7.

Law reviews.
For note, "If You (Pay To) Build It, They

Will Come: Rethinking Publicly-Financed Professional Sports Stadiums after the Atlanta Braves Deal with Cobb County," see 53 Ga. L. Rev. 409 (2018).

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

Bonds not debts within constitutional limitations. — Revenue anticipation bonds issued under the Revenue Bond Law (see O.C.G.A. Art. 3, Ch. 82, T. 36) do not subject the political subdivision issuing the bonds to any pecuniary liability thereon and are therefore not debts against such political subdivision within the meaning of the constitutional provision limiting such indebtedness. Fort Oglethorpe v. Catoosa County, 80 Ga. App. 188, 55 S.E.2d 753, 1949 Ga. App. LEXIS 802 (1949).

Contract between county and airport authority. — Even though, under a contract between county and airport authority for use by the county of an expanded airport facility, the consideration to be paid by the county was not expressed in terms of a definite dollar amount, it was not an unconstitutional "new debt". The contract was a valid intergovernmental contract and the consideration represented the authority's lawful "revenue pledged to the payment of" the bonds. Clayton County Airport Auth. v. State, 265 Ga. 24, 453 S.E.2d 8, 1995 Ga. LEXIS 68 (1995).

County was authorized to pledge its taxing authority as security for its obligation to pay for the use of an expanded airport facility under a contract between the county and an airport authority and it was error to deny validation of the authority's revenue bonds on the basis of the county's pledge. Clayton County Airport Auth. v. State, 265 Ga. 24, 453 S.E.2d 8, 1995 Ga. LEXIS 68 (1995).

Under a contract between county and airport authority for use by the county of an expanded airport facility, although the county's consideration would not be paid directly to the authority, but paid to the custodian of the authority's sinking fund, the consideration did not lose the consideration's character as "revenue" for the authority and such payment scheme was not a reason to deny validation of the authority's revenue bonds. Clayton County Airport Auth. v. State, 265 Ga. 24, 453 S.E.2d 8, 1995 Ga. LEXIS 68 (1995).

Development authority not required to own or operate project. — Proposed bond transaction did not violate Ga. Const. 1983, Art. IX, Sec. VI, Para. I and O.C.G.A. § 36-82-66 of the Revenue Bond Law merely because the development authority would not own or operate the proposed stadium; the development authority could use bond proceeds for paying all or part of the cost of any project (O.C.G.A. § 36-62-6(a)(13)), not only those projects the authority developed, and the authority could pay the costs of another government entity's project pursuant to O.C.G.A. § 36-62-9. Cottrell v. Atlanta Dev. Auth., 297 Ga. 1, 770 S.E.2d 616, 2015 Ga. LEXIS 179 (2015).

RESEARCH REFERENCES

Am. Jur. 2d.

64 Am. Jur. 2d, Public Securities and Obligations, § 194 et seq.

ALR.

Estoppel by recitals in municipal bonds as to lawfulness of issue, 86 A.L.R. 1057; 158 A.L.R. 938.

Subsequent issue of bonds by public body as impairing obligation to prior creditors, 87 A.L.R. 397.

Right of creditor of public body to full or pro rata payment when fund out of which obligation is payable is insufficient to pay all like obligations of equal dignity, 90 A.L.R. 717; 171 A.L.R. 1033.

Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters, 10 A.L.R.2d 559.

When limitations begin to run against actions on public securities or obligations

to be paid out of special or particular fund,
50 A.L.R.2d 271.

36-82-67. Right of bondholder or trustee to apply for receivership upon default in payment on bond; procedure for appointment.

In the event that the governmental body defaults in the payment of the principal or interest on any of the revenue bonds after the same becomes due, whether at maturity or upon call for redemption, and that such default continues for a period of 30 days or in the event that the governmental body or the governing body or the officers, agents, or employees thereof fail or refuse to comply with the essential provisions of this article or default in any material respect in any agreement made with the holders of the revenue bonds, any holders of revenue bonds or any trustee therefor shall have the right to apply in an appropriate judicial proceeding to the superior court of the county in which the governmental body is located or to any court of competent jurisdiction for the appointment of a receiver of the undertaking, whether or not all revenue bonds have been declared due and payable and whether or not such holder or trustee therefor is seeking or has sought to enforce any other right or to exercise any remedy in connection with such revenue bonds. Upon such application, the superior court, if it deems such action necessary for the protection of the bondholders, may appoint and, if the application is made by the holders of 25 percent in principal amount of such revenue bonds then outstanding or by any trustee for holders of such revenue bonds in such principal amount, shall appoint a receiver of the undertaking.

History.
Ga. L. 1937, p. 761, § 8.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

RESEARCH REFERENCES

C.J.S.
75 C.J.S., Receivers, § 1 et seq.

36-82-68. Powers and duties of receiver generally.

(a) The receiver appointed under Code Section 36-82-67, directly or by his agents and attorneys, shall forthwith enter into and upon and take possession of the undertaking and each and every part thereof. If the court so directs, the receiver may exclude the governmental body, its

governing body, officers, agents, and employees, and all persons claiming under them wholly therefrom. The receiver shall have, hold, use, operate, manage, and control the same and each and every part thereof, in the name of the governmental body or otherwise, as the receiver may deem best. He shall exercise all the rights and powers of the governmental body with respect to the undertaking as the governmental body itself might do. The receiver shall maintain, restore, insure, and keep insured the undertaking and from time to time shall make all such necessary or proper repairs as to the receiver may seem expedient. He shall establish, levy, maintain, and collect such fees, tolls, rentals, and other charges in connection with the undertaking as he deems necessary or proper and reasonable. He shall collect and receive all revenues and shall deposit the same in a separate account and apply the revenues so collected and received in such manner as the court shall direct.

(b) If the undertaking involves parking meters, the control and operation thereof shall remain in the governmental body and the authority of the receiver appointed under Code Section 36-82-67 shall be limited to the right of receiving only the receipts from the parking meters.

History.
Ga. L. 1937, p. 761, § 8; Ga. L. 1953, Jan.-Feb. Sess., p. 489, § 3.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

RESEARCH REFERENCES

Am. Jur. 2d.
65 Am. Jur. 2d, Receivers, § 83 et seq.
C.J.S.
75 C.J.S., Receivers, §§ 124 et seq., 166 et seq.

36-82-69. Limitations on authority of receiver and supervising court.

Notwithstanding anything in Code Sections 36-82-67 and 36-82-68, this Code section, and Code Sections 36-82-70 through 36-82-72 to the contrary, the receiver appointed under Code Section 36-82-67 shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the governmental body and useful for the undertaking. The authority of any such receiver shall be limited to the operation and maintenance of the undertaking.

No court shall have jurisdiction to enter any order or decree requiring or permitting the receiver to sell, assign, mortgage, or otherwise dispose of any such assets.

History.
Ga. L. 1937, p. 761, § 8; Ga. L. 1993, p. 91, § 36.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

36-82-70. Supervision of receiver by court.

The receiver appointed under Code Section 36-82-67 shall, in the performance of the powers conferred upon him, act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing contained in Code Sections 36-82-67 through 36-82-69, this Code section, and Code Sections 36-82-71 and 36-82-72 shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth in Code Sections 36-82-67 through 36-82-69, this Code section, and Code Sections 36-82-71 and 36-82-72.

History.
Ga. L. 1937, p. 761, § 8; Ga. L. 1993, p. 91, § 36.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

RESEARCH REFERENCES

Am. Jur. 2d.
65 Am. Jur. 2d, Receivers, § 85.

C.J.S.
75 C.J.S., Receivers, § 46.

36-82-71. Surrender of receivership upon cure of default.

Whenever all that is due upon the revenue bonds and interest thereon and upon any other notes, bonds, or other obligations and interest thereon having a charge, lien, or encumbrance on the revenues of the undertaking and under any of the terms of any covenants or agreements with holders of revenue bonds has been paid or deposited as provided therein and all defaults have been cured and made good and

it appears to the court that no default is imminent, the court shall direct the receiver to surrender possession of the undertaking to the governmental body. The same right of the holders of the revenue bonds to secure the appointment of a receiver shall exist upon any subsequent default as is provided in Code Section 36-82-67.

History.
Ga. L. 1937, p. 761, § 8.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

RESEARCH REFERENCES

Am. Jur. 2d.
65 Am. Jur. 2d, Receivers, § 93 et seq.

36-82-72. Construction of Code Sections 36-82-67 through 36-82-71 and this Code section.

If any part or portion of Code Sections 36-82-67 through 36-82-71 and this Code section is held by any court of competent jurisdiction to create a debt of a governmental body or to be unenforceable or ineffective, the remaining parts and portions thereof shall not be affected thereby in any way, but the part or portion so held unenforceable and ineffective shall be severed and rescinded from this article. The intention of the General Assembly not to permit any governmental body to be deprived of its property or to be susceptible or liable to forfeiture shall be controlling.

History.
Ga. L. 1937, p. 761, § 8; Ga. L. 1984, p. 22, § 36.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

36-82-73. Proceedings for validation of revenue bonds generally.

All revenue bonds issued under this article shall be validated in the superior court in the manner set forth in Code Sections 36-82-74 through 36-82-83.

History.
Ga. L. 1937, p. 761, § 9; Ga. L. 1982, p. 3, § 36.
Law reviews.
For note, "If You (Pay To) Build It, They Will Come: Rethinking Publicly-Financed Professional Sports Stadiums after the Atlanta Braves Deal with Cobb County," see 53 Ga. L. Rev. 409 (2018).

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

Jurisdiction to decide bond validation petitions. — Superior court did not err in ruling on the ad valorem taxation issues because it was undisputed that superior courts had exclusive jurisdiction to hear and decide all issues with regard to bond validation petitions; thus, the superior court simply reiterated that the satisfaction of the development purposes of the transactions justified validation, and that tax exemption was a natural by-product of that validation, as expressly provided by statute. Bene v. State, 362 Ga. App. 73, 865 S.E.2d 249, 2021 Ga. App. LEXIS 563 (2021).

36-82-74. Notice to district attorney or Attorney General of resolution authorizing revenue bonds.

When any governmental body desires to issue revenue bonds under this article, the officer or officers of such governmental body, within six months after the passage of the resolution authorizing the bonds, shall, in writing, notify the district attorney of the judicial circuit in which the governmental body is located of the fact that such resolution has been passed by the governing body and of the intention of the governmental body to issue such bonds. The service of notice shall be personal upon the district attorney and shall be accompanied by a certified copy of the resolution of the governing body of the governmental body authorizing the bonds. If the district attorney is absent from the circuit, such notice shall be served in person upon the Attorney General.

History.
Ga. L. 1937, p. 761, § 10; Ga. L. 1987, p. 3, § 36.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

Effect of failure of solicitor general (now district attorney) to file petition. — When the solicitor general (now district attorney), or the Attorney General, fails to file a validation petition within the 20-day period, any petition filed, without a prior order of court directing such filing, is a nullity. State v. Smallwood, 103 Ga. App. 400, 119 S.E.2d 297, 1961 Ga. App. LEXIS 951 (1961).

State a necessary party in intervention in validation proceeding. — On appeal by intervening taxpayers and citizens from a judgment of the superior court overruling their objections and validating the bonds, the state is a necessary and indispensable party, and, it appearing that the state had not been made a party to the bill of

exceptions or served with a copy of the bill of exceptions, the writ of error is properly dismissed. Darby v. City of Vidalia, 75 Ga. App. 804, 44 S.E.2d 454, 1947 Ga. App. LEXIS 645 (1947).

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113, 2012 Ga. App. LEXIS 707 (2012).

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 332 et seq.

C.J.S.
64A C.J.S., Municipal Corporations, § 2042 et seq.

36-82-75. Duty of district attorney or Attorney General to file petition; order to show cause; service of petition and order; answer.

Within 20 days from the date of service of the notice provided for in Code Section 36-82-74, the district attorney or the Attorney General shall prepare and file, in the office of the clerk of the superior court of the county issuing the bonds or of the county in which the governmental body is located, a petition directed to the superior court of such county in the name of the state and against the governmental body desiring to issue the revenue bonds. The petition shall set forth service of the notice, the name of the governmental body seeking to issue the bonds, the amount of bonds to be issued, for what purpose the bonds are to be issued, what interest they are to bear, how much principal and interest is to be paid annually, when the bonds are to be paid in full, and the security to be pledged to the payment of the bonds; provided, however, that the petition may provide for a maximum interest rate and a maximum annual principal and interest payment. The district attorney or the Attorney General shall obtain from the judge of the court an order requiring the governmental body by its proper officers to show cause, at such time and place, either in term or chambers, within 20 days from the filing of the petition, as the judge may direct, why the bonds and the security for the payment thereof should not be confirmed and validated. The petition and order shall be served in the manner now provided by law for the service of petitions upon counties, governmental bodies, or political subdivisions. The officers of the governmental body shall make sworn answers to the petition within the time prescribed.

History.
Ga. L. 1937, p. 761, § 11; Ga. L. 1991, p. 1103, § 1; Ga. L. 2025, p. 1029, § 36(46)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that" for "however," in the second sentence.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

Effect of failure of solicitor general (now district attorney) to file petition. — When the solicitor general (now district attorney), or the Attorney General, fails to file a validation petition within the 20-day period, any petition filed, without a prior order of court directing such filing, is a nullity. State v. Smallwood, 103 Ga. App. 400, 119 S.E.2d 297, 1961 Ga. App. LEXIS 951 (1961).

Petition sets forth interest rate with reasonable specificity under the circumstances when the petition states the interest rate "will not exceed 10 ¾%" and there was testimony at the validation hearing that the interest rate will be set at the time of closing. Alexander v. Macon-Bibb County Urban Dev. Auth. & Urban Properties #47, 257 Ga. 181, 357 S.E.2d 62, 1987 Ga. LEXIS 785 (1987).

Citizens of municipality have right to object to validation of revenue bonds on grounds that project is unreasonable or unsound. Miller v. State, 83 Ga. App. 135, 62 S.E.2d 921, 1951 Ga. App. LEXIS 815 (1951).

State a necessary party in intervention in validation proceeding. — On appeal by intervening taxpayers and citizens from a judgment of the superior court overruling their objections and validating the bonds, the state is a necessary and indispensable party, and, it appearing that the state had not been made a party to the bill of exceptions or served with a copy of the bill of exceptions, the writ of error is properly dismissed. Darby v. City of Vidalia, 75 Ga. App. 804, 44 S.E.2d 454, 1947 Ga. App. LEXIS 645 (1947).

Burden of making out case is on state. — State is a necessary and indispensable party to an action to require validation of water and sewer revenue anticipation bonds as the express provisions of this section require that the action be brought in its name. The burden of making out the state's case for the validation of the revenue anticipation bonds was upon the state. Darby v. City of Vidalia, 75 Ga. App. 804, 44 S.E.2d 454, 1947 Ga. App. LEXIS 645 (1947).

Bond validation. — Trial court orders validating the bonds for all three portions of a county project were upheld because the challengers cited no deficiencies that the county did not comply with O.C.G.A. § 36-82-75, the county provided unrebutted testimony that the office, hotel, and retail projects would provide economic benefits to the county and state, and that issuance of the bonds was in the public interest and, thus, qualified as projects within the meaning of O.C.G.A. § 36-62-2(6)(N). Long v. Development Authority of Fulton County, 352 Ga. App. 815, 835 S.E.2d 717, 2019 Ga. App. LEXIS 635 (2019).

Georgia Court of Appeals held that under the plain language of O.C.G.A. § 36-62-2, a development authority was authorized by the statute's catchall provision of paragraph (6)(N) to pursue an office project, but only if the project meets that subsection's requirement that a majority of the members of the authority determines and adopts a resolution that the office project would further the public purpose of the law. Long v. Development Authority of Fulton County, 352 Ga. App. 815, 835 S.E.2d 717, 2019 Ga. App. LEXIS 635 (2019).

In an action concerning bond validation, there was sufficient evidence of lawful purpose to support the superior court's bond validation orders because each of the petitions included their stated purpose. Bene v. State, 362 Ga. App. 73, 865 S.E.2d 249, 2021 Ga. App. LEXIS 563 (2021).

In four related appeals, the superior court did not err in validating the taxable revenue bonds because each of the petitions include their stated purpose, and the superior court heard evidence that the bonds would serve the public interest; and

the bond transactions did not violate the Gratuities Clause as the county would derive a substantial benefit from the projects at issue as the projects would improve the county's infrastructure, create hundreds of jobs, expand the tax rolls, and bring economic development. Bene v. State, 362 Ga. App. 73, 865 S.E.2d 249, 2021 Ga. App. LEXIS 563 (2021).

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 333 et seq.

36-82-76. Notice of hearing on validation.

Prior to the hearing of the case, the clerk of the superior court of the county in which it is to be heard shall publish, once during each of the two successive weeks immediately preceding the week in which the hearing is to be held, a notice to the public that on the day specified in the order providing for the hearing of the case the same will be heard. Such publication shall be in the newspaper which is the official organ of the county in which the sheriff's advertisements appear.

History.
Ga. L. 1937, p. 761, § 12; Ga. L. 1966, p. 48, § 1.

Law reviews.
For note, "Procedural Requirements for Public Approval of Tax-Exempt Industrial Development Bonds under TEFRA," 19 Ga. St. B. J. 84 (1982).

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

Notice sufficient. — Although a scrivener's error stated that the hearing would regard the validation of a bond issued by the county industrial building authority, because the notice made clear that it was meant to refer to a case involving the airport authority, not the industrial building authority, the notice of the bond validation hearing was sufficient as the record supported a finding of substantial compliance. Avery v. State of Ga., 295 Ga. 630, 761 S.E.2d 56, 2014 Ga. LEXIS 547 (2014).

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 338.

C.J.S.
64A C.J.S., Municipal Corporations, § 2042 et seq.

36-82-77. Hearing and judgment on validation; parties to proceedings; right of appeal; review of valuation of existing undertakings.

(a) Within the time prescribed in the order or such further time as he may fix, the judge of the superior court shall proceed to hear and determine all questions of law and of fact in the case and shall render

judgment thereof. Any citizen of this state who is a resident of the governmental body which desires to issue such bonds may become a party to the proceedings at or before the time set for the hearing and any party thereto who is dissatisfied with the judgment of the court confirming and validating the issuance of the bonds or refusing to confirm and validate the issuance of the bonds and the security therefor may appeal from the judgment under the procedure provided by law in cases of injunction. Only a party to the proceedings at the time the judgment appealed from is rendered may appeal from such judgment.

(b) Whenever any governmental body values existing undertakings as permitted by law in connection with the issuance of bonds, the superior courts may review such action, which review shall be had in the proceedings to validate the revenue bonds.

History.

Ga. L. 1937, p. 761, § 13; Ga. L. 1939, p. 362, § 3; Ga. L. 1966, p. 48, § 2; Ga. L. 1987, p. 3, § 36.

Law reviews.

For note, "If You (Pay To) Build It, They Will Come: Rethinking Publicly-Financed Professional Sports Stadiums after the Atlanta Braves Deal with Cobb County," see 53 Ga. L. Rev. 409 (2018).

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

Duty of trial court to review soundness of venture. — It is the duty of the trial court on the hearing of an application to validate revenue anticipation bonds to determine from the evidence the fact of whether or not the venture is sound, feasible, and reasonable, and not to review the discretion of the municipal authorities in proposing the venture. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672, 1955 Ga. App. LEXIS 462 (1955).

Generally, there can be but one action to validate either certificates or bonds; in either case all interventions would be heard in the validation proceedings, and the allegation that a declaratory judgment is necessary to avoid a multiplicity of actions is a conclusion of the pleader, contrary to the statutory provisions pertaining to validation of revenue anticipation bonds. Liner v. City of Rossville, 212 Ga. 664, 94 S.E.2d 862, 1956 Ga. LEXIS 487 (1956).

This section authorizes intervention of "any citizen of this state, resident of such municipality" in any proceeding to validate revenue anticipation bonds. Liner v. City of Rossville, 212 Ga. 664, 94 S.E.2d 862, 1956 Ga. LEXIS 487 (1956).

Standing to challenge bond validation. — Appeal filed by challengers to a trial court judgment confirming and validating a city's bond issuance was dismissed because the challengers failed to present any evidence to establish the challengers standing under O.C.G.A. § 36-82-77(a) to become parties in the bond validation proceeding; thus, the challengers lacked standing to appeal the judgment in that proceeding. Sherman v. City of Atlanta, 317 Ga. 345, 730 S.E.2d 113, 2013 Ga. LEXIS 556 (2013).

Attorney who intervened in a bond validation proceeding pursuant to O.C.G.A. § 36-82-77(a) and then offered to withdraw the attorney's objections if the developers paid the attorney a substantial amount of money did not violate Ga. St. Bar R. 4-102(d):4.2(a) or Ga. St. Bar. R. 4-102(d):8.4(a)(4) because the attorney's conduct was not fraudulent; a party could intervene for ulterior and personal reasons and still have standing. In the

Matter of Woodham, 296 Ga. 618, 769 S.E.2d 353, 2015 Ga. LEXIS 137 (2015).

Validity of agreement proper subject for superior court. — Superior court had authority to adjudicate the validity of a Hotel/Motel Tax Operation and Maintenance Agreement for a stadium project even though the agreement did not act as security for the bonds, based on the court's jurisdiction to hear and determine all questions of law and of fact in the bond validation case and render judgment on those issues, pursuant to O.C.G.A. § 36-82-77. Cottrell v. Atlanta Dev. Auth., 297 Ga. 1, 770 S.E.2d 616, 2015 Ga. LEXIS 179 (2015).

No right to jury trial. — Bond validation proceeding is not one of class of cases, either in terms or by analogy, in which jury trials have ever existed as a matter of right; and it does not fall within Ga. Const. 1945, Art. VI, Sec. XVI, Para. I (see now Ga. Const. 1983, Art. I, Sec. I, Para. XI). Steadham v. State, 224 Ga. 78, 159 S.E.2d 397, 1968 Ga. LEXIS 672, cert. denied, 393 U.S. 825, 89 S. Ct. 87, 21 L. Ed. 2d 96, 1968 U.S. LEXIS 658 (1968).

Sufficiency of information in engineering report. — Information contained in engineering report introduced in evidence met the statutory requirements as to certainty and definiteness, in that it showed with reasonable certainty the nature, kind, and location of the improvements and described and defined with reasonable fullness and definiteness the undertaking including the estimated costs thereof. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672, 1955 Ga. App. LEXIS 462 (1955).

Intervenors not permitted to amend objections. — Trial court did not err in refusing to allow citizens who intervened in a bond validation proceeding to amend the citizens' objections between hearing dates as untimely because the citizens were not surprised by the filing of the bond validation petitions, had already consulted counsel, and had sufficient time to prepare. Franzen v. Downtown Dev. Auth. of Atlanta, 309 Ga. 411, 845 S.E.2d 539, 2020 Ga. LEXIS 462 (2020).

Burden of making out case on intervenors when stipulations make prima facie case. — When citizens as intervenors file an intervention objecting to the validation of revenue anticipation bonds, the burden is on the plaintiff in the proceeding to make out a prima facie case, but when the parties to such a proceeding by stipulation and other admissions admit sufficient material allegations to make out a prima facie case it is not error for the judge to rule that the burden is upon intervenors to introduce evidence in support of their intervention. Dade County v. State, 77 Ga. App. 139, 48 S.E.2d 144, 1948 Ga. App. LEXIS 511 (1948).

Intervention seeking validation denial for nonconformity with law not subject to dismissal. — Intervention filed by a resident and taxpayer of the municipality proposing to issue revenue bonds which seeks to have the validation denied and the proceedings dismissed because such petition was not filed in conformity with such laws is not subject to demurrer (now motion to dismiss). State v. Smallwood, 103 Ga. App. 400, 119 S.E.2d 297, 1961 Ga. App. LEXIS 951 (1961).

Intervention in bond validation proceeding. — Challenger in an action validating and confirming taxable revenue bonds lacked standing to intervene in the action as a result of failing to comply with the intervention procedures set forth in O.C.G.A. § 9-11-24(c); and, because the challenger lacked standing to become a party in the trial court, the challenger also lacked standing to appeal the trial court's judgment, therefore, the appeal was dismissed. Sherman v. Dev. Auth., 324 Ga. App. 23, 749 S.E.2d 29, 2013 Ga. App. LEXIS 785 (2013).

Exception must be taken to judgment validating revenue anticipation bonds within 20 days from such judgment, and, when the superior court of a county enters an order validating water revenue certificates of a city on February 16, and exception is not taken to such judgment until March 16, (a period of 28 days), the Court of Appeals is without jurisdiction to review that judgment. Drury v. City of Woodbine, 96 Ga. App. 158, 99 S.E.2d 550, 1957 Ga. App. LEXIS 528 (1957).

State a necessary party in intervention in validation proceeding. — On appeal by intervening

taxpayers and citizens from a judgment of the superior court overruling their objections and validating the bonds, the state is a necessary and indispensable party, and, it appearing that the state had not been made a party to the bill of exceptions or served with a copy of the bill of exception, the writ of error is properly dismissed. Darby v. City of Vidalia, 75 Ga. App. 804, 44 S.E.2d 454, 1947 Ga. App. LEXIS 645 (1947).

Bond proposal secured by infrastructure fees upheld. — Bond proposal secured by infrastructure fees was sound, feasible, and reasonable; the trial court was not required to find that the projected $633 million of fees over a 30 year period would service bonds in the possible amount of $1.25 billion; the bonds would be issued only if sufficient infrastructure fees were projected to service the bonds. Franzen v. Downtown Dev. Auth. of Atlanta, 309 Ga. 411, 845 S.E.2d 539, 2020 Ga. LEXIS 462 (2020).

Notice and a hearing required before dismissal of intervention complaints. — Trial court erred in dismissing a complaint by intervenors objecting to a bond validation proceeding without notice and a hearing on the dismissal issue, although the trial court found that the intervenors had intervened for the improper purpose of seeking $ 1.3 million from developers to avoid the litigation. Citizens for Ethics in Gov't, LLC v. Atlanta Dev. Auth., 303 Ga. App. 724, 694 S.E.2d 680, 2010 Ga. App. LEXIS 332 (2010), cert. denied, No. S10C1350, 2010 Ga. LEXIS 722 (Ga. Sept. 7, 2010).

When proper issue of fact is raised as to feasibility of plan to validate refunding bonds, it is for the trial court to determine, under the evidence, such issue. Dade County v. State, 75 Ga. App. 330, 43 S.E.2d 434, 1947 Ga. App. LEXIS 537 (1947); Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672, 1955 Ga. App. LEXIS 462 (1955).

Bond approval not proper. — Trial court erred by validating taxable revenue bonds for a county development authority as the order validating the bonds failed to set forth sufficient findings of fact and conclusions of law to support the court's holdings and, thus, failed to satisfy the requirements of O.C.G.A. § 9-11-52(a). Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663, 2013 Ga. App. LEXIS 258 (2013).

Standard of review. — When the trial court has concluded the project promoted the statutory objectives and there is evidence to support the trial court's decision, the Supreme Court will find no error. Alexander v. Macon-Bibb County Urban Dev. Auth. & Urban Properties #47, 257 Ga. 181, 357 S.E.2d 62, 1987 Ga. LEXIS 785 (1987).

Remand to trial court for preparation of findings and conclusions. — Judgment granting the state's petition to validate revenue bonds under the Revenue Bond Law, O.C.G.A. § 36-82-60 et seq., was remanded to the trial court because the trial court failed to mention in the judgment the citizen who intervened in the proceedings and to set forth findings of fact and conclusions of law with respect to various grounds pursued by the citizen as required by O.C.G.A. § 9-11-52(a); prior to the judgment, the citizen requested findings of fact and conclusions of law. Sherman v. Dev. Auth., 314 Ga. App. 237, 723 S.E.2d 528, 2012 Ga. App. LEXIS 173 (2012).

Validation upheld. — After a trial court required two intervenors to post a bond of $625,000 with regard to the intervenors' challenge to the public improvement bond approved by a city's building authority for a sewer project, the trial court properly validated the bond by following all necessary procedural requirements and the bond did not violate Ga. Const. 1983, Art. IX, Sec. V, Para. I(a) since the city's payment for the use of the sewer project was a debt specifically authorized under the constitution pursuant to Ga. Const. 1983, Art. IX, Sec. III, Para. I(a). Berry v. City of E. Point, 277 Ga. App. 649, 627 S.E.2d 391, 2006 Ga. App. LEXIS 176 (2006).

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to

value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113, 2012 Ga. App. LEXIS 707 (2012).

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, §§ 347, 350.

C.J.S.
64A C.J.S., Municipal Corporations, §§ 2046 et seq., 2081 et seq.

36-82-78. Effect of judgment of validation.

If no appeal is filed within the time prescribed by law or if an appeal is filed and the judgment is affirmed on appeal, the judgment of the superior court confirming and validating the issuance of the bonds and the security therefor shall be forever conclusive against the governmental body upon the validity of such bonds and the security therefor.

History.
Ga. L. 1937, p. 761, § 14; Ga. L. 1966, p. 48, § 3.

Law reviews.
For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

Conclusiveness of validation judgment. — Judgment of the superior court validating revenue bonds under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), unexcepted to, or affirmed on review, is conclusive against the municipality and the citizens of the municipality upon all questions, including the constitutionality of the statute under which the proceedings are had. Cox v. Georgia Educ. Auth., 225 Ga. 542, 170 S.E.2d 240, 1969 Ga. LEXIS 558 (1969).

Validation judgment regarding revenue bonds for a county's acquisition of a hospital, which had been found to be illegal, was nonetheless conclusive because the judgment had not been appealed and sale of the revenue bonds could not be enjoined. Turpen v. Rabun County Bd. of Comm'rs, 251 Ga. App. 505, 554 S.E.2d 727, 2001 Ga. App. LEXIS 978 (2001), cert. denied, No. S02C0089, 2002 Ga. LEXIS 112 (Ga. Feb. 11, 2002).

Validation order conclusive on intergovernmental contract's legitimacy. — See AMBAC Indem. Corp. v. Akridge, 262 Ga. 773, 425 S.E.2d 637, 1993 Ga. LEXIS 190, cert. denied, 510 U.S. 817, 114 S. Ct. 69, 126 L. Ed. 2d 38, 1993 U.S. LEXIS 4994 (1993).

Action not barred as collateral attack. — Taxpayer's petition seeking a declaration that the valuation method a county board of assessors and the development authority of the county used for leasehold estates arising from a local development authority sale-leaseback bond transaction was illegal was not barred for being a collateral attack on concluded bond validation proceedings because the challenge to the memoranda of agreement that set forth the tax assessment formula at issue would only constitute a prohibited collateral attack on a concluded bond validation proceeding

if the memoranda were specifically adjudicated in the proceedings and held valid by the bond judgment, and the board and authority had to put forth evidence that the applicable bond validation orders did in fact expressly rule upon each memorandum of agreement. Moreover, even if the taxpayer was barred from challenging the tax agreements on concluded bond transactions, the taxpayer also sought an injunction to prohibit the use of the formula in future bond agreements. Sherman v. Fulton County Bd. of Assessors, 288 Ga. 88, 701 S.E.2d 472, 2010 Ga. LEXIS 813 (2010).

Validation not conclusive as to tax exemption as public property. — Two bond validation orders pertaining to a hospital authority's establishment of a continuing care retirement center did not conclusively determine, for purposes of O.C.G.A. § 48-5-41(a)(1)(A), that the property was public property exempt from ad valorem taxation; remand was required for the trial court to address taxability. Columbus Board of Tax Assessors v. Medical Ctr. Hosp. Auth., 302 Ga. 358, 806 S.E.2d 525, 2017 Ga. LEXIS 889 (2017).

RESEARCH REFERENCES

Am. Jur. 2d.

64 Am. Jur. 2d, Public Securities and Obligations, § 351 et seq.

36-82-79. Entry of reference to judgment on validated bonds; use of entry as evidence; clerk's fee.

Bonds validated under this article shall have stamped or written thereon, by the proper officers of the governmental body issuing the same or by their agents or servants, the words "Validated and confirmed by judgment of the superior court," specifying also the date the judgment was rendered and the court in which it was rendered, which entry shall be signed by the clerk of the superior court in which the judgment was rendered. Such entry shall be original evidence of the fact of the judgment and shall be received as original evidence in any court in this state. If provisions in the resolution authorizing the issuance of bonds grant conversion or exchangeability privileges with respect thereto, upon request of the proper officers of the governmental body issuing bonds in exchange for bonds previously signed by a clerk of the superior court, it shall be the duty of such clerk of the superior court to sign the entry as to judgment of validation made on such bonds proposed to be issued in exchange. Such entry shall likewise be received as original evidence of the fact of such judgment in any court in this state. As specified in the general laws of this state, any clerk of a superior court may sign such entry as to the judgment of validation by a manual or a facsimile signature. The clerk of the superior court shall receive for his services rendered under this Code section the fee prescribed in Code Section 15-6-77.

History.

Ga. L. 1937, p. 761, § 15; Ga. L. 1953, Jan.-Feb. Sess., p. 16, § 1; Ga. L. 1970, p. 497, § 8; Ga. L. 1978, p. 2062, § 2.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

RESEARCH REFERENCES

C.J.S.
64A C.J.S., Municipal Corporations, § 2076 et seq.

36-82-80. Payment of costs of proceedings.

The cost of the case shall be paid by the governmental body desiring to issue the bonds.

History.
Ga. L. 1937, p. 761, § 16.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 354.

36-82-81. Procedure when district attorney or Attorney General fails to file petition.

When a governmental body passes a resolution for the issuance of revenue bonds and notice is duly served upon the district attorney or the Attorney General under the authority of such governmental body, for the purpose of securing a judicial validation of such bonds and the security therefor, but the district attorney or Attorney General fails to proceed within the time specified in Code Section 36-82-75, it shall be competent for such governmental body to represent such facts in writing to the court and to represent further that the failure has been without fault on the part of the governmental body. In such case, it shall be the duty of the court and he shall have the power and authority to inquire into the facts and, upon being satisfied that the failure has not arisen from any fault or neglect on the part of the governmental body, to pass an order authorizing and directing the district attorney or Attorney General to proceed within ten days to file the petition authorized by Code Section 36-82-75. Thereafter, the proceedings shall

be had in the same manner as would have been followed had such petition been duly and promptly filed in the first instance.

History.
Ga. L. 1937, p. 761, § 17.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

Court authorized to grant leave to file when city without fault in original failure to file. — When the failure to file a validation petition within the requisite 20-day period is not because of the fault or negligence of the municipality, on application of the municipality in writing and upon a showing of such fact the superior court is authorized to order the solicitor general (now district attorney) to file such petition within 10 days thereafter. State v. Smallwood, 103 Ga. App. 400, 119 S.E.2d 297, 1961 Ga. App. LEXIS 951 (1961).

Intervention seeking validation denial for nonconformity with law not subject to dismissal. — Intervention filed by a resident and taxpayer of the municipality proposing to issue revenue bonds which seeks to have the validation denied and the proceedings dismissed because such petition was not filed in conformity with such laws is not subject to demurrer (now motion to dismiss). State v. Smallwood, 103 Ga. App. 400, 119 S.E.2d 297, 1961 Ga. App. LEXIS 951 (1961).

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, §§ 339 et seq., 356 et seq.

C.J.S.
64A C.J.S., Municipal Corporations, § 2081.

36-82-82. Effect of judgment of validation upon failure to file petition.

When proceedings are had as provided in Code Section 36-82-81 and result in a judgment validating the bonds and the security therefor, the bonds shall be held and deemed to be as fully and completely validated to all intents and purposes as though the proceedings had been originally taken as provided by this article and the judgment of validation shall be finally and completely conclusive in like manner as provided by Code Section 36-82-78.

History.
Ga. L. 1937, p. 761, § 18.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

36-82-83. Validation of revenue bonds of certain hospital authorities.

When a hospital authority created and operating under Article 4 of Chapter 7 of Title 31, the "Hospital Authorities Law," is authorized to confirm and validate revenue bonds in accordance with the procedures of this article, and such an authority is located in more than one county, such bonds shall be confirmed and validated in the superior court of the county in which the principal office of the authority is located; and, where the authority is located in more than one judicial circuit, notice provided for the district attorney shall be served upon the district attorney of the judicial circuit in which the principal office of such an authority is located, in accordance with this article, which district attorney shall have the duties, privileges, and responsibilities and shall exercise the powers provided for district attorneys in revenue bond validation proceedings under this chapter.

History.
Ga. L. 1950, p. 20, § 2; Ga. L. 1957, p. 36, § 2.

36-82-84. Applicability of article to common carriers of passengers for hire.

Wherever applicable, this article shall apply to public common carriers of passengers for hire.

History.
Ga. L. 1957, p. 453, § 2.

36-82-85. Construction of article generally; applicability of certain other provisions of law.

The powers conferred by this article shall be in addition and supplemental to, and not in substitution for, the powers conferred by any other general, special, or local law. The limitations imposed by this article shall not affect the powers conferred by any other general, special, or local law. Bonds may be issued under this article without regard to any other general, special, or local law. The General Assembly declares its intention that the limitations of the amount or percentage of, and the restrictions relating to, indebtedness of a governmental body and the incurring thereof contained in the Constitution of this state and in any general, special, or local law shall not apply to bonds and the issuance thereof under this article.

History.
Ga. L. 1937, p. 761, § 19.

Law reviews.
For article, "Selected Oddities in Georgia Municipal Law," see 9 Ga. L. Rev. 783 (1975).

JUDICIAL DECISIONS

Constitutionality and exhaustiveness of law. — Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) does not purport to be a general law exhaustive of the purposes for which revenue bonds or certificates may be issued and this is not violative of a constitutional provision that laws of a general nature shall have uniform operation throughout the state, and no special law shall be enacted in any case for which provisions have been made by an existing general law (Ga. Const. 1945, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV)). Sigman v. Brunswick Port Auth., 214 Ga. 332, 104 S.E.2d 467, 1958 Ga. LEXIS 417 (1958).

Municipal Electric Authority Act not contrary. — Provisions of the Municipal Electric Authority Act (O.C.G.A Art. 3, Ch. 3, T. 46) are not unlawful as being contrary to provisions of the Revenue Bond Law (O.C.G.A Art. 3, Ch. 82, T. 36). Thompson v. Municipal Elec. Auth., 238 Ga. 19, 231 S.E.2d 720, 1976 Ga. LEXIS 1077 (1976).

Bonds not debt within meaning of debt clause. — Bonds issued for financing certain income producing projects and payable solely from income produced thereby shall not be considered as debts within the meaning of the debt clause, Ga. Const. 1877, Art. VII, Sec. VII, Para. I (see now Ga. Const. 1983, Art. IX, Sec. V, Para. I). City of Valdosta v. Singleton, 197 Ga. 194, 28 S.E.2d 759, 1944 Ga. LEXIS 241 (1944).

RESEARCH REFERENCES

C.J.S.
82 C.J.S., Statutes, § 377 et seq.

ARTICLE 4

BONDS

Editor's notes.
Ga. L. 2000, p. 498, § 4, effective April 20, 2000, repealed and reserved the former article. The former article, relating to bonds for public contractors, consisted of Code Sections 36-82-100 through 36-82-105 and was based on Ga. L. 1910, p. 86, § 1, 2; Ga. L. 1916, p. 94, §§ 1, 3-5; Code 1933, §§ 23-1705-23-1709; Ga. L. 1956, p. 340, §§ 1-6; Ga. L. 1982, p. 3, § 36; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 348, §§ 2, 3; Ga. L. 1989, p. 14, § 36; Ga. L. 1989, p. 461, §§ 2-4; Ga. L. 1993, p. 91, § 36; Ga. L. 1993, p. 1003, § 1.

Code Section 36-82-104 was amended by Ga. L. 2000, p. 1589, § 3. However, this amendment was not given effect due to the repeal of the former article by Ga. L. 2000, p. 498, § 4, effective April 20, 2000.

36-82-100. Expenditure of bond proceeds; auditing.

(a) As used in this Code section, the term "bonds" means any revenue or general obligation bonds issued under this chapter.

(b) When bonds are issued by a county, municipality, or local authority in the amount of $5 million or more, the expenditure of bond proceeds shall be subject to an ongoing performance audit or performance review as provided in this Code section; but this Code section shall not apply if such bond issue is below $5 million.

(c) Each county, municipality, or local authority expending bond

proceeds shall provide for a continuing performance audit or performance review of the expenditure of such funds. The county, municipality, or local authority shall contract with a certified public accountant or with an outside auditor, consultant, or other provider accredited or certified in the field of performance audits or performance reviews. Such accountant, auditor, consultant, or other provider shall only be qualified to perform the audit and review functions under this Code section if such accountant, auditor, consultant, or other provider has significant experience and competence in conducting comprehensive audits and reviews in conformance with generally accepted government auditing standards. The performance audit or performance review contract shall:

(1) Include a goal of ensuring to the maximum extent possible that the bond funds are expended efficiently and economically, so as to secure to the county, municipality, or local authority the maximum possible benefit from the bond funds;

(2) Provide for the issuance of periodic public reports, made accessible through electronic or printed format, or both, at a location advertised in the legal organ not less often than once annually, with respect to the extent to which expenditures are meeting the goal specified in paragraph (1) of this subsection; and

(3) Provide for the issuance of periodic public recommendations, made accessible through electronic or printed format, or both, at a location advertised in the legal organ not less often than once annually, for improvements in meeting the goal specified in paragraph (1) of this subsection.

(d) The auditor, consultant, or other provider to carry out the performance audit or performance review shall be selected through a public request for proposals process. The reasonable cost of the performance audit or performance review shall be paid from the proceeds of the bonds unless a specific waiver of public accountability is included in a legal advertisement in bold print contained within requisite public notice soliciting public preapproval of the applicable bond issue which expressly states that no performance audit or performance review shall be conducted with respect to such bond issue.

(e) On and after May 5, 2006, the expenditure of bond proceeds shall be under the jurisdiction of and subject to review by the inspector general of this state with respect to any claim of fraud, waste, abuse, or mismanagement of funds.

(f) This Code section shall apply with respect to any bonds which are subject to the requirements of subsection (b) of this Code section which are issued after May 5, 2006, until the proceeds of such bond issue have been expended.

History.
Code 1981, § 36-82-100, enacted by Ga. L. 2006, p. 1021, § 2/HB 1012.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2006, "May 5, 2006," was substituted for "the effective date of this Code section" in subsections (e) and (f).

ARTICLE 5

REGULATION OF INTEREST RATES FOR BONDS AND OBLIGATIONS OTHER THAN GENERAL OBLIGATION BONDS

36-82-120. Purpose of article.

It is the purpose of this article to maintain the fiscal solvency of counties, municipal corporations, and political subdivisions of the state and authorities and public corporations created by the Constitution of Georgia or any general, local, or special Act of the General Assembly in public borrowing by exempting from all other laws of the state governing usury or prescribing or limiting interest rates any bonds, notes, certificates, or obligations of any kind issued by any such county, municipal corporation, political subdivision, authority, or public corporation to evidence any repayment obligation for money borrowed, exclusive of general obligation bonds.

History.
Ga. L. 1981, p. 384, § 1.
Law reviews.
For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

36-82-121. Definitions.

As used in this article, the term:

(1) "Bonds" means any bonds, notes, certificates, or obligations of any kind issued by any municipality to evidence any repayment obligation for money borrowed by such municipality, exclusive of general obligation bonds.

(2) "General obligation bonds" means any bonds, notes, certificates, or obligations of any kind issued by any municipality which, under the Constitution of Georgia, may not be issued without the consent of a majority of the qualified voters of the municipality affected, voting in an election for that purpose, and also shall mean any bonds, notes, certificates, or obligations of any kind issued to refund outstanding general obligation bonds without an election as authorized under Article IX, Section V, Paragraph III of the Constitution of Georgia.

(3) "Municipality" means any school district, county, municipal

corporation, or political subdivision of the state or any authority or public corporation created by the Constitution of Georgia or any general, local, or special Act of the General Assembly which is as of March 16, 1981, or may thereafter be authorized by law to issue bonds.

History.
Ga. L. 1981, p. 384, § 2; Ga. L. 1984, p. 1362, § 7; Ga. L. 1985, p. 149, § 36.
Editor's notes.
Ga. L. 1984, p. 1362, § 8, not codified by the General Assembly, provides: "The provisions of this Act [which amended this Code section] shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this Act may be inconsistent with the provisions of the Georgia Constitution under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution or the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this Act shall control."

36-82-122. Exemption of bonds from Constitution and laws of Georgia regulating interest rates; fixing of rates of interest by resolution or ordinance.

(a) From and after March 16, 1981, any bonds issued by a municipality shall be exempt from:

(1) All laws of this state governing usury or prescribing or limiting interest rates to be borne by bonds; and

(2) All provisions of the Constitution of Georgia prescribing or limiting interest rates to be borne by bonds to the extent that the Constitution of Georgia permits the General Assembly by law to define further the powers and duties of any such municipality and to enlarge or restrict the same.

(b) The interest rate or rates to be borne by any bonds issued by a municipality shall be fixed by the governing body of such municipality in the resolution or ordinance adopted by such governing body to authorize the issuance of any such bonds.

History.
Ga. L. 1981, p. 384, § 3; Ga. L. 1982, p. 1603, §§ 1, 3.
Cross references.
Usury, § 7-4-1 et seq.
Editor's notes.
Ga. L. 1982, p. 1603, § 2 ratified and reaffirmed all terms and provisions of Ga. L. 1981, p. 384, as amended by the 1982 Act, and declared that such terms and provisions were of full force and effect. Ga. L. 1982, p. 1603, § 2 stood repealed on November 1, 1982, as provided in § 5(b) of the 1982 Act.
Law reviews.
For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

36-82-123. Repeal of regulations as to interest rates contained in other laws.

All provisions contained in any of the following laws which prescribe or limit the interest rate or rates to be borne by bonds are repealed to the extent the same are in conflict with this article and to the extent necessary to effect the purpose of this article by exempting any bonds issued by a municipality from all laws of the state governing usury or prescribing or limiting interest rates to be borne by bonds:

(1) Article 3 of this chapter, the "Revenue Bond Law";

(2) Article 4 of Chapter 7 of Title 31, the "Hospital Authorities Law";

(3) Article 1 of Chapter 3 of Title 8, the "Housing Authorities Law";

(4) Chapter 62 of this title, the "Development Authorities Law"; and

(5) Article 3 of Chapter 3 of Title 46, pertaining to the Municipal Electric Authority of Georgia.

History.
Ga. L. 1981, p. 384, § 4.

36-82-124. Construction of article.

This article shall be liberally construed to effect the purposes hereof; and insofar as the provisions of this article may be inconsistent with the provisions of the Constitution of Georgia, under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution of Georgia, or inconsistent with the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this article shall control.

History.
Ga. L. 1981, p. 384, § 5.

ARTICLE 6

FORM AND SERVICES CONNECTED WITH CREATION OF REPAYMENT OBLIGATIONS

36-82-140. Use of facsimile signatures and seals; contracts with financial institutions to perform certain repayment functions; evidence of repayment obligations.

Notwithstanding the provisions of other laws to the contrary, the following revisions of relevant laws shall apply to any municipality, as

defined in paragraph (3) of Code Section 36-82-121, which incurs bonded indebtedness:

(1) If a bond is to be issued to evidence the repayment obligation for borrowed money, the signatures of all officers of the municipality required by law or by the proceedings related to such borrowed money to sign such bond may be facsimile signatures and any seal required to be affixed thereon may be a facsimile seal if provision is also made for a manual authenticating signature on the bond by or on behalf of a designated financial institution or other person or other municipality with whom the municipality has a contract as provided in subparagraph (A) of paragraph (2) of this Code section with respect to such bond. In addition, any officer may adopt as a facsimile signature the signature or facsimile signature of a predecessor in office in the event the signature or facsimile signature of such predecessor appears on such bond;

(2)(A) Any municipality borrowing money may contract for the services of a financial institution or other person within or without the state or another municipality to perform any of the following functions with respect to repayment obligations for borrowed money:

(i) Issuance, authentication, transfer, registration, exchange, and related mechanical and clerical functions;

(ii) Record or bookkeeping or book entry functions;

(iii) Preparation, signing, and issuance of checks or warrants in payment of repayment obligations for borrowed money;

(iv) Preparation and maintenance of reports and accounts; and

(v) Performance of any other duties related to repayment obligations for borrowed money.

(B) The cost of performing the aforesaid functions, whether incurred under a contract or through direct performance by the municipality, may be paid from the borrowed moneys or from other funds lawfully available for the purpose; and

(3)(A) Whenever any municipality shall borrow money any repayment obligation with respect thereto may be evidenced:

(i) By bonds issued in such form either coupon or fully registered or both coupon and fully registered in such denominations and with such provisions for registration, exchangeability, and transferability as the resolution authorizing the borrowing of money or any loan agreement, trust agreement, or other contract

or agreement to be entered into in connection with the borrowing of money may provide;

(ii) By book entries under which the right to receive payments of principal, redemption premium, if any, and interest shall be established and transferred only through subsequent book entries; or

(iii) In such other manner as may be provided for in the resolution authorizing the borrowing of money or any loan agreement, trust agreement, or other contract or agreement to be entered into in connection with the borrowing of money.

(B) If any municipality elects to evidence any repayment obligation for borrowed money in a manner permitted by division (ii) or (iii) of subparagraph (A) of this paragraph:

(i) No bond shall be issued to evidence such repayment obligation, and the adoption by the municipality of the resolution authorizing the borrowing of such money and the execution and delivery by the municipality of the loan agreement, trust agreement, or other contract or agreement to be entered into in connection with the borrowing of such money and the receipt by the municipality or by an agent acting on behalf of the municipality of the money borrowed shall be the only requirement to establish lawfully the repayment obligation with respect to such borrowed money; and

(ii) The municipality shall provide for the sending of written statements which provide a record of certain rights with respect to such repayment obligation as of the time of issuance of the statements. Such statements shall be sent each person acquiring rights by registration in such repayment obligation but shall, in and of themselves, confer no rights on the recipient and shall be neither a negotiable instrument nor a security.

(C) In the event any municipality elects to evidence any such repayment obligation in a manner permitted by division (ii) or (iii) of subparagraph (A) of this paragraph, the provisions of any other law of this state to the contrary notwithstanding, the interest of any person in such repayment obligation may be accepted, to the extent of such interest, as a deposit of the repayment obligation to which it relates, provided that the municipality has provided by contract for the pledge of such interest.

History.

Code 1981, § 36-82-140, enacted by Ga. L. 1983, p. 839, § 2; Ga. L. 1984, p. 22, § 36; Ga. L. 1985, p. 149, § 36; Ga. L. 1987, p. 3, § 36.

36-82-141. Records of ownership, registration, transfer, and exchange of repayment obligations not public records.

The records of ownership, registration, transfer, and exchange of repayment obligations for borrowed money and of persons to whom payment with respect to such obligations is made shall not be public records, it being understood that the availability of such records to the general public would likely have a serious adverse impact on the ability of a municipality to consummate subsequent borrowings of money at the most advantageous cost to such municipality.

History.
Code 1981, § 36-82-141, enacted by Ga. L. 1983, p. 839, § 2.

36-82-142. Construction of article.

This article shall be liberally construed to effect the purposes hereof; and insofar as the provisions of this article may be inconsistent with the provisions of the Constitution of Georgia, under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution of Georgia, or inconsistent with the provisions of any law, including any general, local, or special Act of the General Assembly relating to bonds issued by any municipality, this article shall control.

History.
Code 1981, § 36-82-142, enacted by Ga. L. 1983, p. 839, § 2.

ARTICLE 7

REGULATION OF BONDS AND OBLIGATIONS ISSUED BY DEVELOPMENT AUTHORITIES

36-82-160. [Reserved] Requirements for filing; forms; exemptions.

History.
Ga. L. 1984, p. 941, § 1; Ga. L. 1987, p. 3, § 36; repealed by Ga. L. 2001, p. 1033, § 2, effective April 27, 2001.

Editor's notes.
Ga. L. 2001, p. 1033, § 2 repealed and reserved this Code section, effective April 27, 2001.

ARTICLE 8

GEORGIA ALLOCATION SYSTEM

Editor's notes.
Ga. L. 1987, p. 486, effective January 1, 1988, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of §§ 36-82-180 through

36-82-200, concerning the Georgia Allocation Plan, and was based on Ga. L. 1985, p. 1143, § 1; Ga. L. 1986, p. 344, § 2.

36-82-180. Short title.

This article shall be known and may be cited as the "Georgia Allocation System."

History.
Code 1981, § 36-82-180, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.

36-82-181. Legislative purpose.

The economic development and the availability of safe, sanitary, and affordable housing in the State of Georgia are of vital importance to the state and its citizens. Private activity bond financing has been an integral part of the state's program for economic development and affordable housing. The United States government has enacted a law which limits the availability of private activity bond financing within each state. This limited resource must be used in the best interest of the State of Georgia to the fullest extent permitted by federal law. The federal law limits the annual issuance of private activity bonds in the state to an amount not exceeding a state ceiling imposed under the federal law. The federal law not only provides for a distribution of the state ceiling but also provides that a state may by law provide for a different formula for allocating the state ceiling among the governmental units or other authorities in the state having authority to issue private activity bonds. The purpose of this article is to implement a system for allocating the use of private activity bonds, as permitted by federal law, in order to further the economic development of the state, to further the provision of safe, sanitary, and affordable housing, and otherwise to further the purposes of the laws of the state which provide for the issuance of such bonds.

History.
Code 1981, § 36-82-181, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.

Law reviews.
For article, "Financing Affordable Housing in Georgia: The Possibility of a Dedicated Revenue Source," see 13 Ga. St. U.L. Rev. 363 (1997).

36-82-182. Definitions.

As used in this article, the term:

(1) "Amount" means, when used with respect to bonds, notices of allocation, or portions of the state ceiling, an amount measured in terms of United States dollars.

(2) "Application" means the application and amendments thereto

for a notice of allocation required to be filed by an issuer with the department pursuant to this article.

(3) "Bonds" means any bonds, notes, or other obligations which would be included or treated as private activity bonds for the purpose of the state's volume cap under Section 146 of the Federal Code. Section 146 of the Federal Code provides that, for purposes of that section, the term "private activity bond" shall not include the specifically designated types of bonds which would, under other provisions of the Federal Code, constitute private activity bonds; and for purposes of this article, the term "bonds" shall mean only those bonds, notes, or other obligations subject to the volume cap under Section 146 of the Federal Code. Such term shall include the private activity portion of governmental use bonds.

(4) "Borrower" means any person or persons whose private business use, within the meaning of Section 141 of the Federal Code, would cause any bonds to constitute private activity bonds within the meaning of Section 141 of the Federal Code. If there is more than one such person with respect to any issue of bonds, then the term "borrower" shall mean and include each and every such person known at the time that the issuer files an application.

(5) "Business day" means a day on which the department is open for business. Such term shall not include any Saturday, Sunday, or legal holiday officially observed by the state.

(6) "Carryforward election application" means the application for a notice of allocation for a carryforward project required to be filed by an issuer with all attachments and amendments.

(7) "Commissioner" means the commissioner of the Department of Community Affairs.

(8) "Competitive pool" means that portion of the state ceiling set aside prior to April 1, 1990.

(9) "Confirmation of issuance" means the issuer's confirmation, in writing, that the bonds authorized by a notice of allocation have been issued, in such form as the commissioner may promulgate from time to time.

(10) "Department" means the Department of Community Affairs.

(11) "Economic development share" means that portion of the state ceiling established in accordance with Code Section 36-82-186.

(12) "Employment test" means either of the employment tests set forth in Code Section 36-82-188.

(13) "Exempt facility bond" means any bond described as an exempt facility bond in Section 142 of the Federal Code, other than

any obligation described in Section 142(a)(1) or Section 142(a)(2) of the Federal Code and any obligation described in Section 142(a)(6) of the Federal Code which is issued as part of an issue if all of the property to be financed by the net proceeds of such issue is to be owned by a governmental unit, within the meaning of Section 146 of the Federal Code.

(14) "Expiration date" means the final date on which bonds covered by a notice of allocation may be issued and by which date confirmation of issuance must be filed with the department.

(15) "Federal Code" means the Internal Revenue Code of 1986, as amended.

(16) "Filing date" means the final date for filing an application as specified in this article.

(17) "Flexible pool" means that portion of the state ceiling set aside prior to April 1, 1990.

(18) "Flexible share" means that portion of the state ceiling set aside, in accordance with Code Section 36-82-193, for discretionary use by the department.

(19) "Georgia Housing and Finance Authority" means the authority established under Chapter 26 of Title 50.

(20) "HoDAG" means a housing development action grant as administered by the United States Department of Housing and Urban Development.

(21) "Housing bonds" means multifamily housing bonds, single-family housing bonds, or other qualified housing bonds, as the case may be.

(22) "Housing share" means the portion of the state ceiling established in accordance with Code Section 36-83-189.

(23) "Issued" means, with respect to any issue of bonds, that such bonds have been delivered and paid for in full. Payment in full may be made, in whole or in part, by a binding, enforceable agreement to make payment in the future.

(24) "Issuer" means the political subdivision, governmental unit, authority, or other entity which issues any bonds.

(25) "Legal counsel" means an attorney or firm of attorneys duly authorized to practice law in the State of Georgia and admitted to practice before the highest court in the State of Georgia.

(26) "Local housing authorities" means any issuers of multifamily housing bonds, single-family housing bonds, or other qualified housing bonds created and existing under the laws of this state.

(27) "Mortgage credit certificate" means a certificate issued under a qualified mortgage credit certificate program within the meaning of Section 25 of the Federal Code.

(28) "Multifamily housing bond" means any obligation which constitutes an exempt facility bond for the financing of a qualified residential rental project within the meaning of Section 142 of the Federal Code.

(29) "Notice of allocation" means the notice given by the department allocating to an issuer a specified amount from the state ceiling for a specific issue of bonds.

(30) "Period" means any of the time periods into which the calendar year is divided for purposes of authorizing a percentage of the state ceiling to be used during such period as provided in this article as follows: period 1 begins January 1 and ends at midnight on March 31; period 2 begins April 1 and ends at midnight on June 30; period 3 begins July 1 and ends at midnight on September 30; and period 4 begins on October 1 and ends at midnight on December 31.

(31) "Person" means any individual, corporation, limited or general partnership, association, trust, or other entity of any nature whatsoever.

(32) "Policy guidelines" means the policy guidelines set forth in Code Section 36-82-195.

(33) "Private activity portion of governmental use bonds" means the amount of any obligation, treated as a nonqualified amount under Section 141 of the Federal Code, which is in excess of $15 million and which would cause the obligation to be treated as a private activity bond under Section 141(b)(5) of the Federal Code, unless the amount equal to the excess of the nonqualifying amount over $15 million receives an allocation of the state's volume cap under Section 146 of the Federal Code.

(34) "Project" means the facility, as described in an application, proposed to be financed, in whole or in part, by an issue of bonds.

(35) "Qualified application" means a completed application for a notice of allocation.

(36) "Qualified housing project" means a project for which the issuance or exchange of tax-exempt bonds under the Federal Code for qualified housing purposes requires an allocation from the state ceiling.

(37) "Reservations" means the amounts reserved for the Georgia Housing and Finance Authority, the urban residential finance au-

thorities, and the local housing authorities in Code Section 36-82-190.

(38) "Single-family housing bond" means any obligation described as a qualified mortgage bond in Section 143 of the Federal Code.

(39) "Small issue bond" means any obligation described as a qualified small issue bond in Section 144(a) of the Federal Code.

(40) "State" means the State of Georgia.

(41) "State ceiling" means for any calendar year the state ceiling applicable to the state, as such term is used in the Federal Code. The amount of the state ceiling shall be determined in accordance with the provisions of the Federal Code.

(42) "Student loan bond" means any obligation described as a qualified student loan bond in Section 144(b) of the Federal Code.

(43) "System" means the Georgia Allocation System as established by this article.

(44) "UDAG bonds" means any issue of bonds 95 percent or more of the net proceeds of which are to be used to provide facilities with respect to which an urban development action grant, under Section 119 of the Housing and Community Development Act of 1974, as amended, has been applied for and which, if such grant is made, would be an issue described in Section 144(a)(4)(F) of the Federal Code.

(45) "Unused amount" means, as of any date when the unused amount of any share is computed, the amount of any share from which notices of allocation were authorized to be given during a prior period, if any, but with respect to which either no notices of allocation were given during such period or notices of allocation were given but confirmation of issuance was not filed with the department on or before the applicable expiration date plus the amount of any share from which notices of allocation have been given during the period which includes the date of computation but with respect to which confirmation of issuance was not filed with the department on or before the applicable expiration date.

(46) "Urban residential finance authority" means any authority established under Chapter 41 of this title.

History.

Code 1981, § 36-82-182, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1989, p. 165, § 1; Ga. L. 1990, p. 817, § 1; Ga. L. 1991, p. 94, § 36; Ga. L. 1991, p. 1653, § 2-2; Ga. L. 1993, p. 91, § 36; Ga. L. 2025, p. 1029, § 36(47)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted

"Such term" for "For purposes of this article, the term 'bonds'" in paragraph (3); and substituted "Such term" for "The term 'business day'" in paragraph (5).

36-82-183. Powers of department.

The department shall administer, operate, and manage the system. Action taken by the department, however, shall not constitute an opinion of the department on any legal matters with respect to the federal or state tax treatment of any bonds. Without limiting the generality of the department's power and authority to administer, operate, and manage the system, the department shall make such determinations and decisions, promulgate such rules, require the use of such forms, establish such procedures, and otherwise administer, operate, and manage the system in such respects as may be, in the department's determination, necessary, desirable, or incident to its responsibilities as the administrator, operator, and manager of the system. The General Assembly recognizes and acknowledges that the department will encounter situations which have not been foreseen or provided for in this article and expressly delegates to the department the power and authority to administer, operate, and manage the system in all situations and circumstances, both foreseen and unforeseen, including, without limiting the generality of the foregoing, the power and authority to control and establish procedures for controlling any misuse or abuses of the system and the power and authority to resolve conflicts or inconsistencies, if any, in this article or which may arise in administering, operating, or managing the system pursuant to this article. Any decision which the commissioner or the department makes, and any action or inaction by the commissioner or the department, in administering, managing, and operating the system shall be final and conclusive and shall not be subject to any review, whether judicial, administrative, or otherwise, and shall not be covered by, subject to, or required to comply with or satisfy any provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The system depends upon the truthfulness of representations made and information submitted in or accompanying applications. The department may use all of the power and authority granted in this article, and such other power or authority as the commissioner may deem necessary or appropriate, in order to take action against those who fail to comply with any of the provisions of this article or who fail to display the truthfulness, which shall include the completeness necessary to avoid untruthfulness by omission, which the commissioner deems necessary for the system. Without limiting the generality of this article, the General Assembly expressly delegates to the department the power and authority to control, permit to be used, or refuse to permit to be used any allocation which would reduce the state ceiling under Section 146(m) of the Federal Code, dealing with the private activity portion of governmental use bonds; and the department, to accomplish this end, may impose

requirements upon any issuer, including any other agency or department of the state or any county or municipality or agency, department, or authority of a county or municipality within the state.

History.
Code 1981, § 36-82-183, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1987, a comma was inserted following the second "operate" in the third sentence.

36-82-184. Determination of state ceiling; records required.

(a) The amount of the state ceiling shall be determined by the department in accordance with the Federal Code. The amount of the state ceiling available at any time shall be the amount, determined by the department, which results from subtracting from the state ceiling:

(1) The amount of bonds issued pursuant to notices of allocation and with respect to which confirmation of issuance has been received by the department on or before the applicable expiration date; and

(2) The amount of bonds covered by notices of allocation outstanding but with respect to which the expiration date has not occurred and with respect to which no confirmation of issuance has been filed with the department.

(b) The department shall keep separate records for the economic development share, housing share, and flexible share and shall make available to the public, by telephone recording or periodic news release or such other means as the department may determine to be appropriate, information with respect to the available amount of the economic development share, housing share, and flexible share.

History.
Code 1981, § 36-82-184, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.

36-82-185. Application for notice of allocation; receipt of application; issue of notice; confirmation of bond issue; certificates under Federal Code.

(a) Applications for notices of allocation shall be filed, received, and acted on by the department as set forth in this Code section.

(b) Applications shall be filed on such forms as the commissioner shall require. Each application shall be accompanied by the following:

(1) A copy of the inducement resolution or other similar official action taken by the issuer with respect to the bonds and the project which are the subject of the application, signed by an officer, or a designee of said officer, of the issuer;

(2) An affidavit, or copy thereof, of the publisher of the newspaper

or newspapers in which the notice of the public hearing required by Section 147(f) of the Federal Code was published, demonstrating that notice of such public hearing was published, and a copy of the approval of the governmental unit or governmental units required by Section 147(f) of the Federal Code, certified by a public official with the authority to certify such approval. This requirement shall not apply to any bonds:

(A) For which Section 147(f) of the Federal Code does not require such a public hearing and approval of a governmental unit or governmental units; or

(B) Projects requiring the approval of the Georgia State Financing and Investment Commission;

(3) A written opinion of legal counsel, addressed to the department, to the effect that the issuer is authorized under the laws of the state to issue bonds for projects of the same type and nature as the project which is the subject of the application. This opinion shall cite by constitutional or statutory reference, including a reference to the session laws of the General Assembly in the case of a constitutional reference, the provision of the Constitution or law of the state which authorizes the bonds for the project;

(4) A written commitment from a lender, financial institution, underwriter, investment banker, or other purchaser, addressed to the department, to purchase the bonds upon delivery by the issuer. In the discretion of the commissioner, this requirement may be waived in the event an officer of the issuer certifies, in writing, that the bonds subject to the application will be issued on a competitive bid basis;

(5) Any additional items specified elsewhere in this article; and

(6) Any other information as reasonably required by the department.

(c) All applications shall apply for amounts of the state ceiling specified in even amounts of $1,000.00.

(d) If more than one person is a borrower with respect to any issue of bonds, any one of such persons may, and all such persons shall not be required to, execute any application, letter, or writing which this article requires to be executed by the borrower.

(e) The department shall stamp or otherwise designate the date on which it receives each completed application. The date stamped or otherwise designated for any application received after the close of business on a business day will be the next business day. For this purpose, the close of business shall be the time officially designated for the close of the department's business day. The application shall not be

considered completed and shall not be stamped and accepted for filing unless and until each of the items required under subsection (b) of this Code section has been received by the department. Receipt shall be deemed to occur only on a business day.

(f) A notice of allocation shall constitute the only means by which any of the state ceiling shall be allocated to a specific issuer for a specific issue of bonds. Any bonds for which no notice of allocation is given shall not be deemed to have been allocated as a part of the state ceiling as required by the Federal Code and shall be deemed to be bonds issued in excess of the issuer's private activity bond limit under the Federal Code.

(g) The notice of allocation shall be in writing, shall be given to the issuer at the address specified in the application, shall specify the amount of bonds which may be issued, and shall specify the expiration date. The notice of allocation shall be in such form as the commissioner shall determine. A notice of allocation may not be revoked although it shall expire in accordance with the provisions of this article. All notices of allocation shall be given for amounts of the state ceiling specified in even amounts of $1,000.00.

(h) When bonds covered by a notice of allocation have been issued, confirmation of issuance shall be filed with the department immediately and must be filed on or before the expiration date. Unless otherwise determined by the commissioner, the expiration date for any notice of allocation shall never be later than the second to last business day of a calendar year. To the extent necessary to accomplish this, the department shall shorten the time period otherwise allowed to lapse before an expiration date. If bonds are not issued and confirmation of issuance is not filed with the department on or before the expiration date, the notice of allocation shall cease to be effective. The confirmation of issuance shall be deemed to have been filed with the department on the earliest of:

(1) The date it is actually delivered to the department;

(2) If mailed by the United States mail, certified return receipt requested, the date of the postmark;

(3) If sent to the department by a nongovernmental courier or delivery service, the date delivered to that service; or

(4) If sent by facsimile machine, the date received by the department.

(i) Notwithstanding any provisions of this article to the contrary, the department shall not be required to accept any application for notice of allocation filed with the department after December 15 of each year.

(j) A notice of allocation shall not be effective if the bonds actually

issued pursuant to such notice of allocation are in an aggregate principal amount which is less than 90 percent of the amount of bonds authorized by such notice of allocation. The department shall, at the written request of the issuer submitted to the department prior to the actual issuance of the bonds, amend the notice of allocation so as not to be in conflict with this subsection.

(k) The department may, at the written request of an issuer, increase the amount of a notice of allocation by an amount not to exceed 10 percent of the amount of the original application. The department shall not, however, have any obligation to provide such an increase, and no issuer shall have any right to such an increase.

(l) If any issuer in receipt of a notice of allocation fails to have issued the bonds subject to the notice of allocation on or before the expiration date, the project subject to the notice of allocation shall not be eligible to receive an additional notice of allocation for six months after the date of the expiration date of the original notice of allocation. This subsection, however, shall not apply to those projects in which the issuer notifies the department, in writing, 15 days prior to the expiration date of the notice of allocation that the bonds subject to the notice of allocation will not be issued.

(m) The opinions of legal counsel and the commitment from a lender, financial institution, underwriter, investment banker, or other purchaser which are required to accompany applications shall be dated no more than 30 days prior to the date on which the application is filed. Such opinions, such commitment, and any other items required to accompany an application shall be in substantially the form or forms promulgated by the commissioner.

(n) Notices of allocation and other notices and written communications from the department shall be deemed to have been given when duly deposited in the United States mail, first class with all postage prepaid. Notices of allocation may, at the request of the borrower, be picked up by hand or delivered by courier or other delivery service, at the expense of the borrower. Notices and other written communications to and filings with the department shall be given or made either by actual delivery to the office of the commissioner in Atlanta, Georgia, directed to the attention of the bond allocation manager, or by depositing the same in the United States mail, first class with all postage prepaid, addressed to the office of the commissioner in Atlanta, Georgia, directed to the attention of the bond allocation manager. Such notices and other written communications shall be deemed received only upon actual receipt by the department.

(o) The department shall furnish to the issuer receiving a notice of allocation a certificate of the commissioner certifying under penalty of perjury that the allocation evidenced by the notice of allocation was not

made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign, in such form as the department may specify or as may be required pursuant to the Federal Code.

(p) The commissioner of the department is designated, for any purpose required under the Federal Code, as the state official who shall certify that bonds meet the requirements of the state ceiling, in such form as the department may specify or as may be required pursuant to Section 149(e) of the Federal Code and any other applicable Federal Code section or United States Department of the Treasury regulations promulgated pursuant to the Federal Code.

History.
Code 1981, § 36-82-185, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.

36-82-186. Economic development share.

(a) Commencing on April 1, 1990, the economic development share for 1990 is established in an amount equal to 40 percent of the state ceiling. The 1990 percentage shall include any allocations made from the competitive pool prior to April 1, 1990. The economic development share for 1991 and each year thereafter is established in an amount equal to 42 1/2 percent of the state ceiling. The economic development share shall be divided among the periods of the year as follows:

(1) In 1990, during period 2, notices of allocation may be given for amounts up to 100 percent of the economic development share, minus the amount of any notices of allocation from the competitive pool made prior to April 1, 1990; and

(2) In 1991 and each year thereafter:

(A) During period 1, notices of allocation may be given for amounts up to 40 percent of the economic development share;

(B) During period 2, notices of allocation may be given for amounts up to 40 percent of the economic development share; and

(C) During period 3, notices of allocation may be given for amounts up to 20 percent of the economic development share.

(b) At any time, notices of allocation may be given for any unused amount.

History.
Code 1981, § 36-82-186, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.

Cross references.
Elimination of economic development share, § 36-82-197.

36-82-187. Application for economic development share and competitive pool allocation; priority of and approval of application; carrying over; time and amount limitation.

(a) Applications for notices of allocation from the economic development share must be received by the department no later than June 30 of 1990 or September 30 of 1991 and September 30 each year thereafter. Applications for notices of allocation from the economic development share may only be filed for small issue bonds, exempt facility bonds, the private activity portion of governmental use bonds, or any other bond meeting the employment test required by Code Section 36-82-188 on the terms set forth in this Code section. Notwithstanding any provisions of this article to the contrary, the department shall not be required to accept any application for a notice of allocation for exempt facility bonds or the private activity portion of governmental use bonds from the economic development share; and no issuer shall have any right to such an allocation.

(b) In addition to the items specified in Code Section 36-82-185, each application shall be accompanied by the following, where applicable:

(1) If the application is for UDAG bonds:

(A) A copy of the application submitted to the United States Department of Housing and Urban Development for an urban development action grant; and

(B) A written opinion of legal counsel, addressed to the department, to the effect that the bonds which are covered by the application will, based upon the information available at that time to such legal counsel, qualify as UDAG bonds when issued;

(2) If the employment test applies with respect to jobs retained, a written certification which satisfies the employment test, as required by Code Section 36-82-188;

(3) If the application is for exempt facility bonds, a written opinion of legal counsel addressed to the department to the effect that the bonds covered by the application will, based upon the information available at that time to such legal counsel, qualify as exempt facility bonds when issued;

(4) If the application is for the private activity portion of governmental use bonds, a written opinion of legal counsel addressed to the department to the effect that the bonds covered by the application will, based upon the information available at that time to such legal counsel, qualify as the private activity portion of governmental use bonds when issued; and

(5) If the application is for exempt facility bonds or the private activity portion of governmental use bonds, a written statement of the issuer addressed to the department describing the economic impact of the proposed project on the territorial area of the issuer.

(c) The department shall give its notice of allocation approving the allocation requested by the qualified application within 15 days after the department receives the completed application to the extent that amounts in the economic development share remain available for notices of allocation. Such notices of allocation shall be given with respect to qualified applications in the chronological order, by date, in which the completed qualified applications were received by the department.

(d) If the qualified applications received on the same date request notices of allocation that would exceed the amount of the economic development share which, at the time, remains available for notice of allocation, the department shall decide, within 30 days, which qualified application or qualified applications shall receive a notice of allocation by applying the policy guidelines. The decision of the department shall be final and conclusive.

(e) If at any time none of the economic development share remains available for notices of allocation, but additional amounts of the economic development share become available later because confirmation of issuance was not filed with the department on or before the applicable expiration date for any notice or notices of allocation or for any other reason, the department shall give a notice of allocation with respect to qualified applications including any qualified applications which failed to receive a notice of allocation pursuant to subsection (d) of this Code section. Such notices of allocation shall be given, to the extent that the economic development share becomes available, with respect to qualified applications in the chronological order, by date, in which they were received by the department and, if necessary, by again applying the procedures set forth in subsection (d) of this Code section.

(f) Qualified applications received during a period which do not receive a notice of allocation during that period shall automatically be deemed to have been received on the first day of the next period. In order to be deemed automatically to have been received on the first day of the next period, however, any such qualified application received by the department more than 45 days prior to the first day of the next period must be certified as current, not more than 30 days prior to the first day of the next period, by a letter from the issuer, addressed to the department and received by the department prior to the first day of the next period, certifying that the information contained in the qualified application and all items accompanying the qualified application are and remain accurate and in full force and effect, except as may be

specifically set forth in any amendment to the qualified application which does not result in the application's failing to constitute a qualified application received by the department at or before the receipt of such certification. If such certification is received by the department after the first day of the next period, the application shall be deemed to have been resubmitted and received on the date when such certification was received.

(g) Notwithstanding any provisions of this Code section to the contrary, the department may, in its discretion, give a notice of allocation from the flexible share with respect to any qualified application which is not given a notice of allocation from the economic development share.

(h) Notwithstanding any provisions of this Code section to the contrary, the department shall not be required to give a notice of allocation from the economic development share for any bond in an amount of more than $10 million.

(i)(1) The expiration date for a notice of allocation from the economic development share, other than for UDAG bonds, shall be the first business day which occurs on or after the seventy-fifth day after the date on which the notice of allocation is given.

(2) The expiration date for a notice of allocation for UDAG bonds may, in the department's discretion, be the first business day which occurs on or after the one hundred-eightieth day after the date on which the notice of allocation is given. The department shall not, however, have any obligation to provide an expiration date in excess of 75 days, and no issuer shall have any right to an expiration date in excess of 75 days.

(3) The department may, for good cause shown by the issuer in a written statement submitted to the department prior to such expiration date, extend the expiration date for one, but only one, additional period which shall expire, at the department's discretion, on any date not later than 30 days after the original expiration date. The department shall not, however, have any obligation to provide such an extension; and no issuer shall have any right to such an extension.

(j) If confirmation of issuance is not filed with the department on or before the applicable expiration date, the notice of allocation shall cease to be effective and the amount covered by the notice of allocation shall automatically be added to:

(1) The economic development share if the notice of allocation ceases to be in effect prior to July 1 of 1990 or October 1 of 1991 and October 1 of each year thereafter; or

(2) The flexible share if the notice of allocation ceases to be in effect between July 1 of 1990 and December 31 of 1990 or October 1 of 1991

and December 31 of 1991 and October 1 and December 31 each year thereafter.

(k) On July 1, 1990, and October 1, 1991, and October 1 in each year thereafter the economic development share shall expire and any unused amounts remaining in the economic development share and any amounts for which the notice of allocation ceases to be in effect shall automatically be added to the flexible share.

History.
Code 1981, § 36-82-187, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1989, p. 165, § 2; Ga. L. 1990, p. 817, § 1; Ga. L. 1993, p. 91, § 36.

36-82-188. Employment test.

(a) In order to qualify for a notice of allocation from the economic development share, a project must satisfy the employment tests as defined in this Code section. To satisfy the employment tests, a project must either:

(1) Be reasonably expected to increase employment within the territorial area of operation of the issuer by not less than one job for each $125,000.00 or part thereof in bond financing. This requirement shall be known as the increased employment test; or

(2) Be reasonably expected to retain within the territorial area of operation of the issuer not less than one job for each $125,000.00 or part thereof in bond financing. This requirement shall be known as the retained employment test.

(b) The increased employment test shall be satisfied if a borrower reasonably expects that the required additional jobs will be available not later than two years after completion of the project and certifies to this effect in writing. The retained employment test shall be satisfied if the borrower certifies in writing, addressed to the department, that, except for the issuance of the bonds which are the subject of the application, such borrower or other entity which operates the project reasonably expects that it would, within two years after the date of the application, either cease operation at the site of the project, thereby reducing employment by not less than the required number, or reduce employment by not less than the required number without ceasing operation.

(c) A job shall mean, for purposes of either employment test, a position held by a full-time, paid employee with no agreement or arrangement which would limit the duration of such employment. Such an employee either must spend substantially all of his time on the job performing the duties of his job at the location of the project or must be based at the project and spend substantially all of his time on the job

performing the duties of his job within the territorial area of operation of the issuer.

History.
Code 1981, § 36-82-189, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-188, as redesignated by Ga. L. 1990, p. 817, § 1; Ga. L. 1993, p. 91, § 36.
Editor's notes.
Ga. L. 1990, p. 817, § 1, effective April 4, 1990, redesignated former Code Section 36-82-189 as present Code Section 36-82-188; and repealed the former Code Section 36-82-188, which was based on Ga. L. 1987, p. 486, § 1, and which pertained to applications for notices of allocation from the rural area pool.

36-82-189. Housing share.

Commencing on April 1, 1990, the housing share for 1990 is established in an amount equal to 40 percent of the state ceiling. The 1990 percentage shall include any allocations made from the housing share made prior to April 1, 1990. The housing share for 1991 and each year thereafter is established in an amount equal to 42 1/2 percent of the state ceiling.

History.
Code 1981, § 36-82-190, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1989, p. 165, § 3; Code 1981, § 36-82-189, as redesignated by Ga. L. 1990, p. 817, § 1.
Cross references.
Elimination of housing share, § 36-82-197.
Editor's notes.
Former Code Section 36-82-189 was redesignated by Ga. L. 1990, p. 817, § 1 as present Code Section 36-82-188.

36-82-190. Reservations from housing share.

(a) Commencing on April 1, 1990, and extending through June 30, 1990, and for 1991 and each year thereafter commencing on January 1 and extending through September 30, reservations from the housing share shall be as follows:

(1) Sixty-two percent shall be reserved for the Georgia Housing and Finance Authority for any qualified housing project. This shall be known as the state housing reservation;

(2) Nineteen percent shall be reserved for urban residential finance authorities for any qualified housing project. This shall be known as the urban housing reservation; and

(3) Nineteen percent shall be reserved for local housing authorities for any qualified housing projects. This shall be known as the local housing reservation. The local housing reservation shall be available for notices of allocation on a first-come, first-served basis. If applications exceed the amount available, the department shall apply the policy guidelines provided in Code Section 36-82-195.

(b) Any allocations made in 1990 prior to April 1, 1990, shall be

subtracted from the total sum which would be available to an issuer based upon which reservation the issuer qualified for and based upon the percentage formula provided in this Code section.

(c) On July 1, 1990, and October 1, 1991, and October 1 in each year thereafter, the housing share shall expire and any unused amounts remaining in the housing share and any amounts for which the notice of allocation ceases to be in effect shall automatically be added to the flexible share.

(d) If at any time amounts of the state housing reservation or the urban housing reservation remain available for allocation, the Georgia Housing and Finance Authority or the urban residential finance authorities may, upon written notification to the department, transfer any available reservation, or any part thereof, to the state housing reservation, urban housing reservation, or the local housing reservation, if the issuer making the transfer anticipates that such amounts are more likely to be used in the reservation to which the transfer is made.

History.
Code 1981, § 36-82-190, enacted by Ga. L. 1990, p. 817, § 1; Ga. L. 1991, p. 94, § 36; Ga. L. 1991, p. 1653, § 2-3.
Editor's notes.
Ga. L. 1990, p. 817, § 1, effective April 4, 1990, redesignated former Code Section 36-82-190 as present Code Section 36-82-189.

36-82-191. Applications for single-family bond projects; issue of notice; confirmation; exploration.

(a) Applications for single-family bond projects must be filed no later than June 30 of 1990 or September 30 of 1991 and September each year thereafter to be eligible to receive an allocation from the housing share.

(b) Each application for a single-family project shall be accompanied by the following:

(1) The items specified in Code Section 36-82-185;

(2) A written opinion of legal counsel, addressed to the department, to the effect that the bonds which are covered by the application will, based upon the information available at that time to such legal counsel, qualify as single-family housing bonds when issued; and

(3) A letter addressed to the department demonstrating that as of the date of the application for notice of allocation the applicant has reserved to individual mortgagors or projects at least 80 percent of the proceeds of any previous single-family bond issue and, if applicable, actually purchased or underwritten at least 25 percent of the loans funded from all previous single-family bond issues of the applicant for any single-family bond issue.

(c) The department shall give its notice of allocation approving the allocation requested by a qualified application within 15 days after the department receives the completed application, provided that the amount of the applications does not exceed the reservations established in Code Section 36-82-190. Such notices of allocation shall be given with respect to qualified applications in the chronological order, by date, in which the completed qualified applications were received by the department.

(d) The provisions of subsections (e) and (g) of Code Section 36-82-187 with respect to notices of allocation from the economic development share shall also apply to notices of allocation from the single-family bond projects from the local housing reservation.

(e) The expiration date for a notice of allocation for a single-family housing project from any housing reservation shall be 75 days following the date of notice of allocation. The department may, for good cause shown by an issuer, extend the expiration date by not more than 30 days, but no issuer shall have any right to such an extension.

(f) If the confirmation of issuance is not filed with the department on or before the expiration date, the notice of allocation shall cease to be effective and the amount covered by the notice of allocation shall automatically be transferred to and added to the respective reservation in the housing share if on or before June 30 of 1990 or September 30 of 1991 and September 30 each year thereafter or the flexible share if after June 30 of 1990 or September 30 of 1991 and September 30 each year thereafter.

(g) Notwithstanding any provision of this article to the contrary, the commissioner may, for good cause shown by an issuer in a written request addressed to the department, waive the provision of paragraph (3) of subsection (b) of this Code section.

History.
Code 1981, § 36-82-192, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1989, p. 165, § 4; Code 1981, § 36-82-191, as redesignated by Ga. L. 1990, p. 817, § 1.

Editor's notes.
Former Code Section 36-82-191, based on Ga. L. 1987, p. 486, § 1, relating to single-family, multifamily, and general pools, was repealed by Ga. L. 1990, p. 817, § 1, which also enacted the current Code section.

36-82-192. Requirements for applications for qualified residential rental projects; periods for notices of allocation; expiration dates for notices; confirmation of issuance required.

(a) Applications for qualified residential rental projects shall be accompanied by the following:

(1) The items specified in Code Section 36-82-185;

(2) A written opinion of legal counsel addressed to the department to the effect that the bonds which are covered by the application will, based upon the information available at that time to such legal counsel, qualify as exempt facility bonds for the financing of a qualified residential rental project when issued;

(3) A written statement of the issuer, addressed to the department, to the effect that the bonds which are covered by the application will, based upon the information available at that time to such issuer, comply with local zoning laws, statutes, ordinances, and resolutions; and

(4) If the project is expected to be issued in combination with a HoDAG, a copy of the application submitted to the United States Department of Housing and Urban Development for a housing development action grant.

(b) If the amount of bonds covered by applications received does not exceed the amount of the local housing reservation, the department shall give its notice of allocation, approving the allocation requested by each application within 15 days after the filing date.

(c) If the amount of bonds covered by applications received on or before the filing date exceeds the amount of the local housing reservation, the department shall determine allocations by applying the policy guidelines. The department shall give its notices of allocation with respect to those applications which it selects not later than 30 days after the filing date. The decision of the department shall be final and conclusive.

(d) The department shall not be required to give notices of allocation from the local housing reservation for any qualified residential rental housing project in an aggregate principal amount of more than 25 percent of the amount of the local housing reservation.

(e) The provisions of subsections (d), (e), and (g) of Code Section 36-82-187 with respect to notices of allocation from the economic development share shall also apply to notices of allocation from the local housing reservation.

(f)(1) The expiration date for a notice of allocation for a qualified residential rental project from the local housing reservation, other than one expected to be issued in combination with a HoDAG, shall be the first business day which occurs on or after the seventy-fifth day after the date on which the notice of allocation is given.

(2) The expiration date for a notice of allocation expected to be issued in combination with a HoDAG may, in the department's

discretion, be the first business day which occurs on or after the one hundred-eightieth day after the date on which the notice of allocation is given. The department shall not, however, have any obligation to provide an expiration date in excess of 75 days, and no issuer shall have any right to an expiration date in excess of 75 days.

(3) The department may, for good cause shown by the issuer in a written statement submitted to the department prior to such expiration date, extend the expiration date for one, but only one, additional period which shall expire, at the department's discretion, on any date not later than 30 days after the original expiration date. The department shall not, however, have any obligation to provide such an extension; and no issuer shall have any right to such an extension.

(g) If confirmation of issuance is not filed with the department on or before the applicable expiration date, the notice of allocation shall cease to be effective and the amount covered by the notice of allocation shall automatically be added to the appropriate housing reservation, as applicable, if on or before September 30 of 1991 and September 30 each year thereafter or the flexible share if after June 30 of 1990 or September 30 of 1991 and September 30 each year thereafter.

History.
Code 1981, § 36-82-193.1, enacted by Ga. L. 1989, p. 165, § 8; Code 1981, § 36-82-192, as redesignated by Ga. L. 1990, p. 817, § 1.

Editor's notes.
Former Code Section 36-82-192 was redesignated by Ga. L. 1990, p. 817, § 1 as present Code Section 36-82-191.

36-82-193. Flexible share for 1990.

Commencing on April 1, 1990, the flexible share for 1990 is established in an amount equal to 20 percent of the state ceiling. The 1990 percentage shall include any allocations made from the flexible pool prior to April 1, 1990. The flexible share for 1991 and years thereafter shall be in an amount equal to 15 percent of the state ceiling. The flexible share shall be available for notices of allocation given during period 2 through period 4 in 1990 and period 1 through period 4 in 1991 and each year thereafter.

History.
Code 1981, § 36-82-193, enacted by Ga. L. 1990, p. 817, § 1.

Editor's notes.
Ga. L. 1990, p. 817, § 1, effective April 4, 1990 repealed former Code Section 36-82-193, as enacted by Ga. L. 1987, p. 486, § 1 and amended by Ga. L. 1989, p. 165, § 7, relating to applications for notices of allocation from the multifamily pool, and enacted the current Code section.

36-82-194. Application for flexible pool allocation; issue of notice; confirmation; expiration.

(a) Applications for notices of allocation from the flexible share shall

be received and acted on by the department as set forth in this Code section.

(b) Applications for housing bonds shall be filed on the same forms and accompanied by the same items as applications for notices of allocation with respect to such bonds from the housing share. Applications for student loan bonds shall be filed on the same forms and accompanied by the same items as required by Code Section 36-82-185 and a written opinion of legal counsel, addressed to the department, to the effect that the bonds which are covered by the application will, based upon information available at that time to such legal counsel, qualify as student loan bonds under Section 144(b) of the Federal Code when issued. Applications for all other bonds shall be filed on the same forms and accompanied by the same items as applications for notices of allocation from the economic development share. Such applications need not designate that they are filed for a notice of allocation from the flexible share but may be treated as such by the department in its discretion.

(c) The department shall, in its discretion, decide which application or applications shall receive a notice of allocation. The decision of the department shall be final and conclusive.

(d) The provisions of subsection (i) of Code Section 36-82-187 with respect to notices of allocation from the economic development share shall also apply to notices of allocation from the flexible share. Notwithstanding the requirements of subsection (i) of Code Section 36-82-187, however, the expiration date for a notice of allocation for the private activity portion of governmental use bonds shall be such date as the commissioner may determine, separately in the case of each notice of allocation, and may be extended for any period of time at the department's discretion.

History.

Code 1981, § 36-82-199, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-194, as redesignated by Ga. L. 1990, p. 817, § 1.

Editor's notes.

Ga. L. 1990, p. 817, § 1, effective April 4, 1990, repealed the former Code Section 36-82-194, which was based on Ga. L. 1987, p. 486, § 1, and which related to applications for notices of allocation from the general pool.

36-82-195. Policy guidelines for making allocations.

(a) When the department is required to decide which applications should receive a notice of allocation, it shall compare the applications from which the selection is to be made, applying the policy guidelines set forth in this Code section. These policy guidelines are designed to assist the department in making its decisions and are not intended to establish definitive tests or standards. The decision which the depart-

ment makes shall be final and conclusive. Each of the policy guidelines will be applied following the principle that, if all other things were equal among applications which are being compared, the application which most satisfied the intention of the particular policy guideline would be given a notice of allocation. The policy guidelines are stated in subsection (b) of this Code section, and the order in which they are stated does not indicate any priority of one over another.

(b)(1) Special consideration shall be given to projects with a view toward an even and more broadly based geographical distribution of bond issues or bond proceeds, as the case may be, over the state. Applications should be compared based upon the geographic distribution of notices of allocation given during the same calendar year. The department may compare geographic distribution among counties, municipalities, United States congressional districts, or any other geographical areas the department may select. In comparing geographic distribution, the department may consider the amount of bonds covered by notices of allocation and the location of the projects covered by such notices of allocation. For purposes of this policy guideline, the geographic location of student loan bonds shall be considered to be the same as the geographic locations of the educational institutions which are reasonably expected to make use of the proceeds of such student loan bonds; the geographic location of single-family housing bonds shall be considered to be the same as the geographic location of the issuer or, in the case of the Georgia Housing and Finance Authority, the geographic location, specified by the Georgia Housing and Finance Authority to the department in writing; and the geographic location of the private activity portion of governmental use bonds shall be considered to be the same as the geographic location of the issuer.

(2) Special consideration shall be given to projects that would promote or expand economic opportunities, with particular attention given to areas of economic distress.

(3) Special consideration shall be given to those projects that will meet a severe and critical need and which can demonstrate a significant impact on the territorial area of the issuer in which the project will be carried out.

(4) Special consideration shall be given to projects which the department has determined will enhance the public good and general welfare of the state as a whole.

History.

Code 1981, § 36-82-202, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-195, as redesignated by Ga. L. 1990, p. 817, § 1; Ga. L. 1991, p. 1653, § 2-3.

Editor's notes.

Ga. L. 1990, p. 817, § 1, effective April 4, 1990 repealed the former Code Section 36-82-195, which was based on Ga. L. 1987, p. 486, § 1, and which established

the limited purpose share in 1988 and 1989.

36-82-196. Factors to consider in applying policy guidelines.

When the department is required to apply the policy guidelines it may consider such factors, known as evaluation factors, in deciding which applications should receive a notice of allocation. The evaluation factors to be considered shall include, but are not limited to, the number of permanent jobs created or retained; the commitment of the borrower to hire individuals eligible for training under the Job Training Partnership Act or its successor program; the unemployment rate of the territorial area of the issuer compared to the state as a whole; the ratio of private investment to bond financing; evidence of HoDAG or UDAG approval; the amount of benefit to low-income to moderate-income individuals; the cost per qualified residential rental unit; the housing vacancy rate of the territory of the issuer compared to the state as a whole, as determined by the department; and the degree to which the combination of income and price limits serve to target the single-family housing bonds to low-income to moderate-income households.

History.

Code 1981, § 36-82-203, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-196, as redesignated by Ga. L. 1990, p. 817, § 1; Ga. L. 1991, p. 94, § 36.

Editor's notes.

Ga. L. 1990, p. 817, § 1, effective April 4, 1990, repealed the former Code Section 36-82-196, which was based on Ga. L. 1987, p. 486, § 1, and which related to applications for the limited purpose share and applications for notices of allocation from the limited purpose share.

36-82-197. Transfer of fund from economic development share or applicable reservation component of housing share to the flexible share.

If after the first six months of the year, 75 percent or more of the economic development share or any one or more reservation components of the housing share remains unallocated, the commissioner may transfer any available state ceiling, or any part thereof, from the economic development share or the applicable reservation component of the housing share, as the case may be, to the flexible share, if the commissioner anticipates that such amounts are not likely to be used in either the economic development share or the applicable reservation component of the housing share; provided, however, that no such transfer may be made by the commissioner if an issuer submits a letter to the commissioner indicating that such issuer intends to use all or a portion exceeding 25 percent of the respective share or components thereof.

History.
Code 1981, § 36-82-204, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-197, as redesignated by Ga. L. 1990, p. 817, § 1.
Editor's notes.
Ga. L. 1990, p. 817, § 1, effective April 4, 1990, repealed the former Code Section 36-82-197, which was based on Ga. L. 1987, p. 486, § 1 and which established the department share for 1988, 1989, 1990, and years thereafter.

36-82-198. Flexible share carryforward funds.

The department may set aside and reserve from the flexible share amounts which may be treated as a carryforward for one or more carryforward purposes, within the meaning of Section 146 of the Federal Code. Section 146 of the Federal Code requires an election for the use of such carryforward to a future year or years, and regulations with respect to such carryforwards may be promulgated under the Federal Code. The department shall promulgate such rules and procedures as may be necessary in order to use the provisions of the Federal Code and any regulations promulgated pursuant to the Federal Code for such carryforward. The amount of any such carryforward which is set aside and reserved shall be subtracted from the outstanding amount of the flexible share with the same effect as if a notice of allocation were in the amount of the carryforward and confirmation of issuance were received prior to the expiration date.

History.
Code 1981, § 36-82-205, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-198, as redesignated by Ga. L. 1990, p. 817, § 1.
Editor's notes.
Ga. L. 1990, p. 817, § 1, effective April 4, 1990, repealed former Code Section 36-82-198, which was based on Ga. L. 1987, p. 486, § 1, and which established the flexible pool, the farm loan pool, and the competitive pool.

36-82-199. Carryforward applications.

(a) Unless otherwise determined by the commissioner, carryforward election applications must be filed with the department no later than December 1 of each year. Carryforward election applications shall be filed, received, and acted upon by the department as set forth in this Code section.

(b) Carryforward election applications shall be filed on a form promulgated from time to time by the commissioner. Each carryforward election application shall be accompanied by the following:

(1) A copy of the inducement resolution or other similar official action to the effect the issuer has taken preliminary official action approving the undertaking of the carryforward project;

(2) A written opinion of legal counsel, addressed to the department, to the effect that the issuer is authorized under the laws of the

state to issue bonds for projects of the same type and nature as the project which is the subject of the carryforward election application. This opinion shall cite by constitutional or statutory reference, including a reference to the session laws of the General Assembly in the case of a constitutional reference, the provisions of the Constitution or law of the state which authorizes bonds for the project;

(3) A written opinion of legal counsel, addressed to the department, to the effect that the bonds which are covered by the carryforward election application will, based upon the information available at the time to such legal counsel, qualify for carryforward under Section 146(f) of the Federal Code; and

(4) Any other information as reasonably required by the department.

(c) The department shall, in its discretion, decide which carryforward election applications shall receive a notice of allocation. The decision of the department shall be final and conclusive.

History.
Code 1981, § 36-82-206, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.
Editor's notes.
Ga. L. 1990, p. 817, § 1, effective April 4, 1990, redesignated former Code Section 36-82-206 as present Code Section 36-82-199. Former Code Section 36-82-199 is present Code Section 36-82-194.

36-82-200. Mortgage credit certificate carryforward election.

No issuer of single-family housing bonds may elect to exchange any part of a notice of allocation for mortgage credit certificates without the written authorization of the department. Such authorization shall be in the discretion of the commissioner, and no issuer shall have any right to such authorization. Any unused amount of the state ceiling remaining on the last business day of each year and not subject to a notice of allocation shall automatically be exchanged for mortgage credit certificates carryforward elections in such amounts and to such issuers as the department may determine. Applications for mortgage credit certificates for carryforward purposes shall be on the same forms and accompanied by the same items as required by Code Section 36-82-199.

History.
Code 1981, § 36-82-207, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-200, as redesignated by Ga. L. 1990, p. 817, § 1.
Editor's notes.
Ga. L. 1990, p. 817, § 1, effective April 4, 1990, repealed former Code Section 36-82-200, which was based on Ga. L. 1987, p. 486, § 1, and which related to applications for notices of allocation from the farm loan pool.

36-82-201. State ceiling deemed allocated and assigned.

If necessary or appropriate for complying with federal rules and regulations implementing the Federal Code, the state ceiling shall be deemed to be allocated to the state and the state's allocation shall be deemed to be or have been assigned to the issuers to which notices of allocations are or were issued.

History.
Code 1981, § 36-82-208, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-201, as redesignated by Ga. L. 1990, p. 817, § 1.
Editor's notes.
Ga. L. 1990, p. 817, § 1, effective April 4, 1990, deleted former Code Section 36-82-201, which was based on Ga. L. 1987, p. 486, § 1, and which related to applications for notices of allocation from the competitive pool.

36-82-202. Applicability.

The provisions of this article shall apply to all bonds issued on or after April 1, 1990.

History.
Code 1981, § 36-82-209, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.
Editor's notes.
The former provisions of Code Section 36-82-202 are the present provisions of Code Section 36-82-195.

ARTICLE 9

TRUSTS

36-82-220. Definitions.

As used in this article, the term:

(1) "Governmental unit" means any county, municipal corporation, school district, or political subdivision of the state.

(2) "Local authority" means any public corporation or authority created by or pursuant to a local or special Act of the General Assembly or a local or special amendment to the Constitution.

(3) "Obligations" means any bonds, notes, certificates, or obligations of any kind to evidence any repayment obligation for money borrowed or to evidence any divided or undivided interest in any lease or installment purchase contract or other obligation.

(4) "Sponsoring governmental unit" means:

(A) Any governmental unit the governing body of which, or any member thereof which, is authorized by law or constitutional amendment to appoint or elect any member of the governing body of a local authority;

(B) Any governmental unit within the territorial or corporate limits of which any member of the governing body of a local authority is required by law or constitutional amendment to reside;

(C) Any governmental unit an elected or appointed official of which is required by law or constitutional amendment to be a member of the governing body of a local authority; or

(D) Any governmental unit any part of the territorial or corporate limits of which are located within the territorial or corporate limits of a governmental unit described in subparagraph (A), (B), or (C) of this paragraph.

History.
Code 1981, § 36-82-220, enacted by Ga. L. 1997, p. 584, § 1.

36-82-221. Sponsoring governmental unit requirement.

No local authority shall issue or be a grantor of a trust which issues any obligations to finance or refinance any real or personal property to be owned, leased, or operated by any governmental unit which is not a sponsoring governmental unit of such local authority.

History.
Code 1981, § 36-82-221, enacted by Ga. L. 1997, p. 584, § 1.

36-82-222. Construction.

This article shall be liberally construed to effect the purposes hereof. Insofar as the provisions of this article may be inconsistent with the provisions of any local or special amendment to the Constitution, this article shall control and shall be deemed to be an exercise of the power to enlarge or restrict the provisions of such local or special constitutional amendment.

History.
Code 1981, § 36-82-222, enacted by Ga. L. 1997, p. 584, § 1.

ARTICLE 10

COMMERCIAL PAPER NOTES FROM GOVERNMENT

36-82-240. Definitions.

As used in this article, the term:

(1) "Governing body" means the board, commission, council, or other local legislative body of governmental entity.

(2) "Governmental entity" means any school district, independent school system, county, municipal corporation, consolidated city-county government, or other political subdivision of the state, any local authority, local body corporate, or local public corporation created by or pursuant to the Constitution of Georgia or any general, local, or special Act of the General Assembly, or any special district or community improvement district of the state. Such term does not include state authorities as defined in Code Section 50-17-21.

History.

Code 1981, § 36-82-240, enacted by Ga. L. 2004, p. 886, § 5; Ga. L. 2025, p. 1029, § 36(48)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "Such term does not include state authorities as defined in Code Section 50-17-21." for "The term 'governmental entity' does not include 'state authorities' as defined in paragraph (9) of Code Section 50-17-21." in paragraph (2).

Cross references.

Governmental commercial paper notes, § 50-17-90 et seq.

36-82-241. Governed by general provisions on commercial paper; issuance of security by governmental entity; requirements of governing body renewal and reissuance of commercial paper.

(a) Whenever a governmental entity is authorized by law to issue bonds, notes, or certificates, including but not limited to general obligation bonds, revenue bonds, bond anticipation notes, tax anticipation notes, or revenue anticipation certificates, such governmental entity is authorized to issue such obligation in the form of commercial paper notes. The issuance of commercial paper notes shall be subject to the same restrictions and provisions under the laws of this state which would be applicable to the issuance of the type of bond, note, or certificate in lieu of which the commercial paper notes are being issued. The governing body of any governmental entity may designate the commercial paper notes issued under this article to be in registered form or bearer form and may provide for payment by wire transfers or electronic funds transfer in accordance with the federal Electronic Fund Transfer Act, 15 U.S.C. Section 1693, et seq. The authority granted by this article to issue commercial paper notes shall not be construed to permit the governmental entity to increase or otherwise alter any debt limits.

(b) To secure commercial paper notes authorized under this article, a governmental entity may:

(1) Pledge its anticipated taxes, grants, other revenue; the proceeds of any bonds, notes, or other permanent financing; or any combination thereof;

(2) Segregate any pledged funds in separate accounts that may be held by the governmental entity or third parties;

(3) Enter into contracts with third parties to obtain standby lines of credit or other financial commitments designated to provide additional security for commercial paper notes authorized by this article;

(4) Establish any reserves deemed necessary for the payment of the commercial paper notes; and

(5) Adopt ordinances or resolutions and enter into agreements containing covenants, including covenants to issue bonds, notes, or other permanent financing and provisions for protection and security of the owners of commercial paper notes, which shall constitute enforceable contracts with such owners.

(c) Commercial paper notes authorized by this article may be in any form and contain any terms, including provisions for redemption at the option of the owner and provisions for the varying of interest rates in accordance with any index, banker's loan rate, or other standard.

(d) The governing body shall adopt an ordinance or resolution finding that issuance of the obligations in the form of commercial paper notes is necessary and desirable, directing the designated officer to arrange for preparation of the requisite number of suitable notes, and specifying other provisions relating to the commercial paper notes including the following:

(1) For each program of commercial paper notes authorized, the final date of maturity and the total aggregate principal amount of the commercial paper notes authorized to be outstanding at any one time up to the maturity date. The ordinance or resolution may provide that the commercial paper notes may be issued and renewed from time to time until the final maturity date and that the amount issued from time to time may be set by a designated officer of the governmental entity up to the maximum amount authorized to be outstanding at any one time. The ordinance or resolution shall include methods of setting the dates, numbers, and denominations of the commercial paper notes;

(2) The method of setting the interest rates and interest payment dates applicable to the commercial paper notes. Commercial paper notes may bear a stated rate of interest payable only at maturity, which rate or rates may be determined at the time of sale of each unit of commercial paper notes;

(3) The maximum effective rate of interest the commercial paper notes shall bear;

(4) The manner of sale;

(5) The discount, if any, the governmental entity may allow;

(6) Any provisions for the redemption of the commercial paper notes prior to the stated maturity;

(7) The technical form and language of the commercial paper notes; and

(8) All other terms and conditions of the commercial paper notes and of their execution, issuance, and sale deemed necessary and appropriate by the governing body.

(e) The governing body, in the ordinance or resolution authorizing the issuance of commercial paper notes under this article, may delegate to any elected or appointed official or employee of the governmental entity the authority to determine maturity dates, principal amounts, redemption provisions, interest rates, and other terms and conditions of such commercial paper notes that are not appropriately determined at the time of enactment or adoption of the authorizing ordinance or resolution, which delegated authority shall be exercised subject to such parameters, limitations, and criteria as may be set forth in such ordinance or resolution.

(f) Any commercial paper notes may be sold at negotiated sale at a price below the par value thereof.

(g) For purposes of determining the principal amount of debt outstanding in connection with complying with any limitations on the amount of debt outstanding for a governmental entity, commercial paper notes shall be deemed outstanding at any time during the term of a program of commercial paper notes in an amount equal to the maximum amount authorized in the ordinance or resolution.

(h) The renewal and reissuance from time to time of the commercial paper notes pursuant to a commercial paper note program in an amount up to the maximum amount authorized by the ordinance or resolution shall be deemed to be a refunding of the previously maturing amount.

History.

Code 1981, § 36-82-241, enacted by Ga. L. 2004, p. 886, § 5.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2004, "U.S.C." was substituted for "U.S.C.," in subsection (a); and, in paragraph (b)(1), "revenue;" was substituted for "revenue,", and "financing;" was substituted for "financing,".

ARTICLE 11

INTEREST RATE MANAGEMENT AGREEMENTS

Cross references.
Interest and usury, § 7-4-1 et seq.
Interest rate management, § 50-17-100 et seq.

36-82-250. Definitions.

As used in this article, the term:

(1) "Counterparty" means the party entering into a qualified interest rate management agreement with the local governmental entity. A counterparty must be a bank, insurance company, or other financial institution duly qualified to do business in the state that either:

(A) Has, or whose obligations are guaranteed by an entity that has, at the time of entering into a qualified interest rate management agreement and for the entire term thereof, a long-term unsecured debt rating or financial strength rating in one of the top two ratings categories, without regard to any refinement or gradation of rating category by numerical modifier or otherwise, assigned by any two of the following: Moody's Investors Service, Inc., Standard & Poors Ratings Service, a division of The McGraw-Hill Companies, Inc., Fitch, Inc., or such other nationally recognized ratings service approved by the governing body of the local governmental entity; or

(B) Has collateralized its obligations under a qualified interest rate management agreement in a manner approved by the local governmental entity.

(2) "Debt" shall include all debt and revenue obligations that a local governmental entity is authorized to incur by law, including without limitation general obligation debt in the form of bonds or other obligations, revenue bonds and other forms of revenue obligations, and all other debt or revenue undertakings, including, but not limited to, bonds, notes, warrants, certificates or other evidences of indebtedness, or other obligations for borrowed money issued or to be issued by any local governmental entity. "Debt" includes any financing lease or installment purchase contracts of any local public authorities.

(3) "Independent financial adviser" means a person or entity experienced in the financial aspects and risks of qualified interest rate management agreements that is retained by the local governmental entity to render advice with respect to a qualified interest rate management agreement. The independent financial adviser may not be the counterparty or an affiliate or agent of the counterparty on a

qualified interest rate management agreement with respect to which the independent financial adviser is advising the local governmental entity.

(4) "Interest rate management plan" means a written plan prepared or reviewed by an independent financial adviser with respect to qualified interest rate management agreements of the local governmental entity, which plan has been approved by the governing body of the local governmental entity.

(5) "Lease or installment purchase contract" means multiyear lease, purchase, installment purchase, or lease purchase contracts within the meaning of Code Sections 20-2-506 and 36-60-13 or substantially similar other or successor Code sections.

(6) "Local governmental entity" means any governmental body as defined in paragraph (2) of Code Section 36-82-61, as amended; provided, however, that such term shall only include authorities which are local public authorities included in the definition thereof set forth in subparagraphs (C) and (D) of paragraph (2) of Code Section 36-82-61, as amended.

(7) "Qualified interest rate management agreement" means an agreement, including a confirmation evidencing a transaction effected under a master agreement entered into by the local governmental entity in accordance with, and fulfilling the requirements of, Code Section 36-82-253, which agreement in the judgment of the local governmental entity is designed to manage interest rate risk or interest cost of the local governmental entity on any debt or lease or installment purchase contract the local governmental entity is authorized to incur, including, but not limited to, interest rate swaps or exchange agreements, interest rate caps, collars, corridors, ceiling, floor, and lock agreements, forward agreements, swaptions, warrants, and other interest rate agreements which, in the judgment of the local governmental entity, will assist the local governmental entity in managing its interest rate risk or interest cost.

History.
Code 1981, § 36-82-250, enacted by Ga. L. 2005, p. 642, § 1/SB 227.

36-82-251. Qualified interest rate management agreements authorized.

With respect to all or any portion of any debt or lease or installment purchase contract, either issued or anticipated to be issued by the local governmental entity, the local governmental entity may enter into, terminate, amend, or otherwise modify a qualified interest rate management agreement under such terms and conditions as the local

governmental entity may determine, including, without limitation, provisions permitting the local governmental entity to pay to or receive from any counterparty any loss of benefits under such agreement upon early termination thereof or default under such agreement.

History.
Code 1981, § 36-82-251, enacted by Ga. L. 2005, p. 642, § 1/SB 227.

36-82-252. Plan required; annual review of plan and report.

(a) Prior to executing and delivering a qualified interest rate management agreement, the local governmental entity shall have adopted an interest rate management plan that includes:

(1) An analysis of the interest rate risk, basis risk, termination risk, credit risk, market-access risk, and other risks to the local governmental entity entering into qualified interest rate management agreements;

(2) The local governmental entity's procedure for approving and executing qualified interest rate management agreements;

(3) The local governmental entity's plan to monitor interest rate risk, basis risk, termination risk, credit risk, market-access risk, and other risks;

(4) The local governmental entity's procedure for maintaining current records of all qualified interest rate management agreements that have been approved and executed; and

(5) Such other provisions as may from time to time be required by the governing body of the local governmental entity, including but not limited to additional provisions due to changes in market conditions for qualified interest rate management agreements.

(b) The local governmental entity shall conduct an annual review of its interest rate management plan as to the adequacy of the procedures set forth in such plan for the analysis and monitoring requirements set forth in subsection (a) of this Code section. A report summarizing the results of such review shall be submitted annually to the governing body of the local governmental entity. The requirements of this subsection shall not be construed as to require the review of any existing interest rate management plan by an independent financial adviser.

History.
Code 1981, § 36-82-252, enacted by Ga. L. 2005, p. 642, § 1/SB 227.

36-82-253. Requirements for plans; renewal or termination; provisions and limitations regarding obligation for payment; credit enhancement and liquidity agreements.

(a) Each qualified interest rate management agreement shall meet the following requirements:

(1) Subject to subsection (b) of this Code section, the maximum term, including any renewal periods, of any qualified interest rate management agreement may not exceed ten years unless such longer term has been approved by the governing body of the local governmental entity; provided, however, that in no case may the term of the qualified interest rate management agreement exceed the latest maturity date of the bonds, notes, or debt or lease or installment purchase contract referenced in the qualified interest rate management agreement;

(2) The local governmental entity shall enter into a qualified interest rate management agreement only with a counterparty meeting the requirements set forth in paragraph (1) of Code Section 36-82-250;

(3) Prior to the execution and delivery by the local governmental entity of any qualified interest rate management agreement, an interest rate management plan meeting the requirements of Code Section 36-82-252 must have been approved by the governing body of the local governmental entity and the governing body of the local governmental entity shall have been provided evidence that such qualified interest rate management agreement is in compliance with the existing interest rate management plan;

(4) Any qualified interest rate management agreement shall be payable only in the currency of the United States of America; and

(5) Unless otherwise approved by the governing body of the local governmental entity, the notional amount of any qualified interest rate management agreement shall not exceed the outstanding principal amount of the debt or the aggregate payments due under any lease or installment purchase contract to which such agreement relates.

(b) A qualified interest rate management agreement may renew from calendar year to calendar year and may provide for the payment of any fee related to a termination or a nonrenewal, so long as the following requirements are satisfied:

(1) Such qualified interest rate management agreement shall terminate absolutely at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed;

(2) Any such qualified interest rate management agreement may provide for automatic renewal unless positive action is taken by the local governmental entity to terminate such contract, or may provide for termination or renewal in some other manner not prohibited by law, which method of renewal or termination, in either case, shall be specified in the qualified interest rate management agreement; and

(3) Such qualified interest rate management agreement shall include a statement of the total obligation of the local governmental entity for the calendar year of execution and, if renewed, for the calendar year of renewal.

A qualified interest rate management agreement meeting the requirements of this subsection may also provide that the local governmental entity's obligations will terminate immediately and absolutely at such time as appropriated and other funds encumbered for payment by the local governmental entity pursuant to the terms of such qualified interest rate management agreement are no longer available to satisfy such obligations. The total obligation of the local governmental entity for the calendar year payable pursuant to a qualified interest rate management agreement may be stated in contingent but objective terms with respect to variable rate payments or termination payments, but in that event a qualified interest rate management agreement must provide that it will terminate immediately and absolutely at such time as appropriated and other funds encumbered for its payment are no longer available to satisfy the obligations of the local governmental entity under such agreement. A qualified interest rate management agreement executed under this subsection shall not be deemed to create a debt of the local governmental entity or otherwise obligate the payment of any sum beyond the calendar year of execution or, in the event of a renewal, beyond the calendar year of such renewal.

(c)(1) Any qualified interest rate management agreement of a local governmental entity may provide that it is an unconditional, limited recourse obligation of such local governmental entity payable from a specified revenue source.

(2) A local governmental entity may, in any qualified interest rate management agreement that constitutes a limited recourse obligation of the local governmental entity, pledge to the punctual payment of amounts due under the qualified interest rate management agreement revenues from a specified revenue source, which shall not include any taxes, including, without limitation, collateral derived from such revenue source or proceeds of the debt, including debt for future delivery, to which such qualified interest rate management agreement relates.

(d) A qualified interest rate management agreement that constitutes a limited recourse obligation shall not be payable from or charged upon

any funds other than the revenue identified as the source of payment thereof, nor shall the local governmental entity entering into the same be subject to any pecuniary liability thereon. No counterparty under any such qualified interest rate management agreement shall ever have the right to compel any exercise of the taxing power of the state or the local governmental entity to pay any amount due under any such qualified interest rate management agreement, nor to enforce payment thereof against any property of the state or local governmental entity, other than the specified revenue source; nor shall any such qualified interest rate management agreement constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the state or local governmental entity, other than the specified revenue source. Every such qualified interest rate management agreement shall contain a recital setting forth the substance of this subsection.

(e) Any local governmental entity may enter into credit enhancement or liquidity agreements in connection with any qualified interest rate management agreement containing such terms and conditions as the governing body determines are necessary or desirable, provided that any such agreement has the same source of payment as the related qualified interest rate management agreement.

History.
Code 1981, § 36-82-253, enacted by Ga. L. 2005, p. 642, § 1/SB 227.

36-82-254. Required information in annual financial statements.

The local governmental entity that has entered into a qualified interest rate management agreement shall include in its annual financial statements information with respect to each qualified interest rate management agreement it has authorized or entered into, including any information required pursuant to any statement issued by the Governmental Accounting Standards Board.

History.
Code 1981, § 36-82-254, enacted by Ga. L. 2005, p. 642, § 1/SB 227.

36-82-255. Applicability of Georgia law; jurisdiction.

When entering into any qualified interest rate management agreement authorized under this article, the agreement shall be governed by the laws of the State of Georgia, and jurisdiction over the local governmental entity in any matter concerning a qualified interest rate management agreement shall lie exclusively in the courts of the State of Georgia or in the applicable federal court having jurisdiction and located within the State of Georgia.

History.
Code 1981, § 36-82-255, enacted by Ga. L. 2005, p. 642, § 1/SB 227.

36-82-256. Applicability to prior contracts.

Any contract which has been duly authorized and executed by a local governmental entity before May 2, 2005, shall not be rendered invalid or improper by the provisions of this article; provided, however, that this article shall apply to any renewal of such a contract after May 2, 2005, unless the contract permitted the renewal and set the terms of the renewal contract before January 1, 2005, in which case this article shall not apply to any such renewals.

History.
Code 1981, § 36-82-256, enacted by Ga. L. 2005, p. 642, § 1/SB 227.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2005, "May 2, 2005," was substituted for "the effective date of this article" and "May 2, 2005," was substituted for "its effective date" in this Code section.

CHAPTER 83

LOCAL GOVERNMENT INVESTMENT POOL

Sec.		Sec.	
36-83-1.	Short title.	36-83-5.	Pledge of collateral from depository institutions.
36-83-2.	Legislative findings; purpose of chapter.	36-83-6.	Interfund pooling for investment purposes.
36-83-3.	Definitions.	36-83-7.	State technical assistance.
36-83-4.	Authorized investments; delegation of investment authority to financial officer; objective of investment.	36-83-8.	Local government investment pool.

36-83-1. Short title.

This chapter shall be known and may be cited as the "Local Government Investment Pool Act."

History.
Ga. L. 1980, p. 1715, § 1.

36-83-2. Legislative findings; purpose of chapter.

(a) The General Assembly finds that the public interest is served by maximum and prudent investment of idle public funds so that the need for taxes and other public revenues is decreased commensurately with the earnings on such investments.

(b) The purpose of this chapter is to secure the maximum public benefit from the deposit and investment of public funds and, in furtherance of such purpose, to:

(1) Authorize the State Depository Board to establish and maintain a continuing state-wide policy for the deposit and investment of public funds under its control;

(2) Establish a state administered pool for the investment of local government funds;

(3) Authorize the investment of local public funds through the local government investment pool created by this chapter; and

(4) Permit, upon approval by the State Depository Board, any body created for a public purpose to invest funds through the local government investment pool.

(c) The General Assembly finds that the objectives of this chapter will best be obtained through improved money management, emphasizing the primary requirements of safety and liquidity and recognizing the different investment objectives of operating and permanent funds and the effect of the investment of public funds within the state or its

localities upon respective state and local social and economic conditions.

History.
Ga. L. 1980, p. 1715, § 2; Ga. L. 1986, p. 205, § 1.

36-83-3. Definitions.

As used in this chapter, the term:

(1) "Depository institution" means any commercial bank or trust company, mutual savings bank, savings and loan association, or building and loan association existing under the laws of this state or of the United States and domiciled in this state.

(2) "Local government" means any municipality, county, school district, special district, or other political subdivision of this state, as well as any department, agency, or board of that political subdivision, including but not limited to a public library, which has been authorized to make separate deposits to its own account under this chapter by the governing authority of the political subdivision of which it is a department, agency, or board.

History.
Ga. L. 1980, p. 1715, § 3; Ga. L. 1983, p. 455, § 1.

36-83-4. Authorized investments; delegation of investment authority to financial officer; objective of investment.

(a)(1) Subject to the procedures set forth in this chapter, the governing authority of any local government may invest and reinvest any money subject to its control and jurisdiction in:

(A) Obligations of this state or of other states;

(B) Obligations issued by the United States government;

(C) Obligations fully insured or guaranteed by the United States government or a United States government agency;

(D) Obligations of any corporation of the United States government;

(E) Prime bankers' acceptances;

(F) The local government investment pool established by Code Section 36-83-8;

(G) Repurchase agreements; and

(H) Obligations of other political subdivisions of this state.

(2) Subject to the procedures set forth in this chapter, any other body created for a public purpose may, upon obtaining prior approval of the State Depository Board, invest and reinvest any money subject to its control and jurisdiction in the local government investment pool established by Code Section 36-83-8.

(b) The governing authority of any local government, by resolution or ordinance, may delegate the investment authority provided under subsection (a) of this Code section to the treasurer or other financial officer charged with custody of the funds of the local government.

(c) In selecting among avenues of investment or among institutional bids for deposits, the highest rate of return shall be the objective, given equivalent conditions of safety and liquidity.

(d) This Code section shall in no way impair the power of a unit of local government to hold funds in deposit accounts with eligible depository institutions.

History.
Ga. L. 1980, p. 1715, § 4; Ga. L. 1986, p. 205, § 2; Ga. L. 1992, p. 6, § 36.

OPINIONS OF THE ATTORNEY GENERAL

Hospital authorities not eligible. — Hospital authorities created pursuant to the "Hospital Authorities Law" are not eligible to participate in the local government investment pool created by O.C.G.A. § 36-83-8. 1982 Op. Att'y Gen. No. 82-78.

36-83-5. Pledge of collateral from depository institutions.

Local governments shall require from a depository institution a pledge of collateral as provided in Chapter 8 of Title 45.

History.
Ga. L. 1980, p. 1715, § 5.

36-83-6. Interfund pooling for investment purposes.

(a) Local governments may effect and are encouraged to effect temporary transfers among separate funds, for the purpose of pooling amounts available for investment.

(b) This pooling may be accomplished through interfund advances and other appropriate means consistent with recognized principles of governmental accounting, if:

(1) Moneys are available for the investment period required;

(2) The investment fund can repay the advance by the time needed;

(3) The transactions are fully and promptly recorded;

(4) The interest earned is credited to the loaning or advancing fund; and

(5) The transaction does not violate subsection (d) of Code Section 36-83-8 with respect to prior agreements, laws, or covenants which may restrict pooling.

History.
Ga. L. 1980, p. 1715, § 6.

36-83-7. State technical assistance.

The State Depository Board, through the state treasurer, may assist local governments in developing effective cash management policies and in investing funds that are temporarily in excess of operating needs by:

(1) Explaining investment opportunities provided by the local government investment pool to local governments through publications and other appropriate means;

(2) Informing local governments of the state's practice and experience in investing short-term funds; and

(3) In consultation with the Department of Community Affairs, providing technical assistance in the investment of idle funds to municipalities and counties that request such assistance.

History.
Ga. L. 1980, p. 1715, § 7; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2012, p. 775, § 36/HB 942.

36-83-8. Local government investment pool.

(a) A local government investment pool is created, consisting of the aggregate of all funds from local governments and all funds from other bodies created for a public purpose which the State Depository Board has agreed to accept that are placed in the custody of the state for investment and reinvestment as provided in this chapter.

(b)(1) The investment policies for the local government investment pool shall be established by the State Depository Board.

(2) The state treasurer shall administer the local government investment pool on behalf of the participating local governments.

(3) The state treasurer shall develop such procedures consistent with the policies established pursuant to paragraph (1) of this subsection as he deems necessary for the efficient administration of the pool, including, but not limited to:

(A) Specification of minimum amounts which may be deposited

in the pool and minimum periods of time for which deposits shall be retained in the pool;

(B) Payment of amounts equivalent to administrative expenses from the earnings of the pool;

(C) Distribution of the earnings in excess of such expenses or allocation of losses to the several participants, in a manner which equitably reflects the differing amount of their respective investments and the differing periods of time for which such amounts were in the custody of the pool; and

(D) Procedures for the deposit and withdrawal of funds.

(c) The state treasurer shall invest moneys in the local government investment pool with the degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering first the probable safety of their capital and then the probable income to be derived. Specifically, the types of authorized investments for pool assets shall be limited to those set forth in Code Section 50-5A-7 and Chapter 17 of Title 50.

(d)(1) The governing authority of any local government having funds which are available for investment and which are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner may direct its financial officer to remit such funds to the state treasurer for investment as part of the local government investment pool.

(2) Upon determination by the local governing authority that it is in the best interest of the local government to deposit funds in the investment pool, it shall adopt and file with the state treasurer a certified copy of a resolution or ordinance authorizing investment of its funds in the investment pool. The resolution or ordinance shall name the local government official or officials responsible for the deposit and withdrawal of such funds.

(3) The resolution or ordinance filed with the state treasurer shall be accompanied by a statement as to the approximate cash flow requirements of the local government for the invested funds. Subsequent deposits into the investment pool shall be accompanied by a statement as to the intended duration of the investment or the anticipated date of withdrawal of the funds from the pool.

(e) A separate account designated by name or number for each participant in the fund shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report showing the changes in investments made during the preceding month shall be furnished to each participant having a beneficial

interest in the investment pool. Details of any investment transaction shall be furnished to any participant upon request.

(f) The principal and credited income of each account maintained for a participant in the investment pool shall be subject to payment from the pool at any time upon request, subject to the procedures developed in accordance with paragraph (3) of subsection (b) of this Code section. Accumulated income shall be credited to each participant account at least monthly.

(g) Except as provided in this Code section, all instruments of title of all investments of the investment pool shall remain in the custody of the state treasurer. The state treasurer may deposit with one or more fiscal agents or banks those instruments of title which he considers advisable, to be held in safekeeping by the agents or banks for collection of the principal and interest or other income or of the proceeds of sale. The state treasurer shall collect the principal and interest or other income from investments of the investment pool the instruments of title to which are in his custody, when due and payable.

(h) In the event of default in the payment of the principal or interest or other income of any investment of the investment pool, the state treasurer may:

(1) Institute the proper proceedings to collect the matured principal or interest or other income;

(2) Accept for exchange purposes refunding bonds or other evidences of indebtedness, at interest rates to be agreed upon by the state treasurer and the obligor;

(3) Make compromises, adjustments, or disposition of the matured principal or interest or other income, as the state treasurer considers advisable for the purpose of protecting the moneys invested; or

(4) Make compromises or adjustments as to future payments of principal or interest or other income, as the state treasurer considers advisable for the purpose of protecting the moneys invested.

(i) No payment may be issued upon any account in an amount greater than the sum total of the particular account to which it applies. If such payment is issued, the state treasurer shall be personally liable under his official bond for the entire overdraft resulting from the payment if made.

(j) Subject to the objectives and requirements of this Code section, the state treasurer shall formulate procedures for the investment and reinvestment of funds in the investment pool and the acquisition, retention, management, and disposition of investments of the investment pool.

(k) Funds in the local government investment pool may be consolidated with state funds under the control of the state treasurer for investment purposes, if accurate and detailed accounting records are maintained for the funds of each participating local government and a proportionate amount of interest earned is credited to the local government investment pool and the accounts therein. The state treasurer may also place the funds in a separate trust fund to be administered by the state treasurer pursuant to policies established by the State Depository Board.

(l) Payments of amounts for administrative expenses shall be deemed contractually obligated funds held in trust for the benefit of the local government investment pool and shall not lapse.

History.

Ga. L. 1980, p. 1715, § 8; Ga. L. 1986, p. 205, § 3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2000, p. 1474, § 4; Ga. L. 2010, p. 863, §§ 3, 4/SB 296; Ga. L. 2015, p. 826, § 1/HB 95.

OPINIONS OF THE ATTORNEY GENERAL

Hospital authorities not eligible. — Hospital authorities created pursuant to the "Hospital Authorities Law" are not eligible to participate in the local government investment pool created by O.C.G.A. § 36-83-8. 1982 Op. Att'y Gen. No. 82-78.

CHAPTER 84

PURCHASING PREFERENCES

Sec.
36-84-1. Preferences for products manufactured in Georgia; reasonableness.

Editor's notes.

Ga. L. 2000, p. 498, § 5, effective April 20, 2000, repealed and reserved this chapter. The former chapter, relating to competition for public work bids, consisted of Code Sections 36-84-1 and 36-84-2 and was based on Ga. L. 1896, p. 73, §§ 1-5; Civil Code 1910, §§ 390-392; Penal Code 1910, § 741; Code 1933, §§ 23-1710—23-1712, 23-9905.

Ga. L. 2009, p. 204, § 6/SB 44, not codified by the General Assembly, provides: "This Act shall not be applied to impair an obligation of any contract entered into prior to the date this Act becomes effective." The effective date of this Act is July 1, 2009.

36-84-1. Preferences for products manufactured in Georgia; reasonableness.

(a) As used in this Code section, the term "local government" means a county, municipality, or consolidated government.

(b) Local governments, when contracting for or purchasing supplies, materials, equipment, or agricultural products, excluding beverages for immediate consumption, shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality.

(c) In determining whether such a preference is reasonable in any case where the value of a contract for or purchase of such supplies, materials, equipment, or agricultural products exceeds $100,000.00, the local government shall consider, among other factors, information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. No local government shall divide a contract or purchase which exceeds $100,000.00 for the purpose of avoiding the requirements of this subsection.

(d) Nothing in this Code section shall negate the requirements of Code Section 50-5-73.

History.
Code 1981, § 36-84-1, enacted by Ga. L. 2009, p. 204, § 2/SB 44.

CHAPTER 85

INTERLOCAL RISK MANAGEMENT AGENCIES

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Cross references.

Joint self-insurance programs for boards of education and school systems, § 20-2-2001 et seq.

Administrative rules and regulations.

Rules of Commissioner of Insurance, Official Compilation of the Rules and Regulations of the State of Georgia, Office of Commissioner of Insurance, Safety Fire Commissioner and Industrial Loan Commissioner, Rule 120-2-1-.01 et seq.

Code Commission notes.

Ga. L. 1986, p. 1269, § 1 and Ga. L. 1986, p. 1496, § 1 both enacted a Chapter 85 of Title 36. The chapter enacted by Ga. L. 1986, p. 1269, § 1, was redesignated as Chapter 67A of Title 36 pursuant to Code Section 28-9-5.

Law reviews.

For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

36-85-1. Definitions.

As used in this chapter, the term:

(1) "Administrator" means any person who administers a group self-insurance fund other than the interlocal risk management agency.

(2) "Commissioner" means the Commissioner of Insurance.

(3) "County" means any county of the State of Georgia. Such term shall include any public authority, commission, board, or similar agency which is created by local or general Act of the General Assembly and which carries out its functions on a county-wide basis

or wholly within the unincorporated area of a county. The term shall also include any such body which is created or activated by a resolution or ordinance of the governing body of the county individually or jointly with other political subdivisions of the state.

(4) "General liability" means liability for bodily injury, death, or damage to property owned by others to which a municipality or county may be subject either directly or by reason of liability arising out of an act, error, or omission of its employee, agent, or officer in the course and scope of employment.

(5) "Governing authority" means the body which exercises the legislative functions of the municipality or county.

(6) "Group self-insurance fund" or "fund" means a pool of public moneys established by an interlocal risk management agency from contributions of its members in order to pool the risks of accident, disability, supplemental medical, general liability, motor vehicle liability, property damage, or any combination of such risks.

(7) "Interlocal risk management agency" or "agency" means an association formed by municipalities or counties by the execution of an intergovernmental contract for the development and administration of an interlocal risk management program and one or more group self-insurance funds.

(8) "Interlocal risk management program" means a plan and activities carried out under such plan by an interlocal risk management agency to reduce risk of loss on account of accident, disability, supplemental medical, general liability, motor vehicle liability, or property damage, including safety engineering and other loss prevention and control techniques, and to administer one or more group self-insurance funds, including the processing and defense of claims brought against members of the agency.

(9) "Motor vehicle liability" means liability to which a municipality or county may be subject either directly or by reason of liability arising out of the use of a motor vehicle by its employee, agent, or officer in the course and scope of employment. Said term shall also include loss on account of property damage to motor vehicles.

(10) "Municipality" means a municipal corporation of the State of Georgia. Such term shall include any public authority, commission, board, or similar agency which is created by general or local Act of the General Assembly and which carries out its functions wholly or partly within the boundaries of the municipality. The term shall also include such bodies which are created or activated by an ordinance or resolution of the governing body of the municipality individually or jointly with other political subdivisions of the state. The term shall

also include any independent school system of this state which elects to participate in the interlocal risk management agency composed of municipalities; provided, however, such independent school system must have a full-time equivalent student count of at least 2,800 in order to elect to become a member of the interlocal risk management agency composed of municipalities.

(11) "Property damage" means loss to which a municipality or county may be subject by reason of physical damage or destruction to real or personal property owned or leased by such municipality or county.

History.

Code 1981, § 36-85-1, enacted by Ga. L. 1986, p. 1496, § 1; Ga. L. 1987, p. 1454, § 1; Ga. L. 1991, p. 717, § 2; Ga. L. 2017, p. 336, § 2/HB 146; Ga. L. 2019, p. 1056, § 36/SB 52.

Law reviews.

For annual survey of law of torts, see 44 Mercer L. Rev. 375 (1992).

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Respondeat superior principles used to analyze coverage question. — Respondeat superior principles were used to analyze a coverage question under a Georgia Interlocal Risk Management Agency agreement as the statutory language and coverage language was similar to that used by Georgia courts in applying the theory of respondeat superior. Ga. Interlocal Risk Mgmt. Agency v. Godfrey, 273 Ga. App. 77, 614 S.E.2d 201, 2005 Ga. App. LEXIS 413 (2005), cert. denied, No. S05C1419, 2005 Ga. LEXIS 691 (Ga. Oct. 3, 2005).

Police trainee not "member." — Police trainee was not covered by a Georgia Interlocal Risk Management Agency agreement when the trainee obtained a police car to drive to work the next day, used the car to stop a victim, and robbed and murdered the victim for the purely personal reason of obtaining money to pay a drug dealer. Ga. Interlocal Risk Mgmt. Agency v. Godfrey, 273 Ga. App. 77, 614 S.E.2d 201, 2005 Ga. App. LEXIS 413 (2005), cert. denied, No. S05C1419, 2005 Ga. LEXIS 691 (Ga. Oct. 3, 2005).

36-85-2. Formation; functions; counties and municipalities as separate classes; agreements creating agencies; files of administrator are sole property of agency.

(a) A group of municipalities or a group of counties may execute an intergovernmental contract among themselves to form and become members of an interlocal risk management agency. After an interlocal risk management agency has been formed, any municipality or county may, subject to the bylaws and requirements of such agency, become a member and, through participation in the agency, may:

(1) Pool its general liability risks in whole or in part with those of other municipalities or counties;

(2) Pool its motor vehicle liability risks in whole or in part with those of other municipalities or counties;

(3) Pool its property damage risks in whole or in part with those of other municipalities or counties; or

(4) Jointly purchase accident, disability, supplemental medical, general liability, motor vehicle liability, or property damage insurance with other municipalities or counties participating in and belonging to the interlocal risk management agency, the participating municipalities or counties to be coinsured under a master policy or policies with the total premium apportioned among such participants.

(b) For the purposes of this chapter, municipalities and counties shall be deemed to constitute separate classes, and no member of any one such class shall join with a member of another class for the purpose of creating an interlocal risk management agency. There shall be only one interlocal risk management agency established for each class; provided, however, that, if the Commissioner determines that there are special or unique circumstances or needs of a group of counties or municipalities which justify the establishment of an additional interlocal risk management agency or agencies, he may authorize the establishment of such additional agency or agencies. Each agency may establish such group self-insurance funds as may be authorized by the Commissioner of Insurance.

(c) All arrangements and agreements made under the authority of this chapter shall be in writing. A municipality or county may become a member of an interlocal risk management agency by the adoption of a resolution or ordinance by the governing authority of the municipality or county. The interlocal risk management agency shall operate under such name and style as shall be provided in the intergovernmental contract creating such agency and shall have the power to bring and defend actions in all courts.

(d) All books, records, and files maintained by any administrator of any fund established by the agency, including but not limited to audit data and all active and inactive claim files, shall at all times be the sole property of the agency and shall be surrendered immediately to the agency upon demand.

History.

Code 1981, § 36-85-2, enacted by Ga. L. 1986, p. 1496, § 1; Ga. L. 1987, p. 1454, § 2; Ga. L. 2017, p. 336, § 3/HB 146; Ga. L. 2025, p. 1029, § 36(49)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that," for "however," in subsection (b).

36-85-3. Board of trustees.

Each intergovernmental contract establishing an intergovernmental risk management agency shall provide for a board of trustees which shall govern the agency. Such board shall be authorized to administer the agency in accordance with the provisions of the intergovernmental contract establishing the agency and shall be authorized to adopt such bylaws, rules, and regulations as may be necessary or desirable in administering such agency.

History.
Code 1981, § 36-85-3, enacted by Ga. L. 1986, p. 1496, § 1.

36-85-4. Agency not an insurer.

An interlocal risk management agency created pursuant to this chapter is not an insurance company or an insurer under Title 33, and the development and administration by such agency of one or more group self-insurance funds shall not constitute doing business as an insurer.

History.
Code 1981, § 36-85-4, enacted by Ga. L. 1986, p. 1496, § 1.

JUDICIAL DECISIONS

Coverage agreement with Georgia Interlocal Risk Management Agency excluded uninsured and underinsured motorist protection. — Court of appeals correctly determined that no statute required that a city's agreement with the Georgia Interlocal Risk Management Agency (GIRMA) had to meet the uninsured and underinsured motorist coverage requirements that an insurance policy issued by an insurer had to meet pursuant to O.C.G.A. § 33-7-11 because the General Assembly explicitly declared that GIRMA was not an insurer; the city's agreement with GIRMA was limited to its express terms and did not include underinsured motorist protection. Godfrey v. Ga. Interlocal Risk Mgmt. Agency, 290 Ga. 211, 719 S.E.2d 412, 2011 Ga. LEXIS 821 (2011).

36-85-5. Certificate of authority; application.

(a) No interlocal risk management agency shall establish a group self-insurance fund or funds until such agency has been issued a certificate of authority by the Commissioner of Insurance as provided in this Code section and under such rules and regulations as the Commissioner may promulgate to assure compliance with this chapter.

(b) The Commissioner shall not be authorized to issue any certificate of authority pursuant to this Code section prior to April 30, 1987. Any application for a certificate of authority pursuant to this Code section which is filed prior to March 1, 1987, shall be updated by the applicant in order to comply with any statute, rule, or regulation which may be

promulgated or enacted prior to the issuance of the certificate of authority.

(c) When applying for a certificate of authority, an interlocal risk management agency shall file with the Commissioner an application setting forth:

(1) The name of the agency;

(2) The location of the agency's principal office;

(3) The names and addresses of the members of the agency;

(4) The names and addresses of the members of each fund;

(5) The name and address of a Georgia resident designated and appointed as each fund's proposed registered agent for service of process in this state;

(6) The names and addresses of the members of the board of trustees of the agency;

(7) A copy of the bylaws of the agency;

(8) A copy of the intergovernmental contract establishing the agency;

(9) A copy of the agreement or agreements establishing each fund;

(10) A copy of any agreements between the agency, any fund of the agency, and any administrator of a fund;

(11) A statement of the financial condition of the agency and each fund of the agency listing all of their assets and liabilities as of the end of the last preceding month prior to the date of the application on such a form as may be prescribed by the Commissioner;

(12) A copy of each contract, endorsement, and application form proposed to be issued or used in connection with each fund. Such contracts, endorsements, applications, or revisions thereto shall be filed with and approved by the Commissioner prior to their use; and

(13) A copy of the rates, rating systems, and rules proposed to be used in connection with each fund. Such rates, rating systems, rules, and any revisions thereto shall be filed with and approved by the Commissioner prior to their use.

(d) A fund authorized by this chapter may be established by an agency only if the agency has enrolled members which:

(1) For each motor vehicle liability and general liability fund shall generate an annual gross premium of not less than $300,000.00;

(2) For each property damage fund shall generate an annual gross premium of not less than $200,000.00;

(3) For each fund which includes motor vehicle liability or general liability with property damage shall generate an annual gross premium of not less than $500,000.00;

(4) For each fund which includes motor vehicle liability, general liability, and property damage shall generate an annual gross premium of not less than $800,000.00; or

(5) For each fund which includes accident, disability, or supplemental medical coverage shall generate an annual gross premium of not less than $500,000.00.

History.
Code 1981, § 36-85-5, enacted by Ga. L. 1986, p. 1496, § 1; Ga. L. 1987, p. 1454, § 3; Ga. L. 2017, p. 336, § 4/HB 146.

36-85-6. Approval of certificate; renewal.

(a) The Commissioner shall examine the application made under Code Section 36-85-5 to determine whether the agency and any established fund will be able to comply with this chapter and applicable rules and regulations. If the Commissioner finds that the agency and any established fund are capable of complying with such requirements, he shall issue a certificate of authority to the agency.

(b) If the Commissioner refuses to issue a certificate of authority, he shall issue an order setting forth the reasons for refusal and forward it to the agency. A copy of the order shall be sent to each member of the fund.

(c) Except as otherwise provided in subsection (b) of Code Section 36-85-5, the Commissioner shall approve or disapprove the application for a certificate of authority within 60 days of receipt by him of the application and all of the supporting information requested.

(d) The Commissioner may refuse to issue or renew or may suspend or revoke the certificate of authority of any agency, in accordance with Code Section 36-85-12, for failure of the agency to comply with any provision of this chapter or with any of the rules, regulations, or orders of the Commissioner issued pursuant thereto.

(e) The certificate shall be renewed annually in accordance with rules and regulations promulgated by the Commissioner.

History.
Code 1981, § 36-85-6, enacted by Ga. L. 1986, p. 1496, § 1.

36-85-7. Funds to be maintained.

Each fund formed pursuant to this chapter shall possess and thereafter maintain minimum surplus in an amount such as the Commissioner

may reasonably establish or subsequently require for the protection of the members. The Commissioner may authorize a fund to maintain a deposit with the Commissioner consisting of securities eligible for deposit by domestic insurance companies in accordance with Chapter 12 of Title 33 or, for a period not to exceed 60 months, to post a surety bond in lieu of maintaining the minimum surplus required by this Code section.

History.
Code 1981, § 36-85-7, enacted by Ga. L. 1986, p. 1496, § 1.

36-85-8. Investment of assets.

The investable assets of a fund may be invested in securities or other investments permitted by the laws of this state for the investment of assets constituting the legal reserves of property and casualty insurance companies or in such other securities or investments as the Commissioner may permit such insurers to invest their funds under Title 33. Such investments shall be subject to the same terms, conditions, and limitations which apply to property and casualty insurance companies under Title 33.

History.
Code 1981, § 36-85-8, enacted by Ga. L. 1986, p. 1496, § 1.

36-85-9. Local government liability for funds.

Each county or municipality shall be jointly and severally liable for all legal obligations of a fund which arise out of an event which occurred while such county or municipality was a member of such fund; provided, however, that a fund shall not assume a risk greater than an amount to be determined by the Commissioner; and provided, further, that this legal obligation may be enforced by an assessment against such member as provided in the bylaws of the agency.

History.
Code 1981, § 36-85-9, enacted by Ga. L. 1986, p. 1496, § 1.

36-85-10. Contracts between agency and administrator.

(a) If an agency contracts with an administrator, the agency and the administrator must enter into a written agreement which shall be subject to review and approval by the Commissioner in accordance with this Code section and which shall contain at least the following:

(1) A contractual provision obligating the administrator to obtain

and maintain such bonds, deposits, or insurance coverage as may be required to be maintained by this chapter; and

(2) A requirement that errors and omissions coverage or other appropriate liability insurance in an amount which is not less than that specified by the rules and regulations of the Commissioner be maintained at all times by the administrator.

(b) The terms of any such agreement shall be reasonable and equitable, and the agreement and any amendments thereto shall be filed with the Commissioner at least 30 days prior to their use. Any such agreement and any and all amendments thereto which have not been specifically disapproved by the Commissioner within 30 days after the filing thereof shall be deemed to be approved.

(c) A copy of the agreement and any and all amendments thereto shall be furnished to each agency or fund member upon request.

History.
Code 1981, § 36-85-10, enacted by Ga. L. 1986, p. 1496, § 1.

36-85-11. Fidelity bond and errors and omissions insurance; administrators to maintain office in state.

(a) The Commissioner shall require each administrator to have and maintain a fidelity bond in an amount which the Commissioner deems appropriate but which is not less than $100,000.00.

(b) Errors and omissions coverage or other appropriate liability insurance in an amount which is not less than that specified by the rules and regulations of the Commissioner shall be maintained at all times by an administrator of a fund; and a certificate by the insurer or other appropriate evidence of such coverage shall be filed with the Commissioner by the fund.

(c) Each administrator shall maintain an office in this state for the payment, processing, and adjustment of the claims of the fund or funds which it represents.

History.
Code 1981, § 36-85-11, enacted by Ga. L. 1986, p. 1496, § 1.

36-85-12. Revocation, suspension, or refusal to renew certificate of authority; hearing; voluntary dissolution of fund.

(a) The Commissioner may revoke, suspend, or refuse to issue or

renew the certificate of authority of any agency when and if, after investigation, he finds that:

(1) Any certificate of authority issued to the agency was obtained by fraud;

(2) There was any material misrepresentation in the application for the certificate of authority;

(3) The agency, any fund established by the agency, the administrator of a fund, or any marketing representative has otherwise shown itself to be untrustworthy or incompetent;

(4) The agency, any fund established by the agency, the administrator of a fund, or any marketing representative has violated any of the provisions of this chapter or the rules and regulations of the Commissioner promulgated pursuant to this chapter;

(5) The agency, any fund established by the agency, or the administrator of a fund has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any moneys which belong to a member or a person otherwise entitled thereto and which have been entrusted to the agency, fund, or administrator in its fiduciary capacities; or

(6) The agency or any fund established by the agency is found to be in an unsound condition or in such condition as to render its future transaction of business in this state hazardous to its members.

(b) Before the Commissioner shall revoke, suspend, or refuse to issue or renew the certificate of authority of any agency, he shall give the agency an opportunity to be fully heard and to introduce evidence in its behalf. In lieu of revoking, suspending, or refusing to issue or renew the certificate of authority of any agency for any of the causes enumerated in this Code section, after hearing as provided in this Code section, the Commissioner may place the fund and its administrator on probation for a period of time not to exceed one year when, in his judgment, he finds that the public interest and the interests of the fund's members would not be harmed by the continued operation of the fund. At any hearing provided for by this Code section, the Commissioner or his designee shall have authority to administer oaths to witnesses. Any witness testifying falsely after taking an oath commits the offense of perjury.

(c) No fund shall be voluntarily dissolved or otherwise voluntarily cease to function unless:

(1) Written approval is first obtained from the Commissioner; and

(2) The Commissioner determines that all claims and other legal obligations of the fund have been paid or that adequate provisions for such payment have been made.

History.
Code 1981, § 36-85-12, enacted by Ga. L. 1986, p. 1496, § 1.

36-85-13. Exemption from state and local taxes and fees.

Interlocal risk management agencies and funds established by such agencies shall be exempt from state and local taxes and fees.

History.
Code 1981, § 36-85-13, enacted by Ga. L. 1986, p. 1496, § 1.

36-85-14. Periodic examinations.

The Commissioner shall have the authority to require and conduct periodic examinations to verify the solvency of funds in the same manner and under the same conditions as insurers are examined under Chapter 2 of Title 33.

History.
Code 1981, § 36-85-14, enacted by Ga. L. 1986, p. 1496, § 1.

36-85-15. Fund deficiencies; assessments upon members; liquidation of fund.

(a) If the assets of a fund are at any time insufficient to enable a fund to discharge its legal liabilities and other obligations and to maintain the reserves and surplus required of it under this chapter, the agency shall forthwith make up the deficiency or levy an assessment upon the members of the fund for the amount needed to make up the deficiency.

(b) If the agency fails to make up the deficiency or to make the required assessment of the fund members within 30 days after the Commissioner orders it to do so or if the deficiency is not fully made up within 60 days after the date on which any such assessment is made or within such longer period of time as may be specified by the Commissioner, the fund shall be deemed to be insolvent and shall be proceeded against in the same manner as are domestic insurers under Chapter 37 of Title 33; and the Commissioner shall have the same powers and limitations in such proceedings as are provided under that chapter, except as otherwise provided for in this chapter.

(c) If the liquidation of a fund is ordered, an assessment shall be levied upon its members for such an amount as the Commissioner determines to be necessary to discharge all liabilities of the fund, including the reasonable costs of liquidation.

History.
Code 1981, § 36-85-15, enacted by Ga. L. 1986, p. 1496, § 1.

36-85-16. Rules and regulations.

The Commissioner shall have authority to promulgate rules and regulations to effectuate the provisions of this chapter.

History.
Code 1981, § 36-85-16, enacted by Ga. L. 1986, p. 1496, § 1.

36-85-17. Hearings.

Any party which is aggrieved by any act, determination, order, or any other action of the Commissioner taken pursuant to this chapter may request a hearing before the Commissioner or otherwise proceed in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Code 1981, § 36-85-17, enacted by Ga. L. 1986, p. 1496, § 1.

36-85-18. Excess loss funding program required.

(a) An interlocal risk management agency shall maintain at all times an excess loss funding program acceptable to the Commissioner. An excess loss funding program may consist of excess insurance, self-funding from unobligated surplus of a fund, any combination of the foregoing, or any other funding program acceptable to the Commissioner.

(b) The excess loss funding program of an agency shall be approved by the Commissioner as a condition to the issuance and maintenance of a certificate of authority of any agency which establishes a fund or funds authorized pursuant to this article. An agency may be permitted to purchase excess insurance:

(1) From insurers authorized to transact business in this state; or

(2) From approved surplus lines carriers.

History.
Code 1981, § 36-85-18, enacted by Ga. L. 1986, p. 1496, § 1; Ga. L. 1987, p. 1454, § 4.

36-85-19. Audits of funds.

Each fund established under this chapter shall have an annual audit of its books and accounts performed by a certified public accountant. Such audit shall be conducted in accordance with generally accepted account-

ing principles or statutory accounting principles. A copy of such audit shall be made available to fund members.

History.
Code 1981, § 36-85-19, enacted by Ga. L. 1986, p. 1496, § 1; Ga. L. 2022, p. 301, § 1/HB 1195.

36-85-20. Exercise of authority not provision of liability insurance; sovereign immunity.

The exercise by a municipality or county of the authority provided in this chapter shall not constitute the provision of liability insurance protection under Article I, Section II, Paragraph IX of the Constitution of the State of Georgia. The participation by a municipality or county as a member of an agency authorized by this chapter shall not constitute the obtaining of liability insurance and no sovereign immunity shall be waived on account of such participation.

History.
Code 1981, § 36-85-20, enacted by Ga. L. 1986, p. 1496, § 1; Ga. L. 1987, p. 1454, § 5.

Law reviews.
For article, "Local Government Tort Liability: The Summer of '92," see 9 Ga. St. U.L. Rev. 405 (1993).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 36-85-20 conflicts with Ga. Const. 1983, Art. I, Sec. II, Para. IX, as the statute read prior to the 1990 amendment, and was therefore void. Hiers v. City of Barwick, 262 Ga. 129, 414 S.E.2d 647, 1992 Ga. LEXIS 245 (1992), superseded by statute as stated in Gilbert v. Richardson, 217 Ga. App. 612, 458 S.E.2d 405, 1995 Ga. App. LEXIS 544 (1995).

County's participation in an interlocal risk management plan did not constitute liability insurance for the purpose of waiving the county's sovereign immunity to the extent of the plan's coverage. Gilbert v. Richardson, 264 Ga. 744, 452 S.E.2d 476, 1994 Ga. LEXIS 892 (1994).

Even though the 1991 amendment of Ga. Const. 1983, Art. I, Sec. II, Para. IX, eliminated the language under which O.C.G.A. § 36-85-20 was found unconstitutionally void, the revision did not resurrect the statute and, accordingly, the statute did not provide a basis for finding a county's participation in an interlocal risk management plan constituted a waiver of sovereign immunity. The county's purchase of such insurance agreement constituted the purchase of insurance under O.C.G.A. § 33-24-51(b) and the county waived the county's sovereign immunity to the extent of such coverage; reversing in part, Gilbert v. Richardson, 211 Ga. App. 795, 440 S.E.2d 684 (1994). Gilbert v. Richardson, 264 Ga. 744, 452 S.E.2d 476, 1994 Ga. LEXIS 892 (1994).

GIRMA allows waiver of sovereign immunity to extent of coverage. — Trial court erred in granting summary judgment to city and the officer involved in a car accident, based on the doctrine of sovereign immunity, since it has been held that the constitutional provision providing waiver of immunity to the extent of insurance applies to municipalities, that the nonwaiver of immunity provision of O.C.G.A. § 36-85-20 is unconstitutional, and that municipal coverage under a Georgia Interlocal Risk Management Agency (GIRMA) policy results in waiver of immunity to the extent of that coverage. Harden v. Burdette, 204 Ga. App. 733, 420 S.E.2d 626, 1992 Ga. App. LEXIS 1004 (1992).

CHAPTER 86

LOCAL GOVERNMENT EFFICIENCY

Sec.
36-86-1. Short title.
36-86-2. Legislative findings and determinations; purpose.
36-86-3. Definitions.
36-86-4. Local Government Efficiency Grant Program established; grant categories; rules and regulations; budget process; efficiency assessments.

Administrative rules and regulations.

Local Government Efficiency Grant Program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Rule 110-5-1-.01 et seq.

Law reviews.

For note on 1993 enactment of this chapter, see 10 Ga. St. U. L. Rev. 160 (1993).

36-86-1. Short title.

This chapter shall be known and may be cited as the "Local Government Efficiency Act."

History.

Code 1981, § 36-86-1, enacted by Ga. L. 1993, p. 1574, § 1.

36-86-2. Legislative findings and determinations; purpose.

(a) The General Assembly finds and determines that there is a pressing need for modernization and reorganization of local government service delivery programs in many parts of the state. Both increasing population and urbanization in some areas of the state, as well as relative population decreases in other areas of the state, together with modern developments in transportation, communication, information, and other service delivery equipment and systems have rendered obsolete many of the traditional local government territorial systems for delivery of local government services.

(b) In many cases the consolidation of local government units or the consolidation of local government service delivery programs can lead to increased efficiency in the delivery of local government services, thereby providing either enhanced service delivery, lower levels of taxation, or both. In other cases, however, existing territorial systems for local government service delivery already operate in an efficient and cost-effective manner.

(c) The purpose of this chapter is to provide incentives and requirements relating to consolidation of local government units and local

government service delivery programs in those cases where such consolidation will improve efficiency and cost effectiveness, without disturbing territorial arrangements which already operate in an efficient and cost-effective manner.

History.
Code 1981, § 36-86-2, enacted by Ga. L. 1993, p. 1574, § 1.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2006, subsection designations were added to this Code section.

36-86-3. Definitions.

As used in this chapter, the term:

(1) "Local government unit" includes each county in the state, each municipality in the state, each consolidated government in the state, and each local authority in the state which operates any local government service delivery program but does not include local school systems.

(2) "Service" or "local government service" includes any and all services provided by a local government unit, including but not limited to the following:

(A) Law enforcement;

(B) Fire protection and fire safety;

(C) Road and street construction and maintenance;

(D) Public transportation;

(E) Water supply and distribution;

(F) Waste-water, sewage, and storm-water collection and disposal;

(G) Public housing;

(H) Public health services;

(I) Enforcement of building, housing, plumbing, and electrical codes and other similar codes;

(J) Parks and recreation systems;

(K) Planning and zoning;

(L) Solid waste management; and

(M) Electric or gas utility services.

History.
Code 1981, § 36-86-3, enacted by Ga. L. 1993, p. 1574, § 1; Ga. L. 1995, p. 467, § 1.

Code Commission notes. Pursuant to Code Section 28-9-5, in 1993, "similar" was substituted for "similiar" in subparagraph (2)(I).

36-86-4. Local Government Efficiency Grant Program established; grant categories; rules and regulations; budget process; efficiency assessments.

(a) There is established within the Department of Community Affairs a local government efficiency grant program. Funds may be appropriated to such grant program by line item reference in any appropriations Act, and any funds so appropriated shall be used for the sole purpose of making grants to local governments for the following purposes:

(1) Conducting efficiency assessments to determine the need for and desirability of consolidation of local government units or local government service delivery programs, including privatization of such programs, or both;

(2) Planning for the consolidation of local government units or local government service delivery programs, including privatization of such programs, or both, when it has been determined that such consolidation is needed and desirable; and

(3) Implementing the consolidation of local government units or local government service delivery programs, including privatization of such programs, or both, where it has been determined that such consolidation is needed and desirable and a plan has been developed for carrying out the consolidation or furthering the efficiency and effectiveness of a single consolidated local government's service delivery programs.

(b) The Department of Community Affairs shall promulgate rules and regulations which shall provide for:

(1) Standards and procedures for local governments to make application for local government efficiency grant funds; and

(2) Standards and procedures for the awarding of local government efficiency grant funds, such standards to be consistent with the statement of legislative findings set out in Code Section 36-86-2.

(c) Funds appropriated for local government efficiency grants shall be subject to normal budgetary processes and controls, including the lapsing of unexpended and uncommitted funds at the end of each fiscal year.

(d) The Department of Community Affairs shall provide procedures and guidelines specifying the manner of conducting and the contents of the efficiency assessments that are authorized to be conducted under paragraph (1) of subsection (a) of this Code section.

(e) The efficiency assessments shall be conducted only for the purpose of providing the local government units with the cost savings and efficiencies, if any, which could be achieved through consolidation of governmental units or service delivery programs or both. There shall be no requirement that local government units that elect to conduct an efficiency assessment be compelled to consolidate local government units or local government service delivery programs as a result of the findings of the efficiency assessment.

(f) No local government shall be required to undertake any of the studies necessary for carrying out the provisions of subsection (a) of this Code section unless funds are appropriated for the purposes of that subsection.

History.
Code 1981, § 36-86-4, enacted by Ga. L. 1993, p. 1574, § 1; Ga. L. 1995, p. 10, § 36; Ga. L. 1995, p. 467, § 1.

Administrative rules and regulations.
Local Government Efficiency Grant Program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Rule 110-5-1-.01 et seq.

RESEARCH REFERENCES

ALR.
Privatization of governmental services by state or local governmental agency, 65 A.L.R.5th 1.

CHAPTER 87

PARTICIPATION IN FEDERAL PROGRAMS

Sec.
36-87-1. Legislative findings.
36-87-2. Authority of counties and municipal corporations to participate in programs; powers.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1993, this chapter, which was enacted as Chapter 86, containing Code Sections 36-86-1 and 36-86-2, was redesignated as Chapter 87, containing Code Sections 36-87-1 and 36-87-2.

36-87-1. Legislative findings.

Pursuant to Article III, Section VI, Paragraph II, subparagraph (a)(3) of the Constitution of Georgia, the General Assembly finds it to be in the public interest of the citizens of Georgia and a public purpose for counties and municipal corporations to be authorized to participate in certain federal programs.

History.
Code 1981, § 36-87-1, enacted by Ga. L. 1993, p. 792, § 1.

36-87-2. Authority of counties and municipal corporations to participate in programs; powers.

(a) Each county and municipal corporation of the State of Georgia is authorized to participate in federal programs which provide federal grants and federal loans for such purposes including but not limited to housing, transportation, and water and waste-water treatment and distribution purposes. Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to exercise the following powers:

(1) To expend revenues, but shall not impose any new form of taxation; and

(2) To contract:

(A) With the United States and its departments and agencies;

(B) With the State of Georgia and its departments, agencies, and authorities;

(C) With regional commissions, political subdivisions of the state, and public authorities of such subdivisions; and

(D) With private nonprofit entities organized for the purpose of providing services to persons of low and moderate income when

such entities are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986

when the exercise of such powers is necessary to comply with the conditions established by federal law and federal regulations for eligibility for participation in such federal programs.

(b)(1) Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to expend public funds and participate in community development block grant programs and other federal programs to construct facilities to carry out the following purposes:

(A) Providing day-care services primarily to the children of persons of low and moderate income;

(B) Providing services to elderly persons;

(C) Providing health education, literacy and English language instruction, mental health and disability services, legal assistance, emergency food, and medical assistance to low and moderate income persons; and

(D) Any combination of services authorized in this paragraph.

(2) Counties and municipalities are further authorized to carry out the purposes of this subsection by contracting with public agencies and nonprofit entities described in paragraph (2) of subsection (a) of this Code section.

(3) Any contracts, programs, projects, or expenditures of public funds authorized by this subsection which were entered into, carried out, undertaken, or made prior to April 5, 1994, are validated and confirmed.

(c) State agencies rating applications from counties and municipal corporations for federal funding of the construction of child care learning centers shall, to the extent allowed under applicable federal laws or regulations, give priority to those child care learning centers located in or adjacent to industrial parks.

(d) Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to:

(1) Participate in federal and state programs which provide funds for job training, job research assistance, and workforce development programs;

(2) Accept and expend grant funds subject to such terms as may be required by the grantor, including the duty to reimburse the grantor for any funds not expended in accordance with such terms;

(3) Contract with public agencies and nonprofit entities described

in paragraph (2) of subsection (a) of this Code section for the purpose of carrying out such programs; and

(4) Ratify any contracts, programs, projects, or expenditures of public funds authorized by this subsection which were entered into, carried out, undertaken, or made prior to July 1, 1997.

History.

Code 1981, § 36-87-2, enacted by Ga. L. 1993, p. 792, § 1; Ga. L. 1994, p. 822, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 1997, p. 696, § 1; Ga. L. 2005, p. 1484, § 1/HB 186; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2008, p. 181, § 21/HB 1216; Ga. L. 2013, p. 135, § 9/HB 354.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1997, "April 5, 1994," was substituted for "the effective date of this subsection" in paragraph (b)(3), and "July 1, 1997" was substituted for "the effective date of this subsection" in paragraph (d)(4).

Pursuant to Code Section 28-9-5, in 2008, "commissions" was substituted for "commission" in subparagraph (a)(2)(C).

CHAPTER 88

ENTERPRISE ZONES

Sec.		Sec.	
36-88-1.	Short title.	36-88-6.	Criteria for enterprise zone.
36-88-2.	Legislative findings and intent; construction.	36-88-7.	Local ordinances' effect on enterprise zone.
36-88-3.	Definitions.	36-88-8.	Tax exemption.
36-88-4.	Available incentives; qualifying business; exemptions.	36-88-9.	Other tax incentives; reporting.
36-88-5.	Designation of enterprise zones.	36-88-10.	Time limitations.

Law reviews.
For article commenting on the enactment of this chapter, see 14 Ga. St. U. L. Rev. 191 (1997).

36-88-1. Short title.

This chapter shall be known and may be cited as the "Enterprise Zone Employment Act of 1997."

History.
Code 1981, § 36-88-1, enacted by Ga. L. 1997, p. 1481, § 1.

JUDICIAL DECISIONS

Imposition of fees. — An intergovernmental agreement between a city and development authority was lawful under Ga. Const. 1983, Art. IX, Sec. II, Para. VII(c), despite the objectors' claim that the city was not authorized to assess infrastructure fees and provide the fees as payment for bonds; the city had statutory authority to impose the fees under the Redevelopment Powers Law, O.C.G.A. § 36-44-1 et seq., and O.C.G.A. § 36-88-6(g)(1) of the Enterprise Zone Employment Act, O.C.G.A. § 36-88-1 et seq. Franzen v. Downtown Dev. Auth. of Atlanta, 309 Ga. 411, 845 S.E.2d 539, 2020 Ga. LEXIS 462 (2020).

36-88-2. Legislative findings and intent; construction.

The General Assembly finds and determines that there is a need for revitalization in many areas of Georgia. Revitalization will improve geographic areas within cities and counties which are suffering from disinvestment, underdevelopment, and economic decline and will encourage private businesses to reinvest and rehabilitate such areas. The General Assembly recognizes that increased employment opportunities for the citizens of Georgia will assist in the implementation of welfare reform. It is the intent of the General Assembly that this chapter be liberally construed to accomplish these purposes.

History.
Code 1981, § 36-88-2, enacted by Ga. L. 1997, p. 1481, § 1.

36-88-3. Definitions.

As used in this chapter, the term:

(1) "Ad valorem tax" means property taxes levied for state, county, or municipal operating purposes but does not include property taxes imposed by school districts or property taxes imposed for general obligation debt.

(2) "Business enterprise" means any business engaged primarily in retail, manufacturing, warehousing and distribution, processing, telecommunications, tourism, research and development industries, new residential construction, and residential rehabilitation.

(3) "Department" means the Department of Community Affairs.

(4) "Enterprise zone" means the geographic area designated pursuant to Code Section 36-88-5.

(5) "Full-time job equivalent" means a job or jobs with no predetermined end date, with a regular work week of 30 hours or more, and with the same benefits provided to similar employees.

(6) "Low-income and moderate-income individual" means a person currently:

(A) Unemployed or unemployed for three of the six months prior to the date of hire;

(B) Homeless;

(C) A resident of public housing;

(D) Receiving temporary assistance for needy families or who has received temporary assistance for needy families at any time during the 18 months previous to the date of hire;

(E) A participant in the Workforce Investment Act or who has participated in the Workforce Investment Act at any time during the 18 months previous to the date of hire;

(F) A participant in a job opportunity where basic skills are required or who has participated in such a job opportunity at any time during the 18 months previous to the date of hire;

(G) Receiving supplemental social security income; or

(H) Receiving food stamps.

(7) "New job" means employment for an individual created within an enterprise zone by a new or expanded qualified business or service

enterprise at the time of the initial staffing of such new or expanded enterprise.

(8) "Qualified or qualifying business" means an employer that meets the requirements of Code Section 36-88-4 and other applicable requirements of this chapter.

(8.1) "Sales and use tax" means sales and use taxes applicable to sales transactions within the boundaries of an area designated as an enterprise zone pursuant to subsection (g) of Code Section 36-88-6, not to include:

(A) A sales and use tax for educational purposes exempted from such limitation under Article VIII, Section VI, Paragraph IV of the Constitution;

(B) Any tax levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment; or

(C) Any tax levied for purposes of water and sewer projects pursuant to Article 4 or 5A of Chapter 8 of Title 48.

(9) "Service enterprise" means an entity engaged primarily in finance, insurance, and real estate activity or activities listed under the Standard Industrial Classification (SIC) Codes 60 through 67 according to the Federal Office of Management and Budget Standard Industrial Classification Manual, 1987 edition, or engaged primarily in day-care activities.

(10) "Urban redevelopment plan" means a plan prepared and adopted pursuant to the requirements of Chapter 61 of this title.

History.

Code 1981, § 36-88-3, enacted by Ga. L. 1997, p. 1481, § 1; Ga. L. 1998, p. 128, § 36; Ga. L. 1999, p. 333, § 1; Ga. L. 2003, p. 818, § 1; Ga. L. 2004, p. 939, §§ 2, 3; Ga. L. 2017, p. 52, § 1/HB 342.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1997, "Office" was substituted for "office" in paragraph (9).

Editor's notes.

Ga. L. 2004, p. 939, § 6, not codified by the General Assembly, provides that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2004.

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 186 (2003).

36-88-4. Available incentives; qualifying business; exemptions.

(a) The following incentives are available to qualifying business and service enterprises to encourage revitalization within enterprise zones:

(1) The enterprise zone property tax exemption provided in Code Section 36-88-8;

(2) The occupational tax, regulatory fee, and business inspection fee abatement or reduction provided in Code Section 36-88-9; and

(3) For enterprise zones created pursuant to subsection (g) of Code Section 36-88-6, the sales and use tax exemption provided in such subsection pursuant to the authority granted by Article IX, Section II, Paragraph VII(c) of the Constitution of Georgia.

(b) A qualifying business or service enterprise is an enterprise which increased employment by five or more new full-time job equivalents in an area designated as an enterprise zone and which provides additional economic stimulus in such zone. The quality and quantity of such additional economic stimulus shall be determined, on a case-by-case basis, by the local governing body or bodies that have designated the enterprise zone. Such business or service enterprise may be new, an expansion or reinvestment of an existing business or service enterprise, or a successor to such business or service enterprise. Whenever possible, 10 percent of such new employees shall be low-income or moderate-income individuals.

(c) Notwithstanding any provision of this Code section to the contrary, a local governing body or bodies creating an enterprise zone prior to January 1, 2000, may provide the exemptions and abatements as provided in this chapter to any qualifying business or service enterprise which employs at least 5,000 persons and which creates ten or more new full-time job equivalents that did not exist prior to July 1, 1997, provided such qualifying business or service enterprise provides economic stimulus to such zone and the quality and quantity of such stimulus is acceptable to the local governing body or bodies creating the enterprise zone.

History.
Code 1981, § 36-88-4, enacted by Ga. L. 1997, p. 1481, § 1; Ga. L. 2017, p. 52, § 2/HB 342.

JUDICIAL DECISIONS

Bond proposal secured by infrastructure fees upheld. — Bond proposal secured by infrastructure fees was sound, feasible, and reasonable; the trial court was not required to find that the projected $633 million of fees over a 30 year period would service bonds in the possible amount of $1.25 billion; the bonds would be issued only if sufficient infrastructure fees were projected to service the bonds. Franzen v. Downtown Dev. Auth. of Atlanta, 309 Ga. 411, 845 S.E.2d 539, 2020 Ga. LEXIS 462 (2020).

36-88-5. Designation of enterprise zones.

A local governing body or bodies may designate one or more geographic

areas as enterprise zones. In such enterprise zone, local ad valorem taxes, occupation taxes, license fees, and other local fees and taxes, except local sales and use taxes or any combination thereof, may be exempted or reduced from applying to qualified business and service enterprises in accordance with the provisions of this chapter. A joint resolution by a county and one or more municipalities may provide such exemptions for jointly designated enterprise zones. Any areas designated as an enterprise zone may be redesignated as an enterprise zone after the expiration of its initial term as an enterprise zone if the area continues to meet the criteria for an enterprise zone contained in this chapter.

History.
Code 1981, § 36-88-5, enacted by Ga. L. 1997, p. 1481, § 1.

36-88-6. Criteria for enterprise zone.

(a) In order to be designated as an enterprise zone, a nominated area shall meet at least three of the five criteria specified in subsections (b), (c), (d), (e), and (f), or the criteria specified in subsection (g) of this Code section. In determining whether an area suffers from poverty, unemployment, or general distress, the governing body shall use data from the most current United States decennial census and from other information published by the United States Bureau of the Census, the Federal Bureau of Labor Statistics, and the Georgia Department of Labor. In determining whether an area suffers from underdevelopment, the governing body shall use the data specified in subsection (e) of this Code section. The data shall be comparable in point or period of time and methodology employed.

(b) Pervasive poverty shall be evidenced by showing that poverty is widespread throughout the nominated area and shall be established by using the following criteria:

(1) The poverty rate shall be determined from the data in the most current United States decennial census prepared by the United States Bureau of the Census;

(2) For parcels within the nominated area, the parcels must be within or adjacent to a census block group where the ratio of income to poverty level for at least 15 percent of the residents shall be less than 1.0;

(3) Census geographic block groups with no population shall be treated as having a poverty rate which meets the standards of paragraph (2) of this subsection; and

(4) All parcels of a nominated area must abut and may not contain a noncontiguous parcel, unless such nonabutting parcel qualifies

separately under the criteria set forth under paragraph (2) of this subsection.

(c) Unemployment shall be evidenced by the use of data published by the Office of Labor Information Systems of the Georgia Department of Labor indicating that the average rate of unemployment for the nominated area for the preceding calendar year is at least 10 percent higher than the state average rate of unemployment or by evidence of adverse economic conditions brought about by significant job dislocation within the nominated area such as the closing of a manufacturing plant or federal facility.

(d) General distress shall be evidenced by adverse conditions within the nominated area other than those of pervasive poverty and unemployment. Examples of such adverse conditions include, but are not limited to, a high incidence of crime, abandoned or dilapidated structures, deteriorated infrastructure, and substantial population decline.

(e) Underdevelopment shall be evidenced by data indicating development activities, or lack thereof, through land disturbance permits, business license fees, building permits, development fees, or other similar data indicating that the level of development in the nominated area is lower than development activity within the local governing body's jurisdiction.

(f) General blight within the nominated area shall be evidenced by the inclusion of any portion of the nominated area in an urban redevelopment area as defined by paragraph (20) of Code Section 36-61-2 for which an urban redevelopment plan has been adopted by the affected governing bodies according to the requirements of Chapter 61 of this title.

(g)(1) A nominated area under this subsection shall:

(A) Be included in an urban redevelopment area as defined in Code Section 36-61-2; and

(B) Contain within its borders the site for a redevelopment project having a minimum of $400 million in capital investment for the redevelopment of an area certified by the commissioner to have been chronically underdeveloped for a period of 20 years or more.

(2) Any nominated area meeting the criteria in paragraph (1) of this subsection may be designated as an enterprise zone. Any redevelopment project used to qualify an area for designation as an enterprise zone under this subsection shall, upon approval of such designation, qualify for an exemption of any sales and use tax levied within the boundaries of such project.

(3) Any variation in the sales price of goods and services within any redevelopment project used to qualify an area for designation as

an enterprise zone under this subsection attributable to lease arrangements between a retailer and the owner of the project shall be a permitted practice under Parts 1 and 2 of Article 15 of Chapter 1 of Title 10.

(4) By resolution or ordinance, the local governing body designating and creating an enterprise zone under this subsection may assess and collect annual enterprise zone infrastructure fees from each retailer that is a qualifying business or service enterprise making sales transactions exempted from sales and use tax under paragraph (2) of this subsection in an amount not to exceed, in aggregate, the amount of sales and use tax on transactions of such retailer exempted under paragraph (2) of this subsection, which fees may be pledged by such local governing body, directly or indirectly, as security for revenue bonds issued for development or infrastructure within the enterprise zone.

(5) This subsection shall not apply to projects involving or related to casino gambling.

History.

Code 1981, § 36-88-6, enacted by Ga. L. 1997, p. 1481, § 1; Ga. L. 1999, p. 81, § 36; Ga. L. 2004, p. 939, § 4; Ga. L. 2009, p. 132, § 1/HB 427; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2017, p. 52, § 3/HB 342; Ga. L. 2025, p. 660, § 1/HB 416, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, substituted "defined in Code Section 36-61-2" for "defined in paragraph (23) of Code Section 26-61-2" in subparagraph (g)(1)(A); and substituted "retailer that is a qualifying business or service enterprise making sales transactions exempted from sales and use tax under paragraph (2) of this subsection" for "retailer operating within the boundaries of the project" in paragraph (g)(4).

Editor's notes.

Ga. L. 2004, p. 939, § 6, not codified by the General Assembly, provides that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2004.

JUDICIAL DECISIONS

Bond proposal secured by infrastructure fees upheld. — Bond proposal secured by infrastructure fees was sound, feasible, and reasonable; the trial court was not required to find that the projected $633 million of fees over a 30 year period would service bonds in the possible amount of $1.25 billion; the bonds would be issued only if sufficient infrastructure fees were projected to service the bonds. Franzen v. Downtown Dev. Auth. of Atlanta, 309 Ga. 411, 845 S.E.2d 539, 2020 Ga. LEXIS 462 (2020).

36-88-7. Local ordinances' effect on enterprise zone.

(a)(1) Each ordinance adopted by a local government possessing an approved enterprise zone, when applicable, shall provide encouragement and incentives to increase rehabilitation, renovation, restoration, improvement for new construction for housing and the economic

viability and profitability of businesses and commerce located within such enterprise zones.

(2) Creation of an enterprise zone shall be consistent with the comprehensive plan or plans of the jurisdiction or jurisdictions designating the enterprise zone which plan or plans are adopted pursuant to Chapter 70 of this title.

(3) Each local government possessing an enterprise zone may review its ordinances to determine which ordinances may have a negative effect upon the rehabilitation, renovation, restoration, improvement, or new construction of housing, or the economic viability and profitability of businesses and commerce located within an enterprise zone. Such local government may waive, amend, or otherwise modify such ordinances so as to minimize such adverse effect.

(b) Nothing in this Code section shall authorize any local government to waive, amend, provide exceptions to or otherwise modify or alter any ordinance which is:

(1) Expressly required to implement or enforce any statutory provisions; or

(2) Designed to protect persons against discrimination on the basis of race, color, creed, national origin, sex, age, or handicap.

(c) Nothing in this Code section shall be construed so as to rescind the authority granted to local governments to create, maintain, and regulate enterprise zones pursuant to any local enterprise zone law in effect on July 1, 1997.

History.
Code 1981, § 36-88-7, enacted by Ga. L. 1997, p. 1481, § 1.

36-88-8. Tax exemption.

(a)(1) The governing body of a local government or governments creating an enterprise zone other than an enterprise zone under subsection (g) of Code Section 36-88-6, shall include in the creating ordinance a provision to exempt qualifying business and service enterprises from state, county, and municipal ad valorem taxes that would otherwise be levied on the qualifying business and service enterprises not to exceed the following schedule:

(A) One hundred percent of the property taxes shall be exempt for the first five years;

(B) Eighty percent of the property taxes shall be exempt for the next two years;

(C) Sixty percent of the property taxes shall be exempt for the next year;

(D) Forty percent of the property taxes shall be exempt for the next year; and

(E) Twenty percent of the property taxes shall be exempt for the tenth year.

(2) For any qualifying business or service enterprise, the schedule provided for in paragraph (1) of this subsection may begin in any year during which an area has an enterprise zone designation. Such tax exemption may continue even if the area's enterprise zone designation has terminated. A minimum of five new jobs must be maintained for a qualifying business or service enterprise to maintain eligibility for the tax exemption provided pursuant to this Code section.

(b) If the project consists of new residential construction, residential rehabilitation, or other rehabilitation of an existing structure and the value of the improvement exceeds the value of the land by a ratio of five to one, then the exemption schedule in subsection (a) of this Code section shall also apply whether or not the project is carried out by a qualifying business or service enterprise.

(c) In no event shall the value of the property tax exemptions granted to qualifying business and service enterprises within an enterprise zone created by a city, a county, or both, exceed 10 percent of the value of the property tax digest of the creating jurisdiction or jurisdictions.

History.

Code 1981, § 36-88-8, enacted by Ga. L. 1997, p. 1481, § 1; Ga. L. 1999, p. 333, § 2; Ga. L. 2004, p. 939, § 5; Ga. L. 2017, p. 52, § 4/HB 342.

Cross references.

Tax credits for business enterprises in less developed areas, § 48-7-40.1.

Editor's notes.

Ga. L. 2004, p. 939, § 6, not codified by the General Assembly, provides that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2004.

36-88-9. Other tax incentives; reporting.

(a) In addition to other incentives, the local governing body or bodies creating an enterprise zone may include in the creating ordinance an exemption or abatement from occupation taxes, regulatory fees, building inspection fees, and other fees that would otherwise have been imposed on a qualifying business. Such governing bodies may grant any of these incentives either when the enterprise is initially created or by subsequent resolution making such incentives applicable to an existing enterprise zone.

(b) Local governments shall report designations of enterprise zones to the department, providing sufficient information to identify at a

minimum the geographic boundaries of the zones, the specific fees and taxes to be exempted or abated, and the beginning and end dates of the designation period. The time and manner of reporting shall be determined by the department.

History.
Code 1981, § 36-88-9, enacted by Ga. L. 1997, p. 1481, § 1.

36-88-10. Time limitations.

An area designated as an enterprise zone shall remain in existence for ten years from the first day of the calendar year immediately following its designation as an enterprise zone; provided, however, that an area designated as an enterprise zone under subsection (g) of Code Section 36-88-6 shall remain in existence for 30 years from the first issuance of any revenue bonds issued under paragraph (4) of subsection (g) of Code Section 36-88-6 with a principal amount in excess of $100,000.00. Municipal and county governments may enter into agreements with qualifying business or service enterprises in designated enterprise zones to provide for modification or termination of the tax and fee exemptions and abatements. Property tax incentives available to a qualified business or service enterprise in an enterprise zone shall remain in effect for the full ten-year period established by Code Section 36-88-8, regardless of the termination of the designation of the enterprise zone.

History.
Code 1981, § 36-88-10, enacted by Ga. L. 1997, p. 1481, § 1; Ga. L. 2017, p. 52, § 5/HB 342; Ga. L. 2025, p. 660, § 2/HB 416, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, substituted "30 years from the first issuance of any revenue bonds issued under paragraph (4) of subsection (g) of Code Section 36-88-6 with a principal amount in excess of $100,000.00" for "30 years from such day or until the redevelopment project required in subparagraph (g)(1)(B) of Code Section 36-88-6 is complete and any revenue bonds issued under paragraph (4) of subsection (g) of Code Section 36-88-6 are retired, whichever first occurs" at the end of the first sentence.

CHAPTER 89

HOMEOWNER TAX RELIEF GRANTS

Sec.		Sec.	
36-89-1.	Definitions.		conditions of grant; taxpayer notice.
36-89-2.	Appropriation; purpose.	36-89-5.	Administration; rules and regulations; excess funds.
36-89-3.	Appropriation to specify amount and eligible assessed value; procedures.	36-89-6.	Recovery of erroneous or illegal credit.
36-89-4.	Procedure for allotment;		

Code Commission notes.

Ga. L. 2000, p. 486, § 1 enacted a Chapter 89 of Title 36, consisting of Code Section 36-89-1. Pursuant to Code Section 28-9-5, in 2000, that Code section was redesignated as Code Section 36-80-20.

Editor's notes.

Ga. L. 1999, p. 273, § 1 enacted this chapter; however, Ga. L. 1999, p. 1267, § 1 also enacted a chapter originally designated as this chapter which was redesignated as Chapter 90 of Title 36.

Law reviews.

For note on 1999 enactment of this chapter, see 16 Ga. St. U.L. Rev. 177 (1999).

36-89-1. Definitions.

As used in this chapter, the term:

(1) "Applicable rollback" means a:

(A) Rollback of an ad valorem tax millage rate pursuant to subsection (a) of Code Section 48-8-91 in a county or municipality that levies a local option sales tax;

(B) Rollback of an ad valorem tax millage rate pursuant to subparagraph (c)(2)(C) of Code Section 48-8-104 in a county or municipality that levies a homestead option sales tax;

(C) Subtraction from an ad valorem millage rate pursuant to Code Section 20-2-334 in a local school system that receives a state school tax credit;

(D) Reduction of an ad valorem tax millage rate pursuant to the development of a service delivery strategy under Code Section 36-70-24; and

(E) Reduction of an ad valorem tax millage rate pursuant to paragraph (2) of subsection (a) of Code Section 33-8-8.3 in a county that collects insurance premium tax.

(2) "County millage rate" means the net ad valorem tax millage rate, after deducting applicable rollbacks, levied by a county for county purposes and applying to qualified homesteads in the county, including any millage levied for those special districts reported on the 2004 ad valorem tax digest certified to and received by the state

revenue commissioner on or before December 31, 2004, but not including any millage levied for purposes of bonded indebtedness and not including any millage levied on behalf of a county school district for educational purposes.

(3) "Eligible assessed value" means a certain stated amount of the assessed value of each qualified homestead in the state. The amount of the eligible assessed value for any given year shall be fixed in that year's General Appropriations Act.

(4) "Fiscal authority" means the individual authorized to collect ad valorem taxes for a county or municipality which levies ad valorem taxes.

(5) "Municipal millage rate" means the net ad valorem tax millage rate, after deducting applicable rollbacks, levied by a municipality for municipal purposes and applying to qualified homesteads in the municipality, including any millage levied for those special tax districts reported on the 2004 City and Independent School Millage Rate Certification certified to and received by the state revenue commissioner on or before December 31, 2004, but not including any millage levied for purposes of bonded indebtedness and not including any millage levied on behalf of an independent school district for educational purposes.

(6) "Qualified homestead" means a homestead qualified for any exemption, state, county, or school, authorized under Code Section 48-5-44.

(7) "School millage rate" means the net ad valorem tax millage rate, after deducting applicable rollbacks, levied on behalf of a county or independent school district for educational purposes and applying to qualified homesteads in the county or independent school district, not including any millage levied for purposes of bonded indebtedness and not including any millage levied for county or municipal purposes.

(8) "State millage rate" means the state millage levy.

History.

Code 1981, § 36-89-1, enacted by Ga. L. 1999, p. 273, § 1; Ga. L. 2002, p. 1031, § 4; Ga. L. 2005, p. 138, § 1/HB 116; Ga. L. 2006, p. 72, § 36/SB 465.

Editor's notes.

Ga. L. 2002, p. 1031, § 9, not codified by the General Assembly, provided that the Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2005, p. 138, § 3/HB 116, not codified by the General Assembly, provides that the 2005 amendment applies to all taxable years beginning on or after January 1, 2005.

36-89-2. Appropriation; purpose.

In each year, the General Assembly shall appropriate funds for home-

owner tax relief grants to counties, municipalities, and county or independent school districts in order to provide for more effective regulation and management of the finance and fiscal administration of the state and pursuant to and in furtherance of the provisions of Article III, Section IX, Paragraph II(c) of the Constitution; Article VII, Section III, Paragraph III of the Constitution; Article VIII, Section I, Paragraph I of the Constitution; and other provisions of the Constitution.

History.

Code 1981, § 36-89-2, enacted by Ga. L. 1999, p. 273, § 1; Ga. L. 2002, p. 1031, § 5; Ga. L. 2003, p. 665, § 45; Ga. L. 2012, p. 775, § 36/HB 942.

Editor's notes.

Ga. L. 2002, p. 1031, § 9, not codified by the General Assembly, provides that the Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Georgia. St. U.L. Rev. 233 (2003).

36-89-3. Appropriation to specify amount and eligible assessed value; procedures.

(a) In the fiscal year ending on June 30, 2009, the General Assembly shall appropriate to the Department of Revenue funds to provide homeowner tax relief grants to counties, municipalities, and county or independent school districts. When funds are so appropriated, the General Appropriations Act shall specify the amount appropriated and the eligible assessed value of each qualified homestead in the state for the specified tax year, which eligible assessed value shall, subject to annual appropriation by the General Assembly, be not less than that specified in the Fiscal Year 2004 General Appropriations Act. If for any reason the amount appropriated in the General Appropriations Act is insufficient to fund the eligible assessed value stated in the General Appropriations Act, the amount appropriated may be adjusted in amendments to the General Appropriations Act. If the amount appropriated in the General Appropriations Act is sufficient to fund the eligible assessed value stated in the General Appropriations Act, that amount shall not be reduced or withdrawn for any reason.

(b) In the fiscal year ending on June 30, 2009, the General Assembly shall appropriate to the Department of Revenue funds to provide homeowner tax relief grants to counties, municipalities, and county or independent school districts. When funds are so appropriated, the supplemental appropriation bill shall specify the amount appropriated and the eligible assessed value of each qualified homestead in the state for the specified tax year. If for any reason the amount appropriated in the supplemental appropriation bill is insufficient to fund the eligible assessed value stated in the supplemental appropriation bill, the amount appropriated is authorized to be, but is not required to be,

adjusted in the General Appropriations Act for the next succeeding fiscal year. If the amount appropriated in the General Appropriations Act is sufficient to fund the eligible assessed value stated in the General Appropriations Act, that amount shall not be reduced or withdrawn for any reason.

(c) Subject to the limitations of subsection (d) of this Code section, in each fiscal year beginning on or after July 1, 2009, the General Assembly shall appropriate to the Department of Revenue funds to provide homeowner tax relief grants to counties, municipalities, and county or independent school districts. When funds are so appropriated, the supplemental appropriation bill shall specify the amount appropriated and the eligible assessed value of each qualified homestead in the state for the specified tax year. If for any reason the amount appropriated in the supplemental appropriation bill is insufficient to fund the eligible assessed value stated in the supplemental appropriation bill, the amount appropriated is authorized to be, but is not required to be, adjusted in the General Appropriations Act for the next succeeding fiscal year. If the amount appropriated in the General Appropriations Act is sufficient to fund the eligible assessed value stated in the General Appropriations Act, that amount shall not be reduced or withdrawn for any reason.

(d)(1) As used in this subsection, the term "budget report" means the budget report prepared pursuant to Code Section 45-12-74.

(2) For each fiscal year beginning on or after July 1, 2009, no funds shall be appropriated under subsection (c) of this Code section in any supplemental appropriation bill or General Appropriations Act unless the amount of estimated total revenues available for appropriation enumerated in the budget report for the current fiscal year exceeds the amount of estimated total revenues available for appropriation enumerated in the budget report for the most recent fiscal year in which homeowner tax relief grant funds were appropriated by 3 percent plus the percent change in the rate of economic inflation on individual taxpayers as determined under the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics of the United States Department of Labor.

(e) When funds are appropriated as provided in this Code section, each fiscal authority shall follow the procedures specified in Code Section 36-89-4. When funds are not appropriated, each fiscal authority shall not follow the procedures specified in Code Section 36-89-4 and shall not include a notice on each tax bill regarding the unavailability of the credit.

History. Code 1981, § 36-89-3, enacted by Ga. L. 1999, p. 273, § 1; Ga. L. 2002, p. 1031, § 6; Ga. L. 2003, p. 665, § 46; Ga. L. 2009,

p. 1, § 1/HB 143; Ga. L. 2010, p. 878, § 36/HB 1387.

Editor's notes.

Ga. L. 2002, p. 1031, § 9, not codified by the General Assembly, provides that the Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Georgia. St. U.L. Rev. 233 (2003).

36-89-4. Procedure for allotment; conditions of grant; taxpayer notice.

(a)(1) When funds are appropriated as provided in Code Section 36-89-3, such grants shall be allotted to each county, municipality, and county or independent school district in the state as follows:

(A) Immediately following the actual preparation of ad valorem property tax bills, each county fiscal authority shall notify the Department of Revenue of the total amount of tax revenue which would be generated by applying the sum of the state and county millage rates to the eligible assessed value of each qualified homestead in the county. The total amount of actual tax credits, so calculated, given to all qualified homesteads in the county shall be the amount of the grant to that county;

(B) Immediately following the actual preparation of ad valorem property tax bills, each county or independent school district's fiscal authority shall notify the Department of Revenue of the total amount of tax revenue which would be generated by applying the school millage rate to the eligible assessed value of each qualified homestead in the county or independent school district. The total amount of actual tax credits, so calculated, given to all qualified homesteads in the county or independent school district shall be the amount of the grant to that county or independent school district; and

(C) Immediately following the actual preparation of ad valorem property tax bills, each municipality's fiscal authority shall notify the Department of Revenue of the total amount of tax revenue which would be generated by applying the municipal millage rate to the eligible assessed value of each qualified homestead in the municipality. The total amount of actual tax credits, so calculated, given to all qualified homesteads in the municipality shall be the amount of the grant to that municipality.

(2) Credit amounts computed under paragraph (1) of this subsection shall be applied to reduce the otherwise applicable tax liability on a dollar-for-dollar basis, but the credit granted shall not in any case exceed the amount of the otherwise applicable tax liability after

the granting of all applicable homestead exemptions except for any homestead exemption under Article 2A of Chapter 8 of Title 48, the "Homestead Option Sales and Use Tax Act," as amended, and after the granting of all applicable millage rollbacks.

(b) The grant of funds to each county shall be conditioned on the county's fiscal authority reducing each qualified homestead's otherwise applicable liability for county taxes for county purposes by a credit amount calculated in subparagraph (a)(1)(A) of this Code section.

(c) The grant of funds to each county or independent school district shall be conditioned on the county or independent school district's fiscal authority reducing each qualified homestead's otherwise applicable liability for school taxes by a credit amount calculated in subparagraph (a)(1)(B) of this Code section.

(d) The grant of funds to each municipality shall be conditioned on the municipality's fiscal authority reducing each qualified homestead's otherwise applicable liability for municipal taxes by a credit amount calculated in subparagraph (a)(1)(C) of this Code section.

(e) Each fiscal authority shall show the credit amount on the tax bill, together with a prominent notice in substantially the following form: "This reduction in your bill is the result of homeowner's tax relief enacted by the Governor and the General Assembly of the State of Georgia."

History.
Code 1981, § 36-89-4, enacted by Ga. L. 1999, p. 273, § 1; Ga. L. 2000, p. 424, § 1; Ga. L. 2002, p. 1031, § 7.

Editor's notes.
Ga. L. 2002, p. 1031, § 9, not codified by the General Assembly, provides that the Act shall be applicable to all taxable years beginning on or after January 1, 2002.

36-89-5. Administration; rules and regulations; excess funds.

(a) The state revenue commissioner shall administer this chapter and shall adopt rules and regulations for the administration of this chapter, including specific instructions to local governments. The state revenue commissioner may adopt procedures for partial or installment distribution of grants when the commissioner determines that a full distribution will only result in the necessity of return of funds under subsection (b) of this Code section.

(b) If any excess funds remain from the funds granted to any county, municipality, or county or independent school district under this chapter, after the county, municipality, or county or independent school district complies with the credit requirements of Code Section 36-89-4, such excess funds shall be returned by the county, municipality, or county or independent school district to the Department of Revenue.

History.
Code 1981, § 36-89-5, enacted by Ga. L. 1999, p. 273, § 1; Ga. L. 2002, p. 1031, § 8; Ga. L. 2008, p. 324, § 36/SB 455.
Editor's notes.
Ga. L. 2002, p. 1031, § 9, not codified by the General Assembly, provides that the Act shall be applicable to all taxable years beginning on or after January 1, 2002.

36-89-6. Recovery of erroneous or illegal credit.

Any credit under this chapter which is erroneously or illegally granted shall be recoverable by the political subdivision granting such credit in the same manner as any other delinquent tax.

History.
Code 1981, § 36-89-6, enacted by Ga. L. 1999, p. 273, § 1.

CHAPTER 90

LOCAL GOVERNMENT CABLE FAIR COMPETITION

Sec.
36-90-1. Short title.
36-90-2. Definitions.
36-90-3. Notifications to private providers before authorizing public provider; feasibility analysis and specific findings required; components of business plan; public hearings; requirements of ordinance or resolution.
36-90-4. Accounting methods regarding the cost of providing service; cross-subsidization prohibited.
36-90-5. Franchise agreements.
36-90-6. Price or rate charges by public providers.
36-90-7. Open meetings and records.
36-90-8. Immunity of local governments from antitrust liability.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1999, this chapter, originally designated as Chapter 89 of Title 36, was redesignated as Chapter 90 of Title 36.

Law reviews.
For note on 1999 enactment of this chapter, see 16 Ga. St. U.L. Rev. 183 (1999).

36-90-1. Short title.

This chapter shall be known and may be cited as the "Local Government Cable Fair Competition Act of 1999."

History.
Code 1981, § 36-90-1, enacted by Ga. L. 1999, p. 1267, § 1.

36-90-2. Definitions.

As used in this chapter, the term:

(1) "Authorization" means the official act of a franchising authority to allow a public provider to deliver service.

(2) "Cable service" means:

(A) The one-way transmission to subscribers of (i) video programming or (ii) other programming service; and

(B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(3) "Capital costs" means all costs of providing a service which are capitalized in accordance with generally accepted governmental accounting principles.

(4) "Cross-subsidization" or "cross-subsidize" means the payment

of any item of direct or indirect costs of providing a service which is not accounted for in the full cost accounting of providing the service.

(5) "Direct costs" means those expenses of a public provider which are directly attributable to the provision of a service that would be eliminated if the provision of said service were discontinued.

(6) "FCC" means the Federal Communications Commission.

(7) "Franchising authority" means any governmental entity which is empowered by law to grant a franchise and which is also a public provider.

(8) "Full-cost accounting" means the accounting for all costs incurred by a public provider in providing a service, including all direct and indirect costs, as required by this chapter. In preparation of such accounting, a public provider shall utilize cost accounting standards promulgated by the federal Costs Accounting Standards Board of the federal Office of Management and Budget so as to assure that all direct and indirect costs are included.

(9) "Generally accepted governmental accounting principles" means the accounting standards promulgated from time to time by the Governmental Accounting Standards Board.

(10) "Indirect costs" means any costs identified with two or more services or other public provider functions and which are not directly identified with a single service. Indirect costs may include, but are not limited to, administration, accounting, personnel, purchasing, legal, and other staff or departmental support. Indirect costs shall be allocated to two or more services in proportion to the relative burden each respective service places upon the cost category.

(11) "Private provider" means any person, firm, partnership, corporation, or association offering service, other than a public provider.

(12) "Public provider" means any county, municipal corporation, or other political subdivision of the state which provides service; any authority or instrumentality acting on behalf of or for the benefit of any county, municipal corporation, or other political subdivision of the state which provides service; and any authority or instrumentality created by the state which provides service.

(13) "Service" means cable service provided by a private provider or a public provider.

(14) "Subscriber" means any private person lawfully receiving any cable service provided by a private or public provider by means of or in connection with a cable system.

History. Code 1981, § 36-90-2, enacted by Ga. L. 1999, p. 1267, § 1; Ga. L. 2004, p. 990, § 2.

36-90-3. Notifications to private providers before authorizing public provider; feasibility analysis and specific findings required; components of business plan; public hearings; requirements of ordinance or resolution.

(a) Before a franchising authority may begin the authorization process of permitting a public provider to deliver service, the franchising authority must notify each private provider serving the targeted market that the franchising authority intends to begin the process of authorizing a public provider to provide cable service. The notice must state that the private provider is not meeting the present and future needs of the community and shall set forth each such unmet need separately and fully in order that the private provider may reasonably ascertain the scope and nature of the issues identified by the franchising authority. The franchising authority must allow each private provider 30 days to present a plan to address the identified needs not being met, including a reasonable period of time to implement the plan. Neither the notification nor response to the notification provided for in this subsection shall affect the franchise agreement between a private provider and a franchising authority.

(b) If the franchising authority does not accept the private provider's plan to address the identified issues submitted as provided in subsection (a) of this Code section, the franchising authority shall then conduct an independent feasibility analysis and require the public provider to prepare a business plan to provide service. Such business plan shall set forth assumptions and specific findings as to:

(1) The cable service market share to be obtained by the public provider over a four-year period;

(2) The programming service offerings;

(3) Reasonable projections, for a period of at least four years, of the revenue and the direct, indirect, and imputed operating costs of providing service;

(4) The equipment needed to provide the service;

(5) The source and adequacy of the total direct and indirect capital to construct and operate the proposed system;

(6) The repayment of the debt service, including the length of payback of the principal debt;

(7) A cost-benefit analysis that shows a range of assumptions relating to market penetration rates, subscription rates, operating costs, and capital outlay;

(8) Assumptions as to programming costs;

(9) Assumptions as to actual or potential competition from all other providers;

(10) The allocation of costs between the public provider and other municipal operations; and

(11) The ability to address the issues cited in the notice to the private providers specified in subsection (a) of this Code section.

(c) In order for the business plan provided for in subsection (b) of this Code section to be adopted and the process to move forward, the business plan shall include, at a minimum, the following components:

(1) The total homes passed, provided that such shall be certified by the appropriate official responsible for municipal tax or census;

(2) Cable service basic penetration, estimated subscribers, and total homes passed, provided that such shall be reflective of the market analysis and not presume a penetration achieved by the fourth year of operation in excess of 40 percent without full independent verification;

(3) The overall estimated revenue takeout per home, provided that the same shall not exceed by more than 5 percent the amount being achieved by the private provider as developed from such publicly available information as franchise fee reports;

(4) The estimated miles of cable plant, provided that such shall be determined based on an actual survey conducted by public works employees and certified as to method and findings by a responsible supervisor;

(5) The average construction cost per cable service subscriber or cable plant mile or both, provided that such shall be based on an estimate provided by an independent supplier; and

(6) A definitive plan for the servicing of any capital utilized to fund the construction and operation of the cable system, including a reasonable payback period at an interest rate reflective of the public market and the inherent risks of the business.

(d) Prior to granting the authorization to the public provider, the franchising authority shall conduct at least two public hearings held at least two weeks apart. The public provider shall publish its business plan in its entirety and provide a complete copy to each private provider at least 30 days before the first public hearing. Such notice shall state that the business plan prepared by the public provider is available for public inspection each business day prior to the authorization and shall state the location where such inspection may be made. Notice of the

time, place, and date of each hearing shall be published in a newspaper of general circulation within the jurisdiction of the county or municipality once a week for the two weeks preceding the week in which the hearing is to be held. In addition, the private provider shall be given two weeks' written notice of the proposed hearing.

(e) Any authorization by the franchising authority shall be by passage of an ordinance or resolution and must:

(1) Find that the public provider possesses satisfactory financial and technical capability to be a public provider;

(2) Set forth the terms and conditions with respect to franchise terms and conditions, conditions of access to public property, and pole attachment; and

(3) Adopt the business plan.

History.
Code 1981, § 36-90-3, enacted by Ga. L. 1999, p. 1267, § 1; Ga. L. 2004, p. 990, § 3.

36-90-4. Accounting methods regarding the cost of providing service; cross-subsidization prohibited.

On and after January 1, 2000, each public provider shall prepare and maintain records in accordance with generally accepted governmental accounting principles which record the full cost accounting of providing service. Such records shall show the amount and source of capital, including working capital, utilized in providing service. Nothing contained in this chapter shall preclude a public provider utilizing capital from any lawful source, including the public provider's general funds, provided that the reasonable cost of such capital is accounted for as a cost of providing the service. No public provider shall cross-subsidize the costs of providing service. A public provider shall impute into its indirect costs of providing service an amount for franchise fees, regulatory fees, occupation taxes, pole attachment fees, and ad valorem property taxes, calculated in the same manner as such amounts are calculated for any private provider paying such costs to the public provider in the same service area.

History.
Code 1981, § 36-90-4, enacted by Ga. L. 1999, p. 1267, § 1.

36-90-5. Franchise agreements.

(a) In providing service, a public provider shall not employ terms more favorable or less burdensome than those imposed by the public provider upon any private provider providing the same service within

its jurisdiction with respect to franchise terms and conditions, conditions of access to public property, and pole attachment.

(b) A franchising authority shall not impose or enforce any local regulation on any private provider which is not also made applicable to any competing public provider, nor shall a franchising authority discriminate between a public provider and private provider.

(c) A public provider may not unreasonably withhold a request by a private provider to transfer, modify, or renew its existing franchise in accordance with the terms of the franchise and in accordance with the provisions of 47 U.S.C. Section 537, 47 U.S.C. Section 545, and 47 U.S.C. Section 546.

(d) In any action by a franchising authority to enforce any term or condition of a franchise agreement, a violation of this Code section by the public provider with respect to such respective term or condition shall be a defense in such action.

(e) Nothing contained in this Code section shall be interpreted to limit the authority of the public provider, as the franchising authority, to collect franchise fees, control and regulate its streets and public ways, or enforce its powers to provide for the public health, safety, and welfare.

History.
Code 1981, § 36-90-5, enacted by Ga. L. 1999, p. 1267, § 1.

RESEARCH REFERENCES

ALR.
Workers' compensation benefits for professional athletes, 77 A.L.R.7th 6.

36-90-6. Price or rate charges by public providers.

On and after January 1, 2000, a public provider shall offer service at a price or rate to each subscriber which is either (1) equal to or greater than the price or rate for comparable service of competing private providers or (2) equal to or greater than the incremental direct and indirect costs of providing service to such subscriber. If, however, such service is required by state or federal law or regulation to be offered as a subsidized service, the funds to cover any deficiency in such costs shall be identified in the full cost accounting of such service.

History.
Code 1981, § 36-90-6, enacted by Ga. L. 1999, p. 1267, § 1.

36-90-7. Open meetings and records.

All meetings and records of public providers of a service shall be subject to the Georgia public records and public meetings laws contained, respectively, in Article 4 of Chapter 18 of Title 50 and Chapter 14 of Title 50.

History.
Code 1981, § 36-90-7, enacted by Ga. L. 1999, p. 1267, § 1.

36-90-8. Immunity of local governments from antitrust liability.

The immunity from antitrust liability afforded to local governments by the provisions of Code Sections 36-65-1 and 36-65-2 shall not apply to public providers in the offering and providing of services as defined in this chapter; and public providers shall be subject to applicable antitrust liabilities, subject, however, to the provisions of the federal Local Government Antitrust Act of 1984, 15 U.S.C. Sections 34-36.

History.
Code 1981, § 36-90-8, enacted by Ga. L. 1999, p. 1267, § 1.

CHAPTER 91

PUBLIC WORKS BIDDING

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Bonds

Part 1

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36-91-91. Liability of contracting party to subcontractors for noncompliance.
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36-91-94. Providing copy of bond or security deposit agreement.
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Article 4

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36-91-100. Definitions.
36-91-101. Authority to enter into contracts; costs; grants or loans; eminent domain.
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36-91-110. Definitions.
36-91-111. [Reserved] Creation of Partnership for Public Facilities and Infrastructure Act Guidelines Committee; membership; terms; allowances; duties; support.
36-91-112. Guidelines.
36-91-113. Unsolicited proposals.
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36-91-116. Default and remedies.
36-91-117. Powers.
36-91-118. Sovereign or official immunity.
36-91-119. Article inapplicable to local government procurement via competitive sealed bidding; article inapplicable to certain transportation projects; public meeting requirements.

Cross references.

State, county, and municipal road systems, § 32-4-1 et seq.

ARTICLE 1

GENERAL PROVISIONS

RESEARCH REFERENCES

ALR.

Conspiracy or combination to prevent actual competition in bids for public work as affecting contract for the work or recovery therefor, 62 A.L.R. 224.

Validity of contract for material patented or held in monopoly where letting to lowest bidder is required, 77 A.L.R. 702.

Power of municipality to fix specific scale of wages or hours for employees of contractors or subcontractors for municipal contracts, 81 A.L.R. 349; 129 A.L.R. 763.

Differences in character or quality of materials, articles, or work as affecting acceptance of bid for public contract, 27 A.L.R.2d 917.

Contract for personal services as within requirement of submission of bids as condition of public contract, 15 A.L.R.3d 733.

Right of municipal corporation to recover back from contractor payments made under contract violating competitive bidding statute, 33 A.L.R.3d 397.

Validity, construction, and effect of requirement under state statute or local ordinance giving local or locally qualified contractors a percentage preference in determining lowest bid, 89 A.L.R.4th 587.

36-91-1. Short title.

This chapter shall be known and may be cited as the "Georgia Local Government Public Works Construction Law."

History.

Code 1981, § 36-91-1, enacted by Ga. L. 2001, p. 820, § 12.

Cross references.

Contracts for public works, Code Section 13-10-1 et seq.

Editor's notes.

Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Section 36-91-1 as present Code Section 36-91-2.

Law reviews.

For article, "General Overview of Pro-

curement Process," see 10 Ga. St. B. J. 12 (2005).

For article, "Construction Law," see 70 Mercer L. Rev. 51 (2018).

JUDICIAL DECISIONS

Mandamus. — Based on the Georgia legislature's explicitly stated intention in the Georgia Local Government Public Works Construction Law, O.C.G.A. § 36-91-1 et seq., that local laws and ordinances controlled the manner of the city's execution of and entry into contracts, a contractor was not entitled to a writ of mandamus requiring the city to execute a contract in the city's favor, as neither the mayor nor the city council exercised their discretionary authority to approve any award that might or might not have resulted from the competitive sealed proposals process. Duty Free Air & Ship Supply Co./Franklin Wilson Airport Concession, Inc. v. City of Atlanta, 282 Ga. 173, 646 S.E.2d 48, 2007 Ga. LEXIS 350 (2007).

36-91-2. Definitions.

As used in this chapter, the term:

(1) "Alternate bids" means the amount stated in the bid or proposal to be added to or deducted from the amount of the base bid or base proposal if the corresponding change in project scope or alternate materials or methods of construction is accepted.

(2) "Base bid" or "base proposal" means the amount of money stated in the bid or proposal as the sum for which the bidder or proposer offers to perform the work.

(3) "Bid bond" means a bond with good and sufficient surety or sureties for the faithful acceptance of the contract payable to, in favor of, and for the protection of the governmental entity for which the contract is to be awarded.

(4) "Change order" means an alteration, addition, or deduction from the original scope of work as defined by the contract documents to address changes or unforeseen conditions necessary for project completion.

(5) "Competitive sealed bidding" means a method of soliciting public works construction contracts whereby the award is based upon the lowest responsive, responsible bid in conformance with the provisions of subsection (b) of Code Section 36-91-21.

(6) "Competitive sealed proposals" means a method of soliciting public works contracts whereby the award is based upon criteria identified in a request for proposals in conformance with the provisions of subsection (c) of Code Section 36-91-21.

(7) "Emergency" means any situation resulting in imminent danger to the public health or safety or the loss of an essential governmental service.

(8) "Governing authority" means the official or group of officials responsible for governance of a governmental entity.

(9) "Governmental entity" means a county, municipal corporation, consolidated government, authority, board of education, or other public board, body, or commission but shall not include any authority, board, department, or commission of the state, or a public transportation agency as defined by Chapter 9 of Title 32.

(10) "Payment bond" means a bond with good and sufficient surety or sureties payable to the governmental entity for which the work is to be done and intended for the use and protection of all subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of the work provided for in the public works construction contract.

(11) "Performance bond" means a bond with good and sufficient surety or sureties for the faithful performance of the contract and to indemnify the governmental entity for any damages occasioned by a failure to perform the same within the prescribed time. Such bond shall be payable to, in favor of, and for the protection of the governmental entity for which the work is to be done.

(12) "Public works construction" means the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to any public real property other than those projects covered by Chapter 4 of Title 32 or by Chapter 37 of Title 50. Such term does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property, or any energy savings performance contract or any improvements or installations performed as part of an energy savings performance contract.

(13) "Responsible bidder" or "responsible offeror" means a person or entity that has the capability in all respects to perform fully and reliably the contract requirements.

(14) "Responsive bidder" or "responsive offeror" means a person or entity that has submitted a bid or proposal that conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.

(15) "Scope of project" means the work required by the original contract documents and any subsequent change orders required or appropriate to accomplish the intent of the project as described in the bid documents.

(16) "Scope of work" means the work that is required by the contract documents.

(17) "Sole source" means those procurements made pursuant to a

written determination by a governing authority that there is only one source for the required supply, service, or construction item.

History.
Code 1981, § 36-91-1, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-2, as redesignated by Ga. L. 2001, p. 820, § 12; Ga. L. 2007, p. 640, § 1/SB 146; Ga. L. 2012, p. 59, § 1/SB 113.

JUDICIAL DECISIONS

Public works construction. — Board of Regents of the University System of Georgia was immune from a suit by employees of a contractor who provided a forged payment bond to the Board; the maintenance contract was not for "public works construction" as defined in O.C.G.A. § 36-91-2(12); therefore, the provisions for payment bonds in O.C.G.A. § 13-10-60 et seq. did not apply. Further, the Board had no duty to investigate the information presented on the face of the payment bond. Bd. of Regents of the Univ. Sys. of Ga. v. Brooks, 324 Ga. App. 15, 749 S.E.2d 23, 2013 Ga. App. LEXIS 781 (2013).

Emergency sufficiently identified. — City was not required to obtain a payment bond in compliance with O.C.G.A. § 36-91-90 because the requirement did not apply to emergency projects, O.C.G.A. § 36-91-22(e); the city's description in its minutes of the "emergency replacement of a 10-inch sanitary sewer main on Embassy Drive" was sufficient to describe the nature of the emergency. City of College Park v. Sekisui SPR Ams., LLC, 331 Ga. App. 404, 771 S.E.2d 101, 2015 Ga. App. LEXIS 177 (2015), cert. denied, No. S15C1141, 2015 Ga. LEXIS 471 (Ga. June 15, 2015).

ARTICLE 2

CONTRACTING AND BIDDING REQUIREMENTS

Administrative rules and regulations.
School Facilities and Capital Outlay Management, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Rule 160-5-4-.01 et seq.

36-91-20. Written contract required; advertising; competitive sealed bidding; timing of addendums; prequalification.

(a) All public works construction contracts subject to this chapter entered into by a governmental entity with private persons or entities shall be in writing and on file and available for public inspection at a place designated by such governmental entity. Municipalities and consolidated governments shall execute and enter into contracts in the manner provided in applicable local legislation or by ordinance.

(b)(1) Prior to entering into a public works construction contract other than those exempted by Code Section 36-91-22, a governmental entity shall publicly advertise the contract opportunity. Such notice shall be posted conspicuously in the governing authority's office and shall be advertised on the Georgia Procurement Registry as provided

for in Code Section 50-5-69 at no cost to the governmental entity. Such advertisement on such registry shall be for the same period of time specified under paragraph (3) of this subsection. Such notice may be advertised in the legal organ of the county or by electronic means on the website of the governmental entity or any other appropriate websites identified by the governmental entity.

(2) Contract opportunities that are advertised in the legal organ shall be advertised a minimum of two times, with the first advertisement occurring at least four weeks prior to the opening of the sealed bids or proposals. The second advertisement shall follow no earlier than two weeks from the first advertisement.

(3) Contract opportunities that are advertised solely on the internet shall be posted continuously for at least four weeks prior to the opening of sealed bids or proposals. Inadvertent or unintentional loss of internet service during the advertisement period shall not require the contract award or bid or proposal opening to be delayed.

(4) Contract opportunities that will be awarded by competitive sealed bids shall have plans and specifications available on the first day of the advertisement and shall be open to inspection by the public. The plans and specifications shall indicate if the project will be awarded by base bid or base bid plus selected alternates and:

(A) A statement listing whether all anticipated federal, state, or local permits required for the project have been obtained or an indication of the status of the application for each such permit including when it is expected to be obtained; and

(B) A statement listing whether all anticipated rights of way and easements required for the project have been obtained or an indication of the status as to when each such rights of way or easements are expected to be obtained.

(5) Contract opportunities that will be awarded by competitive sealed proposals shall be publicly advertised with a request for proposals which request shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project.

(6) The advertisement shall include such details and specifications as will enable the public to know the extent and character of the work to be done.

(7) All required notices of advertisement shall also advise of any mandatory prequalification requirements or pre-bid conferences as well as any federal requirements pursuant to subsection (d) of Code Section 36-91-22. Any advertisement which provides notice of a

mandatory pre-bid conference or prequalification shall provide reasonable advance notice of said conference or for the submittal of such prequalification information.

(c) Governmental entities are authorized to utilize any construction delivery method, provided that all public works construction contracts subject to the requirements of this chapter that:

(1) Place the bidder or offeror at risk for construction; and

(2) Require labor or building materials in the execution of the contract

shall be awarded on the basis of competitive sealed bidding or competitive sealed proposals. Governmental entities shall have the authority to reject all bids or proposals or any bid or proposal that is nonresponsive or not responsible and to waive technicalities and informalities.

(d) No governmental entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening bids or proposals, excluding Saturdays, Sundays, and legal holidays. However, if the necessity arises to issue an addendum modifying plans and specifications within the 72 hour period prior to the advertised time for the opening of bids or proposals, excluding Saturdays, Sundays, and legal holidays, then the opening of bids or proposals shall be extended at least 72 hours, excluding Saturdays, Sundays, and legal holidays, from the date of the original bid or proposal opening without need to readvertise as required by subsection (b) of this Code section.

(e) Bid and contract documents may contain provisions authorizing the issuance of change orders, without the necessity of additional requests for bids or proposals, within the scope of the project when appropriate or necessary in the performance of the contract. Change orders may not be used to evade the purposes of this article.

(f) Any governmental entity may, in its discretion, adopt a process for mandatory prequalification of prospective bidders or offerors; provided, however, that:

(1) Criteria for prequalification must be reasonably related to the project or the quality of work;

(2) Criteria for prequalification must be available to any prospective bidder or offeror requesting such information for each project that requires prequalification;

(3) Any prequalification process must include a method of notifying prospective bidders or offerors of the criteria for or limitations to prequalification; and

(4) Any prequalification process must include a procedure for a

disqualified bidder to respond to his or her disqualification to a representative of the governmental entity; provided, however, that such procedure shall not be construed to require the governmental entity to provide a formal appeals procedure. A prequalified bidder or offeror can not be later disqualified without cause.

History.

Code 1981, § 36-91-20, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12; Ga. L. 2007, p. 640, § 2/SB 146; Ga. L. 2018, p. 926, § 2/HB 489; Ga. L. 2019, p. 283, § 2/HB 322; Ga. L. 2025, p. 1029, § 36(50)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "internet" for "Internet" in two places in paragraph (b)(3).

Law reviews.

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

School board acted within the board's authority. — Trial court properly relied solely on the court's determination that an unsuccessful bidding contractor would be unlikely to prevail on the merits of the contractor's suit in denying the contractor's petition for an interlocutory injunction and vacation of the court's temporary restraining order as: (1) the school board acted within the board's powers in accepting, albeit late, the lowest bidder's list of subcontractors; and (2) the board was authorized to find that the bid provision requiring that a list of subcontractors be provided with a bid was immaterial and could be waived. R. D. Brown Contrs., Inc. v. Bd. of Educ. of Columbia County, 280 Ga. 210, 626 S.E.2d 471, 2006 Ga. LEXIS 112 (2006).

Mandamus. — Based on the Georgia legislature's explicitly stated intention in the Georgia Local Government Public Works Construction Law, O.C.G.A. § 36-91-1 et seq., that local laws and ordinances controlled the manner of the city's execution of and entry into contracts, a contractor was not entitled to a writ of mandamus requiring the city to execute a contract in the city's favor, as neither the mayor nor the city council exercised their discretionary authority to approve any award that might or might not have resulted from the competitive sealed proposals process. Duty Free Air & Ship Supply Co./Franklin Wilson Airport Concession, Inc. v. City of Atlanta, 282 Ga. 173, 646 S.E.2d 48, 2007 Ga. LEXIS 350 (2007).

36-91-21. Competitive award requirements.

(a) It shall be unlawful to let out any public works construction contracts subject to the requirements of this chapter without complying with the competitive award requirements contained in this Code section. Any contractor who performs any work of the kind in any other manner and who knows that the public works construction contract was let out without complying with the notice and competitive award requirements of this chapter shall not be entitled to receive any payment for such work.

(b) Any competitive sealed bidding process shall comply with the following requirements:

(1) The governmental entity shall publicly advertise an invitation for bids;

(2) Bidders shall submit sealed bids based on the criteria set forth in such invitation;

(3) The governmental entity shall open the bids publicly and evaluate such bids without discussions with the bidders; and

(4) The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids; provided, however, that, if the bid from the lowest responsible and responsive bidder exceeds the funds budgeted for the public works construction contract, the governmental entity may negotiate with such apparent low bidder to obtain a contract price within the budgeted amount. Such negotiations may include changes in the scope of work and other bid requirements.

(c)(1) In making any competitive sealed proposal, a governmental entity shall:

(A) Publicly advertise a request for proposals, which request shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project, as well as the relative importance of the evaluation factors;

(B) Open all proposals received at the time and place designated in the request for proposals so as to avoid disclosure of contents to competing offerors during the process of negotiations; and

(C) Make an award to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the governmental entity, taking into consideration the evaluation factors set forth in the request for proposals. The evaluation factors shall be the basis on which the award decision is made. The contract file shall indicate the basis on which the award is made.

(2) As set forth in the request for proposals, offerors submitting proposals may be afforded an opportunity for discussion, negotiation, and revision of proposals. Discussions, negotiations, and revisions may be permitted after submission of proposals and prior to award for the purpose of obtaining best and final offers. In accordance with the request for proposals, all responsible offerors found by the governmental entity to have submitted proposals reasonably susceptible of being selected for award shall be given an opportunity to

participate in such discussions, negotiations, and revisions. During the process of discussion, negotiation, and revision, the governmental entity shall not disclose the contents of proposals to competing offerors.

(d) Whenever a public works construction contract for any governmental entity subject to the requirements of this chapter is to be let out by competitive sealed bid or proposal, no person, by himself or herself or otherwise, shall prevent or attempt to prevent competition in such bidding or proposals by any means whatever. No person who desires to procure such work for himself or herself or for another shall prevent or endeavor to prevent anyone from making a bid or proposal therefor by any means whatever, nor shall such person so desiring the work cause or induce another to withdraw a bid or proposal for the work.

(e) Before commencing the work, any person who procures such public work by bidding or proposal shall make an oath in writing that he or she has not directly or indirectly violated subsection (d) of this Code section. The oath shall be filed by the officer whose duty it is to make the payment. If the contractor is a partnership, all of the partners and any officer, agent, or other person who may have represented or acted for them in bidding for or procuring the contract shall also make the oath. If the contractor is a corporation, all officers, agents, or other persons who may have acted for or represented the corporation in bidding for or procuring the contract shall make the oath. If such oath is false, the contract shall be void, and all sums paid by the governmental entity on the contract may be recovered by appropriate action.

(f)(1) Unless otherwise required by law, no governmental entity that contracts for public works construction shall in its bid documents, specifications, project agreements, or other controlling documents for a public works construction contract:

(A) Require or prohibit bidders, offerors, contractors, subcontractors, or material suppliers to enter into or adhere to prehire agreements, project labor agreements, collective bargaining agreements, or any other agreement with one or more labor organizations on the same or other related construction projects; or

(B) Discriminate against, or treat differently, bidders, offerors, contractors, subcontractors, or material suppliers for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations on the same or other related construction projects.

(2) Nothing in this subsection shall prohibit bidders, offerors, contractors, subcontractors, or material suppliers from voluntarily entering into agreements described in paragraph (1) of this subsection.

(3) The head of a governmental entity may exempt a particular public works construction contract from the requirements of any or all of the provisions of paragraph (1) of this subsection if the governmental entity finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstance under this paragraph shall not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations or concerning employees on the particular project who are not members of or affiliated with a labor organization.

(g) If any member of a governmental entity lets out any public works construction contract subject to the requirements of this article and receives, takes, or contracts to receive or take, either directly or indirectly, any part of the pay or profit arising out of any such contract, he or she shall be guilty of a misdemeanor.

(h) No public works construction contract with a governing authority shall be valid for any purpose unless the contractor shall comply with all bonding requirements of this chapter. No such contract shall be valid if any governmental entity lets out any public works construction contract subject to the requirements of this chapter without complying with the requirements of this chapter.

History.

Code 1981, § 36-91-21, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12; Ga. L. 2013, p. 628, § 5/SB 179; Ga. L. 2025, p. 1029, § 36(51)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that," for "however," in paragraph (b)(4).

Law reviews.

For survey article on construction law, see 59 Mercer L. Rev. 55 (2007)

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on construction law, see 60 Mercer L. Rev. 59 (2008).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former O.C.G.A. § 36-82-102 are included in the annotations for this Code section.

Applicability. — Since the highest bid for a town's construction project was less than $100,000.00, O.C.G.A. § 36-91-21 did not apply; also, while the winning bid was higher than another contractor's bid, the winning bid included more extensive work, consistent with the town's request and need; the awarding of the contract to the contractor's competitor was not improper. Griffin Bros., Inc. v. Town of Alto, 280 Ga. App. 176, 633 S.E.2d 589, 2006 Ga. App. LEXIS 784 (2006).

Mandamus. — Based on the Georgia legislature's explicitly stated intention in the Georgia Local Government Public

Works Construction Law, O.C.G.A. § 36-91-1 et seq., that local laws and ordinances controlled the manner of the city's execution of and entry into contracts, a contractor was not entitled to a writ of mandamus requiring the city to execute a contract in the contractor's favor, as neither the mayor nor the city council exercised their discretionary authority to approve any award that might or might not have resulted from the competitive sealed proposals process. Duty Free Air & Ship Supply Co./Franklin Wilson Airport Concession, Inc. v. City of Atlanta, 282 Ga. 173, 646 S.E.2d 48, 2007 Ga. LEXIS 350 (2007).

Liability when payment bond not obtained. — Former O.C.G.A. § 36-82-102 provided that if a payment bond was not obtained, then the Atlanta Housing Authority should be liable to subcontractors who furnish labor, supplies, materials, or equipment to the contractor for any loss resulting to the subcontractor. B & B Elec. Supply Co. v. H.J. Russell Constr. Co., 166 Ga. App. 499, 304 S.E.2d 544, 1983 Ga. App. LEXIS 2222 (1983) (decided under former O.C.G.A. § 36-82-102).

School board acted within the board's authority. — Trial court properly relied solely on the court's determination that an unsuccessful bidding contractor would be unlikely to prevail on the merits of the contractor's suit in denying the contractor's petition for an interlocutory injunction and vacation of the court's temporary restraining order as: (1) a school board acted within the board's powers in accepting, albeit late, the lowest bidder's list of subcontractors; and (2) the board was authorized to find that the bid provision requiring that a list of subcontractors be provided with a bid was immaterial and could be waived. R. D. Brown Contrs., Inc. v. Bd. of Educ. of Columbia County, 280 Ga. 210, 626 S.E.2d 471, 2006 Ga. LEXIS 112 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 36-91-21(f) (see now (g)) is not an offense designated as one that requires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.

36-91-22. Exceptions; use of inmate labor; emergency situations.

(a) The requirements of this chapter shall not apply to public works construction projects, when the same can be performed at a cost of less than $250,000.00. Public works construction projects shall not be subdivided in an effort to evade the provisions of this chapter.

(b) Any governmental entity having a correctional institution shall have the power and authority to purchase material for and use inmate labor in performing public works construction projects; and in such cases, this chapter shall not apply. Any governmental entity may contract with a governmental entity having a correctional institution for the use of inmate labor from such institution and use the inmates in the performance of any public works construction project; and in such cases, this chapter shall not apply.

(c) In the event that the labor used or to be used in a public works construction project is furnished at no expense by the state or federal government or any agency thereof, the governing authority shall have the power and authority to purchase material for such public works

construction project and use the labor furnished free to the governmental entity; and in such case, this chapter shall not apply.

(d) Where a public works construction contract involves the expenditure of federal assistance or funds, the receipt of which is conditioned upon compliance with federal laws or regulations regarding the procedures for awarding public works construction contracts, a governmental entity shall comply with such federal requirements and shall not be required to comply with the provisions of this chapter that differ from the federal requirements. The governmental entity shall provide notice that federal procedures exist for the award of such contracts in the advertisement required by subsection (b) of Code Section 36-91-20. The availability and location of such federal requirements shall be provided to any person requesting such information.

(e) The requirements of this chapter shall not apply to public works construction projects necessitated by an emergency; provided, however, that the nature of the emergency shall be described in the minutes of the governing authority. Any contract let by a county pursuant to this subsection shall be ratified, as soon as practicable, on the minutes of the governing authority, and the nature of the emergency shall be described therein.

(f) Except as otherwise provided in Chapter 4 of Title 32, the requirements of this chapter shall not apply to public works construction projects subject to the requirements of Chapter 4 of Title 32.

(g) The requirements of this chapter shall not apply to public works construction projects or any portion of a public works construction project self-performed by a governmental entity. If the governmental entity contracts with a private person or entity for a portion of such project, the provisions of this chapter shall apply to any such contract estimated to exceed $250,000.00.

(h) The requirements of this chapter shall not apply to sole source public works construction contracts.

(i) The requirements of this chapter shall not apply to hospital authorities; provided, however, that a public works construction contract entered into by a hospital authority shall be subject to the requirements of this chapter if, in connection with such contract, the hospital authority either:

(1) Incurs indebtedness and secures such indebtedness by pledging amounts to be received by such authority from one or more counties or municipalities through an intergovernmental contract entered into in accordance with Code Section 31-7-85; or

(2) Receives funds from the state or one or more counties or municipalities for the purpose of financing a public works construc-

tion project, which moneys are not for reimbursement of health services provided.

History.

Code 1981, § 36-91-22, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12; Ga. L. 2025, p. 488, § 6/HB 137, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, substituted "$250,000.00" for "$100,000.00" in subsections (a) and (g).

Law reviews.

For survey article on construction law, see 59 Mercer L. Rev. 55 (2007)

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on construction law, see 60 Mercer L. Rev. 59 (2008).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

Administrative rules and regulations.

Bidding Requirements for School Capital Outlay Projects, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, School Facilities and Capital Outlay Management, Rule 160-5-4-.18.

JUDICIAL DECISIONS

Payment bond not required. — City was not required to obtain a payment bond in compliance with O.C.G.A. § 36-91-90 because the requirement did not apply to emergency projects, O.C.G.A. § 36-91-22(e); the city's description in the city's minutes of the "emergency replacement of a 10-inch sanitary sewer main on Embassy Drive" was sufficient to describe the nature of the emergency. City of College Park v. Sekisui SPR Ams., LLC, 331 Ga. App. 404, 771 S.E.2d 101, 2015 Ga. App. LEXIS 177 (2015), cert. denied, No. S15C1141, 2015 Ga. LEXIS 471 (Ga. June 15, 2015).

36-91-23. Prohibition of disqualification of otherwise qualified bidder from bid or proposal or prequalification based upon lack of previous experience; conditions.

In awarding contracts based upon sealed competitive bids or sealed competitive proposals, no responsible bidder shall be disqualified from a bid or proposal or denied prequalification based upon:

(1) A lack of previous experience with a job of the size for which the bid or proposal is being sought if:

(A) The bid or proposal is not more than 30 percent greater in scope or cost from the responsible bidder's previous experience in jobs;

(B) The responsible bidder has experience in performing the work for which bids or proposals are sought; and

(C) The responsible bidder is capable of being bonded by a surety which meets the qualifications of the bid documents for a bid bond, a performance bond, and a payment bond as required for the scope of the work for which the bid or proposal is being sought; or

(2) A lack of previous experience with the construction delivery

method to be used for the job for which the bid or proposal is being sought.

History.
Code 1981, § 36-91-23, enacted by Ga. L. 2013, p. 126, § 2/SB 168; Ga. L. 2018, p. 343, § 2/HB 899.
Administrative rules and regulations.
Bidding Requirements for School Capital Outlay Projects, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, School Facilities and Capital Outlay Management, Rule 160-5-4-.18.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2013, Code Section 36-91-23, as enacted by Ga. L. 2013, p. 628, § 6/SB 179, was redesignated as Code Section 36-91-24.

36-91-24. Liquidated damages and other incentive provisions for project completion.

Public works construction contracts may include both liquidated damages provisions for late construction project completion and incentive provisions for early construction project completion when the project schedule is deemed to have value. The terms of the liquidated damages provisions and the incentive provisions shall be established in advance as a part of the construction contract and included within the terms of the bid or proposal.

History.
Code 1981, § 36-91-24, enacted by Ga. L. 2013, p. 628, § 6/SB 179.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2013, Code Section 36-91-23, as enacted by Ga. L. 2013, p. 628, § 6/SB 179, was redesignated as Code Section 36-91-24.

JUDICIAL DECISIONS

Delay clause not enforceable liquidated damages provision. — Trial court properly held a contract's delay clause was not an enforceable liquidated damages provision because the city testified that liquidated damages clauses were very common in its construction contracts and that the $1,000 per day number was not project specific, but a standard number; thus, the amount of liquidated damages plainly had no reasonable relation to any probable actual damage which may follow a delayed completion of the project. City of Brookhaven v. Multiplex, LLC, 369 Ga. App. 9, 891 S.E.2d 60, 2023 Ga. App. LEXIS 373 (2023).

ARTICLE 3

BONDS

PART 1

GENERAL PROVISIONS

Administrative rules and regulations.
School Facilities and Capital Outlay Management, Official Compilation of the Rules and Regulations of the State of

Georgia, Georgia Department of Education, Rule 160-5-4-.01 et seq.

36-91-40. Approval and filing of bonds with treasurer.

(a)(1) Any bid bond, performance bond, payment bond, or security deposit required for a public works construction contract shall be approved and filed with the treasurer or the person performing the duties usually performed by a treasurer of the obligee named therein. At the option of the governmental entity, if the surety named in the bond is other than a surety company authorized by law to do business in this state pursuant to a current certificate of authority to transact surety business by the Commissioner of Insurance, such bond shall not be approved and filed unless such surety is on the United States Department of Treasury's list of approved bond sureties.

(2) Any bid bond, performance bond, or payment bond required by this Code section shall be approved as to form and as to the solvency of the surety by an officer of the governmental entity negotiating the contract on behalf of the governmental entity. In the case of a bid bond, such approval shall be obtained prior to acceptance of the bid or proposal. In the case of payment bonds and performance bonds, such approval shall be obtained prior to the execution of the contract.

(b) Whenever, in the judgment of the obligee:

(1) Any surety on a bid, performance, or payment bond has become insolvent;

(2) Any corporate surety is no longer certified or approved by the Commissioner of Insurance to do business in the state; or

(3) For any cause there are no longer proper or sufficient sureties on any or all of the bonds,

the obligee may require the contractor to strengthen any or all of the bonds or to furnish a new or additional bond or bonds within ten days. Thereupon, if so ordered by the obligee, all work on the contract shall cease unless such new or additional bond or bonds are furnished. If such bond or bonds are not furnished within such time, the obligee may terminate the contract and complete the same as the agent of and at the expense of the contractor and his or her sureties.

History. Code 1981, § 36-91-40, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12.

JUDICIAL DECISIONS

Approval of payment bonds. — When the general contractor failed to pay the subcontractor for the subcontractor's work on a city project and the surety was

insolvent, and the subcontractor sued the general contractor and the city for the subcontractor's work, the trial court properly granted summary judgment in favor of the city because the city complied with the payment bond requirements, and the subcontractor was limited to the exclusive remedy set forth in Georgia's payment bond statutes, O.C.G.A. §§ 36-91-90 and 36-91-91. J. Squared Plumbing Company, Inc. v. City of Atlanta, 337 Ga. App. 229, 786 S.E.2d 894, 2016 Ga. App. LEXIS 301 (2016).

36-91-41. No bid bond required under certain circumstances.

When a governmental entity invites competitive sealed proposals for a public works construction project and the request for proposals for such project states that price or project cost will not be a selection or evaluation factor, no bid bond shall be required unless the governmental entity provides for a bid bond in the request for proposals and specifies the amount of such bond.

History.
Code 1981, § 36-91-41, enacted by Ga. L. 2013, p. 628, § 7/SB 179.

Administrative rules and regulations.
Bidding Requirements for School Capital Outlay Projects, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, School Facilities and Capital Outlay Management, Rule 160-5-4-.18.

Editor's notes.
Former Code Section 36-91-41 was redesignated as Code Section 36-91-50 by Ga. L. 2001, p. 820, § 12, effective July 1, 2001.

36-91-42. Acceptance of electronic signatures and corporate seals.

Public procurement officers shall accept electronic signatures and electronic corporate seals on bonds issued pursuant to this part so long as such signatures and seals comply with the provisions of Chapter 12 of Title 10 and Code Section 33-24-14.

History.
Code 1981, § 36-91-42, enacted by Ga. L. 2021, p. 459, § 3-1/SB 169.

36-91-43 through 36-91-45. Redesignated.

Editor's notes.
Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Sections 36-91-41 through 36-91-45 as present Code Sections 36-91-50 through 36-91-54, respectively, and designated those Code sections as Part 2 of Article 3 of this chapter.

Part 2

Bid Bonds

36-91-50. Projects requiring bid bonds; revocation of bids; surety.

(a) Bid bonds shall be required for all public works construction contracts subject to the requirements of this article with estimated bids or proposals over $100,000.00; provided, however, that a governmental entity may require a bid bond for projects with estimated bids or proposals of $100,000.00 or less.

(b) In the case of competitive sealed bids, except as provided in Code Sections 36-91-52 and 36-91-53, a bid may not be revoked or withdrawn until 60 days after the time set by the governmental entity for opening of bids. Upon expiration of this time period, the bid will cease to be valid, unless the bidder provides written notice to the governmental entity prior to the scheduled expiration date that the bid will be extended for a time period specified by the governmental entity.

(c) In the case of competitive sealed proposals, the governmental entity shall advise offerors in the request for proposals of the number of days that offerors will be required to honor their proposals; provided, however, that, if an offeror is not selected within 60 days of opening the proposals, any offeror that is determined by the governmental entity to be unlikely of being selected for contract award shall be released from his or her proposal.

(d) If a governmental entity requires a bid bond for any public works construction contract, no bid or proposal for a contract with the governmental entity shall be valid for any purpose unless the contractor shall give a bid bond with good and sufficient surety or sureties approved by the governing authority. The bid bond shall be in the amount of not less than 5 percent of the total amount payable by the terms of the contract. No bid or proposal shall be considered if a proper bid bond or other security authorized in Code Section 36-91-51 has not been submitted. The provisions of this subsection shall not apply to any bid or proposal for a contract that is required by law to be accompanied by a proposal guaranty and shall not apply to any bid or proposal for a contract with any public agency or body which receives funding from the United States Department of Transportation and which is primarily engaged in the business of public transportation.

History.
Code 1981, § 36-91-41, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-50, as redesignated by Ga. L. 2001, p. 820, § 12; Ga. L. 2025, p. 1029, § 36(52)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that," for "however, that" in subsection (c).

Editor's notes.

Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Section 36-91-50 as present Code Section 36-91-70.

36-91-51. Cash in lieu of bid bonds; letters of credit.

(a) In lieu of the bid bond provided for in Code Section 36-91-50, the governmental entity may accept a cashier's check, certified check, or cash in the amount of not less than 5 percent of the total amount payable by the terms of the contract payable to and for the protection of the governmental entity for which the contract is to be awarded.

(b) When the amount of any bid bond required under this article does not exceed $750,000.00, the governmental entity may, in its sole discretion, accept an irrevocable letter of credit issued by a bank or savings and loan association, as defined in Code Section 7-1-4, in the amount of and in lieu of the bond otherwise required under Code Section 36-91-50.

History.

Code 1981, § 36-91-42, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-51, as redesignated by Ga. L. 2001, p. 820, § 12; Ga. L. 2007, p. 209, § 1/HB 134.

Editor's notes.

Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Section 36-91-51 as present Code Section 36-91-71.

36-91-52. Bid and bidder defined; withdrawal of bids for appreciable errors; resubmission.

(a) As used in this Code section, the term "bid" includes proposal and the term "bidder" includes offeror.

(b) Any governmental entity receiving bids subject to this article shall permit a bidder to withdraw a bid from consideration after the bid opening without forfeiture of the bid security if the bidder has made an appreciable error in the calculation of his or her bid and if:

(1) Such error in the calculation of his or her bid can be documented by clear and convincing written evidence;

(2) Such error can be clearly shown by objective evidence drawn from inspection of the original work papers, documents, or materials used in the preparation of the bid sought to be withdrawn;

(3) The bidder serves written notice upon the governmental entity which invited proposals for the work prior to the award of the contract and not later than 48 hours after the opening of bids, excluding Saturdays, Sundays, and legal holidays;

(4) The bid was submitted in good faith and the mistake was due

to a calculation or clerical error, an inadvertent omission, or a typographical error as opposed to an error in judgment; and

(5) The withdrawal of the bid will not result in undue prejudice to the governmental entity or other bidders by placing them in a materially worse position than they would have occupied if the bid had never been submitted.

(c) In the event that an apparent successful bidder has withdrawn his or her bid as provided in subsection (b) of this Code section, action on the remaining bids should be considered as though the withdrawn bid had not been received. In the event the project is relet for bids, under no circumstances shall a bidder who has filed a request to withdraw a bid be permitted to resubmit a bid for the work.

(d) No bidder who is permitted to withdraw a bid pursuant to subsection (b) of this Code section shall for compensation supply any material or labor to, or perform any subcontract or other work agreement for, the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

History.
Code 1981, § 36-91-43, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-52, as redesignated by Ga. L. 2001, p. 820, § 12.

Editor's notes.
Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Section 36-91-52 as present Code Section 36-91-72.

36-91-53. Forfeit of security by affiliated corporation.

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

(1) "Affiliated corporation" means, with respect to any corporation, any other corporation related thereto:

(A) As a parent corporation;

(B) As a subsidiary corporation;

(C) As a sister corporation;

(D) By common ownership or control; or

(E) By control of one corporation by the other.

(2) The term "bid" includes proposals.

(b) In any case where two or more affiliated corporations bid for a contract under this Code section and any one or more of such affiliated corporations subsequently rescind or revoke their bid or bids in favor of another such affiliated corporation whose bid is for a higher amount and the contract is awarded at such higher amount to such other affiliated corporation, then the bid bond, proposal guaranty, or other

security otherwise required under this article of each affiliated corporation rescinding or revoking its bid shall be forfeited.

History.
Code 1981, § 36-91-44, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-53, as redesignated by Ga. L. 2001, p. 820, § 12.

Law reviews.
For article, "Constraining Corporate Law Principles in Affiliate World," see 72 Emory L. J. 855 (2023).

36-91-54. Action on breach of bond.

The obligee in any bid bond required to be given in accordance with this article shall be entitled to maintain an action thereon at any time upon any breach of such bond; provided, however, that no action may be instituted on the bonds or security deposits after one year from the completion of the contract and the acceptance of the public work by the governmental entity.

History.
Code 1981, § 36-91-45, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-54, as redesignated by Ga. L. 2001, p. 820, § 12.

Part 3

Performance Bonds

Editor's notes.
Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Article 4 (Code Sections 36-91-50 through 36-91-52) as Part 3 of Article 3.

36-91-70. Requirement of performance bonds.

Performance bonds shall be required for all public works construction contracts subject to the requirements of this chapter with an estimated contract amount greater than $100,000.00; provided, however, that a governmental entity may require a performance bond for public works construction contracts that are estimated at $100,000.00 or less. No public works construction contract requiring a performance bond shall be valid for any purpose unless the contractor shall give such performance bond. The performance bond shall be in the amount of at least the total amount payable by the terms of the contract and shall be increased as the contract amount is increased.

History.
Code 1981, § 36-91-50, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-70, as redesignated by Ga. L. 2001, p. 820, § 12.

Editor's notes.
Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Section 36-91-70 as present Code Section 36-91-90.

36-91-71. Acceptable substitutes for bond.

When the amount of the performance bond required under this article does not exceed $750,000.00, the governmental entity may, in its sole discretion, accept an irrevocable letter of credit by a bank or savings and loan association, as defined in Code Section 7-1-4, in the amount of and in lieu of the bond otherwise required under this article.

History.
Code 1981, § 36-91-51, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-71, as redesignated by Ga. L. 2001, p. 820, § 12; Ga. L. 2007, p. 209, § 2/HB 134.
Editor's notes.
Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Section 36-91-71 as present Code Section 36-91-91.
Law reviews.
For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

36-91-72. Action on performance bond.

The obligee in any performance bond required to be given in accordance with this article shall be entitled to maintain an action thereon at any time upon any breach of such bond; provided, however, no action can be instituted on the bonds or security deposits after one year from the completion of the contract and the acceptance of the public work by the governmental entity.

History.
Code 1981, § 36-91-52, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-72, as redesignated by Ga. L. 2001, p. 820, § 12.
Editor's notes.
Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Section 36-91-72 as present Code Section 36-91-92.

36-91-73 through 36-91-75. Redesignated.

Editor's notes.
Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Sections 36-91-73 through 36-91-75 as present Code Sections 36-91-93 through 36-91-95, respectively.

Part 4

Payment Bonds

Editor's notes.
Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Article 5 (Code Sections 36-91-70 through 36-91-75) as Part 4 of Article 3.

36-91-90. Requirement for payment bonds.

Payment bonds shall be required for all public works construction contracts subject to the requirements of this chapter with an estimated contract amount greater than $100,000.00; provided, however, that a governmental entity may require a payment bond for public works construction contracts that are estimated at $100,000.00 or less. No

public works construction contract requiring a payment bond shall be valid for any purpose, unless the contractor shall give such payment bond; provided, however, that, in lieu of such payment bond, the governmental entity, in its discretion, may accept a cashier's check, certified check, or cash for the use and protection of all subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of work provided in the contract. The payment bond or other security accepted in lieu of a payment bond shall be in the amount of at least the total amount payable by the terms of the initial contract and shall be increased if requested by the governmental entity as the contract amount is increased.

History.

Code 1981, § 36-91-70, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-90, as redesignated by Ga. L. 2001, p. 820, § 12.

Law reviews.

For survey article on construction law, see 59 Mercer L. Rev. 55 (2007)

For survey article on construction law, see 60 Mercer L. Rev. 59 (2008).

For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

JUDICIAL DECISIONS

Bond was adequate remedy at law for subcontractor on school project. — When a subcontractor on a school district's high school project had a remedy against the general contractor on the general contractor's performance bond under O.C.G.A. § 36-91-90, this legal remedy was adequate and precluded the subcontractor from asserting an equitable lien against the school district. McArthur Elec., Inc. v. Cobb County Sch. Dist., 281 Ga. 773, 642 S.E.2d 830, 2007 Ga. LEXIS 250 (2007).

Subcontractor, that received a transfer of funds by or on behalf of the debtor as the general contractor, argued its potential claim under O.C.G.A. § 36-91-93 of the Georgia Little Miller Act against the payment bond precluded the bankruptcy trustee from avoiding the transfer as a preference under 11 U.S.C. § 547, as constituting contemporaneous new value. The subcontractor also argued the funds were held in constructive trust, were earmarked, or were paid in the ordinary course of business. Watts v. Pride Util. Constr., Inc. (In re Sudco, Inc.), No. 04-17205-WHD, No. 05-1134, 2007 Bankr. LEXIS 3730 (Bankr. N.D. Ga. Sept. 27, 2007).

Compliance with payment bond requirements. — When the general contractor failed to pay the subcontractor for the subcontractor's work on a city project and the surety was insolvent, and the subcontractor sued the general contractor and the city for the subcontractor's work, the trial court properly granted summary judgment in favor of the city because the city complied with the payment bond requirements, and the subcontractor was limited to the exclusive remedy set forth in Georgia's payment bond statutes, O.C.G.A. §§ 36-91-90 and 36-91-91. J. Squared Plumbing Company, Inc. v. City of Atlanta, 337 Ga. App. 229, 786 S.E.2d 894, 2016 Ga. App. LEXIS 301 (2016).

Constructive trust created. — Constructive trust is created in favor of a subcontractor over funds paid by the owner of property to the contractor when the project is a public works project and the subcontractor enjoys no lien rights, but is entitled to file a claim against a payment bond in accordance with the

Georgia Little Miller Act, O.C.G.A. § 36-91-90 et seq. Watts v. Pride Util. Constr., Inc. (In re Sudco, Inc.), No. 04-17205-WHD, No. 05-1134, 2007 Bankr. LEXIS 3730 (Bankr. N.D. Ga. Sept. 27, 2007).

Emergency exception. — City was not required to obtain a payment bond in compliance with O.C.G.A. § 36-91-90 because the requirement did not apply to emergency projects, O.C.G.A. § 36-91-22(e); the city's description in the city's minutes of the "emergency replacement of a 10-inch sanitary sewer main on Embassy Drive" was sufficient to describe the nature of the emergency. City of College Park v. Sekisui SPR Ams., LLC, 331 Ga. App. 404, 771 S.E.2d 101, 2015 Ga. App. LEXIS 177 (2015), cert. denied, No. S15C1141, 2015 Ga. LEXIS 471 (Ga. June 15, 2015).

36-91-91. Liability of contracting party to subcontractors for noncompliance.

If a payment bond or security deposit is not taken in the manner and form required in this article, the corporation or body for which work is done under the contract shall be liable to all subcontractors and to all persons furnishing labor, skill, tools, machinery, or materials to the contractor or subcontractor thereunder for any loss resulting to them from such failure. No agreement, modification, or change in the contract, change in the work covered by the contract, or extension of time for the completion of the contract shall release the sureties of such payment bond.

History.

Code 1981, § 36-91-71, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-91, as redesignated by Ga. L. 2001, p. 820, § 12.

Law reviews.

For survey article on construction law, see 59 Mercer L. Rev. 55 (2007)

For survey article on construction law, see 60 Mercer L. Rev. 59 (2008).

For annual survey of construction law, see 67 Mercer L. Rev. 23 (2015).

For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

JUDICIAL DECISIONS

Compliance with payment bond requirements. — When the general contractor failed to pay the subcontractor for the subcontractor's work on a city project and the surety was insolvent, and the subcontractor sued the general contractor and the city for the subcontractor's work, the trial court properly granted summary judgment in favor of the city because the city complied with the payment bond requirements, and the subcontractor was limited to the exclusive remedy set forth in Georgia's payment bond statutes, O.C.G.A. §§ 36-91-90 and 36-91-91. J. Squared Plumbing Company, Inc. v. City of Atlanta, 337 Ga. App. 229, 786 S.E.2d 894, 2016 Ga. App. LEXIS 301 (2016).

36-91-92. Notice of commencement.

(a) The contractor furnishing the payment bond or security deposit shall post on the public works construction site and file with the clerk of the superior court in the county in which the site is located a notice of commencement no later than 15 days after the contractor physically

commences work on the project and supply a copy of the notice of commencement to any subcontractor, materialman, or person who makes a written request of the contractor. Failure to supply a copy of the notice of commencement within ten calendar days of receipt of the written request from the subcontractor, materialman, or person shall render the provisions of paragraph (1) of subsection (a) of Code Section 36-91-93 inapplicable to the subcontractor, materialman, or person making the request. The notice of commencement shall include:

(1) The name, address, and telephone number of the contractor;

(2) The name and location of the public work being constructed or a general description of the improvement;

(3) The name and address of the governmental entity that is contracting for the public works construction;

(4) The name and address of the surety for the performance and payment bonds, if any; and

(5) The name and address of the holder of the security deposit provided, if any.

(b) The failure to file a notice of commencement shall render the notice to contractor requirements of paragraph (2) of subsection (a) of Code Section 36-91-93 inapplicable.

(c) The clerk of the superior court shall file the notice of commencement within the records of that office and maintain an index separate from other real estate records or an index with the preliminary notices specified in subsection (a) of Code Section 44-14-361.3. Each such notice of commencement shall be indexed under the name of the governmental entity and the name of the contractor as contained in the notice of commencement.

History.

Code 1981, § 36-91-72, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-92, as redesignated by Ga. L. 2001, p. 820, § 12; Ga. L. 2013, p. 628, § 8/SB 179.

JUDICIAL DECISIONS

Summary judgment improperly granted. — In an action on a public works payment bond under O.C.G.A. §§ 36-91-92 and 36-91-93, a trial court erred in granting summary judgment to a surety because a material issue of fact existed as to whether a general contractor complied with the notice of commencement requirements so as to fall under the provisions of O.C.G.A. § 36-91-93(a)(2), or whether the general contractor received a sub-subcontractor's request but failed to comply and thus fell under the provisions of O.C.G.A. § 36-91-93(a)(1). Southway Crane & Rigging v. Fed. Ins. Co., 294 Ga. App. 504, 669 S.E.2d 482, 2008 Ga. App. LEXIS 1253 (2008).

36-91-93. Rights of persons protected by payment bond or security deposit; governmental entity not a party.

(a) Every person entitled to the protection of the payment bond or security deposit required to be given who has not been paid in full for labor or material furnished in the prosecution of the work referred to in such bond or security deposit before the expiration of a period of 90 days after the day on which the last of the labor was done or performed by such person or the material or equipment or machinery was furnished or supplied by such person for which such claim is made, or when he or she has completed his or her subcontract for which claim is made, shall have the right to bring an action on such payment bond or security deposit for the amount, or the balance thereof, unpaid at the time of the commencement of such action and to prosecute such action to final execution and judgment for the sum or sums due such person; provided, however, that:

(1) Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing such payment bond or security deposit on a public works construction project where the contractor has not complied with the notice of commencement requirements shall have the right of action upon the payment bond or security deposit upon giving written notice to the contractor within 90 days from the day on which such person did or performed the last of the labor or furnished the last of the material or machinery or equipment for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was performed or done. The notice to the contractor may be served by registered or certified mail, postage prepaid, or statutory overnight delivery, duly addressed to the contractor, at any place at which the contractor maintains an office or conducts his or her business or at his or her residence, by depositing such notice in any post office or branch post office or any letter box under the control of the United States Postal Service; alternatively, notice may be served in any manner in which the sheriffs of this state are authorized by law to serve summons or process; and

(2) Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing such payment bond or security deposit on a public works construction project where the contractor has complied with the notice of commencement requirements in accordance with subsection (a) of Code Section 36-91-92 shall have the right of action on the payment bond or security deposit, provided that such person shall, within 30 days from the filing of the notice of commencement or 30 days following the first delivery of labor,

material, machinery, or equipment, whichever is later, give to the contractor a written notice setting forth:

(A) The name, address, and telephone number of the person providing labor, material, machinery, or equipment;

(B) The name and address of each person at whose instance the labor, material, machinery, or equipment is being furnished;

(C) The name and the location of the public works construction site; and

(D) A description of the labor, material, machinery, or equipment being provided and, if known, the contract price or anticipated value of the labor, material, machinery, or equipment to be provided or the amount claimed to be due, if any.

(b) Nothing contained in this Code section shall limit the right of action of a person entitled to the protection of the payment bond or security deposit required to be given pursuant to this article to the 90 day period following the day on which such person did or performed the last of the labor or furnished the last of the material or machinery or equipment for which such claim is made.

(c) Every action instituted under this Code section shall be brought in the name of the claimant without making the governmental entity for which the work was done or was to be done a party to such action.

History.

Code 1981, § 36-91-73, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-93, as redesignated by Ga. L. 2001, p. 820, § 12.

JUDICIAL DECISIONS

Bond precluded bankruptcy trustee from avoiding transfer. — Subcontractor, that received a transfer of funds by or on behalf of the debtor as the general contractor, argued the subcontractor's potential claim under O.C.G.A. § 36-91-93 of the Georgia Little Miller Act against the payment bond precluded the bankruptcy trustee from avoiding the transfer as a preference under 11 U.S.C. § 547, as constituting contemporaneous new value. The subcontractor also argued the funds were held in constructive trust, were earmarked, or were paid in the ordinary course of business. Watts v. Pride Util. Constr., Inc. (In re Sudco, Inc.), No. 04-17205-WHD, No. 05-1134, 2007 Bankr. LEXIS 3730 (Bankr. N.D. Ga. Sept. 27, 2007).

Summary judgment improperly granted. — In an action on a public works payment bond under O.C.G.A. §§ 36-91-92 and 36-91-93, a trial court erred in granting summary judgment to a surety because a material issue of fact existed as to whether a general contractor complied with the notice of commencement requirements so as to fall under the provisions of O.C.G.A. § 36-91-93(a)(2), or whether the general contractor received a sub-subcontractor's request but failed to comply and thus fell under the provisions of O.C.G.A. § 36-91-93(a)(1). Southway Crane & Rigging v. Fed. Ins. Co., 294 Ga. App. 504,

669 S.E.2d 482, 2008 Ga. App. LEXIS 1253 (2008).

36-91-94. Providing copy of bond or security deposit agreement.

The official who has the custody of the bond or security deposit required by this article is authorized and directed to furnish to any person making application therefor a copy of the bond or security deposit agreement and the contract for which it was given, certified by the official who has custody of the bond or security deposit. With his or her application, such person shall also submit an affidavit that he or she has supplied labor or materials for such work and that payment therefor has not been made or that he or she is being sued on any such bond or security deposit. Such copy shall be primary evidence of the bond or security deposit and contract and shall be admitted in evidence without further proof. Applicants shall pay for such certified copies and such certified statements such fees as the official fixes to cover the cost of preparation thereof, provided that in no case shall the fee fixed exceed the fees which the clerks of the superior courts are permitted to charge for similar copies.

History.
Code 1981, § 36-91-74, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-94, as redesignated by Ga. L. 2001, p. 820, § 12.

36-91-95. Time limitation.

No action can be instituted on the payment bonds or security deposits after one year from the completion of the contract and the acceptance of the public works construction by the proper public authorities. Every action instituted under this article shall be brought in the name of the claimant, without the governmental entity for which the work was done or was to be done being made a party thereto.

History.
Code 1981, § 36-91-75, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-95, as redesignated by Ga. L. 2001, p. 820, § 12.

JUDICIAL DECISIONS

Claims arising under payment bond were time-barred. — Summary judgment was properly entered for a surety on a subcontractor's breach of an implied contract, bad faith breach of contract, promissory estoppel, and unjust enrichment claims as all of the claims arose from work performed while the surety was acting as surety on the payment bond and from the surety's refusal to pay the subcontractor under the payment bond; thus, O.C.G.A. § 36-91-95 applied and the claims were time barred. Masonry Specialists of Ga., Inc. v. United States Fid. & Guar. Co., 273 Ga. App. 774, 616 S.E.2d 103, 2005 Ga. App. LEXIS 443 (2005).

Suit on payment bond was time-barred. — Summary judgment was properly entered for a surety on a subcontractor's suit on a payment bond as the surety produced an affidavit stating

that the project was completed and dedicated more than one year before the suit was filed; and the subcontractor failed to show that the affiant was not authorized to accept the completed project. Masonry Specialists of Ga., Inc. v. United States Fid. & Guar. Co., 273 Ga. App. 774, 616 S.E.2d 103, 2005 Ga. App. LEXIS 443 (2005).

ARTICLE 4

BIDDING FOR GOVERNMENT WORKS PROJECTS

Cross references.
State and private participation in water projects, § 50-23-28.2.

36-91-100. Definitions.

As used in this article, the term:

(1) "Affected local government" means any county, municipality, or consolidated government in which water storage facilities of a project are located or proposed to be located, which will receive for local use water or services from such project, or which, under a service delivery agreement entered into pursuant to Article 2 of Chapter 70 of this title, provides or is authorized to provide within an area water facilities or services similar to water facilities and services proposed to be provided by a project in such area.

(2) "Lead local authority" means the sole local governing authority or local authority participating in a project or the local governing authority or local authority designated pursuant to subsection (b) of Code Section 36-91-102.

(3) "Local authority" means any local water authority created by Act of the General Assembly, any authority created pursuant to the provisions of Chapter 62 of this title, and any authority created by a county, municipality, or consolidated government which provides water, sewer, or waste-water treatment services.

(4) "Local governing authority" means any county, municipality, or consolidated government.

(5) "Project" has the meaning provided by paragraph (10) of Code Section 12-5-471 and includes environmental facilities as defined in subparagraph (B) of paragraph (5) of Code Section 50-23-4.

History.
Code 1981, § 36-91-100, enacted by Ga. L. 2011, p. 52, § 1/SB 122; Ga. L. 2012, p. 775, § 36/HB 942.

36-91-101. Authority to enter into contracts; costs; grants or loans; eminent domain.

(a) Local governing authorities and local authorities shall be autho-

rized to enter into contracts provided for by this article with private persons, firms, associations, or corporations providing for or delegating the responsibility for procuring all permits, licenses, and permissions from the United States of America or any agency or instrumentality thereof; the State of Georgia, its departments, agencies, or authorities; or any county or municipality of this state as necessary or required for the purpose of constructing projects within this state, and to plan, finance, construct, acquire, lease, operate, or maintain such projects or cause such projects to be planned, financed, constructed, acquired, leased, operated, or maintained. Such contracts may provide for the reimbursement to the private person, firm, association, or corporation of costs and expenses associated with the execution thereof through service payments, user fees, purchase payments, and such other consideration as the local governing authority or local authority may deem appropriate. Such contracts may provide for the assumption by such local governing authority or local authority of such projects, permits, licenses, and permissions at such times as appropriate for the construction of the project or as otherwise agreed upon.

(b) A local governing authority or local authority may take any action to obtain federal, state, or local assistance for a project that serves the public purpose of this article and may enter into any contracts required to receive such assistance. A local governing authority or local authority may determine that it serves the public purpose of this article for all or any portion of the costs of a project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the federal, state, or local government or any instrumentality thereof. A local governing authority or local authority may agree to make grants or loans to the operator of a project from time to time from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

(c) Nothing in this article shall be construed to delegate the power of eminent domain to any private entity with respect to any project commenced or proposed pursuant to this article. Any local governing authority may exercise the power of eminent domain in the manner provided by law for the purpose of acquiring any property or interests therein to the extent that such action serves the public purpose of this article.

History.
Code 1981, § 36-91-101, enacted by Ga. L. 2011, p. 52, § 1/SB 122.

36-91-102. Planning, finance, construction, acquisition, leasing, operation, and maintenance of projects; implementation; lobbying restrictions.

(a) In addition to other methods of procurement authorized by law,

local governing authorities and local authorities shall be authorized to utilize the procedures of this article to provide for the planning, finance, construction, acquisition, leasing, operation, and maintenance of projects. The provisions of this article shall be an alternative to such other methods to be exercised at the option of each local governing authority or local authority.

(b) After identifying or being informed of any project that may be suitable for utilization of the procedures of this article, one or more local governing authorities and local authorities may participate in consideration and implementation of a project. Where more than one local governing authority or local authority agrees to participate in consideration or implementation of a project, the participants shall designate one of their number to be the lead local authority for purposes of implementing the procedures of this article; provided, however, that not less than one representative of each such participating local governing authority or local authority, as agreed to by such local governing authorities or local authorities, shall have the right to participate in all aspects of such implementation.

(c)(1) The lead local authority shall evaluate a project to determine, in the judgment of the lead local authority, appropriate or desirable levels of state, local, and private participation in financing, constructing, and operating such project. In making such determinations, the lead local authority shall seek the advice and input of affected local governments and is encouraged to seek the advice and input of the Water Supply Division of the Georgia Environmental Finance Authority, affected local governing authorities, applicable planning organizations, and the private financial and construction sectors.

(2) The lead local authority shall be authorized to issue a written request for proposals indicating the scope of the project, the proposed financial participations in the project, and the factors that will be used in evaluating the proposals as well as the relative importance of the evaluation factors, and containing or incorporating by reference other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor. Public notice of such request for proposal shall be made at least 90 days prior to the date set for receipt of proposals by posting the legal notice on the websites of each participating local governing authority and local authority in substantially the same manner utilized by such authority to solicit requests for proposals, with a copy of such notice provided simultaneously to each affected local government.

(3) Upon receipt of a proposal or proposals responsive to the request for proposals, the lead local authority shall accept written public comment, solicited in the same manner as provided for notice

of proposals, for a period of 30 days beginning at least ten days after the date set for receipt of proposals. In addition, the lead local authority shall hold at least one public hearing on such proposals within the jurisdiction of each participating local governing authority, participating local authority, or affected local government not later than the conclusion of the period for public comment.

(4)(A) The lead local authority, acting by and through a designated representative appointed for such purposes, and with the participation of any designated representatives of other participating local governing authorities or local authorities, shall engage in individual discussions with each respondent deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence and ability to meet the level of private financial participation called for by the local governing authority. Repetitive informal interviews shall be permissible. Any affected local governments shall receive ten days' notice of any such individual discussions and interviews and may participate through an appointed representative. In the event that the Georgia Environmental Finance Authority or any other state authority or agency agrees to consider or participate in the project, a representative of such authority or agency appointed by such authority or agency may participate in such discussions and interviews.

(B) At the discussion stage, the representatives may discuss estimates of total project costs, including, but not limited to, life cycle costing and nonbinding estimates of price for services. Discussions conducted with respondents pursuant to this subparagraph shall not be public meetings subject to the provisions of Chapter 14 of Title 50. Proprietary information or trade secrets may be designated by a respondent as subject to one or more exemptions from public disclosure pursuant to the provisions of Code Section 50-18-72, but such designation shall not be binding on the participating local governing authorities, local authorities, and affected local governments unless consistent with applicable law.

(C)(i) At the conclusion of the discussion stage, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process, the designated representative, with the input of the representatives of any other participating entity and in an open and public meeting subject to the provisions of Chapter 14 of Title 50, shall select in the order of preference one or more respondents whose qualifications and proposed services are deemed most meritorious.

(ii) Negotiations shall then be conducted by the designated representative with the selected respondents. A representative of

any participating local governing authority, participating local authority, and participating state agency or authority shall have the right to notice of and participation in such negotiations. Negotiations conducted with selected respondents pursuant to this division shall not be public meetings subject to the provisions of Chapter 14 of Title 50.

(D) The designated representative shall select for approval by the lead local authority the respondent for project implementation based upon contract terms that are the most satisfactory and advantageous to the participating local governing authorities and local authorities based upon a thorough assessment of value and the ability of the final project's characteristics to meet the goals of the participating local governing authorities and local authorities, consistent with applicable state-wide and regional water plans and local comprehensive plans. Before making such selection, the designated representative shall consult in an open and public meeting subject to the provisions of Chapter 14 of Title 50 with the representatives of any participating local governing authority, participating local authority, participating state agency or authority, and affected local government. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the request for proposal, the lead local authority may award contracts to more than one respondent. Should the lead local authority determine in writing that only one respondent is fully qualified, or that one respondent is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that respondent.

(E) Upon approval of the selection by the lead local authority, a contract or contracts not exceeding 50 years in duration may be entered into with the selected respondents on behalf of all participating entities, subject to approval by each such participating entity and by each affected local government.

(5) A dispute over the award of a contract under this article shall be resolved by the filing of a petition in the superior court of the county in which the lead local authority is located within 30 days of the awarding of such contract and shall be determined through the use of a special master appointed by the judge of the superior court of the county in which the lead local authority is located. The decision of the special master with regard to such dispute shall be appealable for a de novo review to the superior court of the county in which the lead local authority is located within 30 days following the decision of the special master. Neither the special master nor the superior court shall be authorized to enjoin or otherwise delay or suspend the execution of the contract and any work to be performed under such contract.

(6) Nothing in this Code section shall require the designated representatives, the lead local authority, or any local governing authority, local authority, or state agency or authority to continue negotiations or discussions arising out of any request for proposal.

(7) Every local governing authority and local authority shall be authorized to promulgate reasonable rules or regulations to assist in its evaluation of proposals and to implement the purposes of this article.

(d) No public officer, employee, or member of a local governing authority or local authority, with respect to contracts of such local governing authority or local authority, or the General Assembly shall serve as an agent, lobbyist, or board member for any private entity directly or indirectly under a contract or negotiating a contract provided for by this article for three years after leaving his or her position as a public officer, employee, or member of the local governing authority, local authority, or the General Assembly.

History.
Code 1981, § 36-91-102, enacted by Ga. L. 2011, p. 52, § 1/SB 122; Ga. L. 2012, p. 775, § 36/HB 942.

ARTICLE 5

PARTNERSHIP FOR PUBLIC FACILITIES AND INFRASTRUCTURE

Editor's notes.
Ga. L. 2015, p. 406, § 1/SB 59, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Partnership for Public Facilities and Infrastructure Act.'"

36-91-110. Definitions.

As used in this article, the term:

(1) "Comprehensive agreement" means the written agreement between the private entity and the local government required by Code Section 36-91-115.

(2) "Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, operate, maintain, or expand.

(3) "Local authority" means any local authority created pursuant to a local or general Act of the General Assembly, including a joint public instrumentality.

(4) "Local government" means any county, municipality, consolidated government, or board of education.

(5) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint

venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

(6) "Qualifying project" means any project selected in response to a request from a local government or submitted by a private entity as an unsolicited proposal in accordance with this article and subsequently reviewed and approved by a local government, within its sole discretion, as meeting a public purpose or public need. This term shall not include and shall have no application to any project involving:

(A) The generation of electric energy for sale pursuant to Chapter 3 of Title 46;

(B) Communications services pursuant to Articles 4 and 7 of Chapter 5 of Title 46;

(C) Cable and video services pursuant to Chapter 76 of this title; or

(D) Water reservoir projects as defined in paragraph (10) of Code Section 12-5-471, which shall be governed by Article 4 of this chapter.

(7) "Revenue" means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project.

(8) "Unsolicited proposal" means a written proposal for a qualifying project that is received by a local government and is not in response to any request for proposal for a qualifying project issued by a local government.

History.
Code 1981, § 36-91-110, enacted by Ga. L. 2015, p. 406, § 2/SB 59.

Law reviews.
For annual survey of administrative law, see 67 Mercer L. Rev. 1 (2015).

36-91-111. [Reserved] Creation of Partnership for Public Facilities and Infrastructure Act Guidelines Committee; membership; terms; allowances; duties; support.

History.
Code 1981, § 36-91-111, enacted by Ga. L. 2015, p. 406, § 2/SB 59; repealed by Ga. L. 2024, p. 922, § 8-1/SB 341, effective May 6, 2024.

Editor's notes.
Ga. L. 2024, p. 922, § 8-1/SB 341, reserved the designation of this Code section, effective May 6, 2024.

36-91-112. Guidelines.

(a) Prior to executing any comprehensive agreement for the devel-

opment or operation of a qualifying project pursuant to an unsolicited proposal received by a local government under this article, the local government shall adopt its own guidelines as a policy, rule, regulation, or ordinance, which shall contain each of the factors identified in subsection (b) of this Code section.

(b) The model guidelines shall include, at a minimum, the following:

(1) The period of time each calendar year when the local government will consider receiving, processing, reviewing, or evaluating unsolicited proposals for qualifying projects, and such limited time period shall be established within the sole discretion of the local government;

(2) Procedures for the financial review and analysis of an unsolicited proposal that may include:

(A) A cost-benefit analysis;

(B) Evaluation of the public need for or benefit derived from the qualifying project;

(C) Evaluation of the estimated cost of the qualifying project for reasonableness in relation to similar facilities;

(D) Evaluation of the source of funding for the project;

(E) Consideration of plans to ensure timely development or operation;

(F) Evaluation of risk sharing, including cost or completion guarantees, added value, or debt or equity investments by the private entity; and

(G) Consideration of any increase in funding, dedicated revenue source, or other economic benefit that would not otherwise be available;

(3) Criteria for determining any fees authorized in Code Section 36-91-113 that the local government elects to charge the private entity for the processing, review, and evaluation of an unsolicited proposal;

(4) A requirement for the issuance of a request for proposals upon a decision by the local government to proceed with a qualifying project pursuant to an unsolicited proposal;

(5) Procedures for posting and publishing notice of the opportunity to offer competing proposals;

(6) Procedures for the processing, review, and consideration of competing proposals, and the period for the processing, review, and consideration of competing proposals shall not be less than 90 days;

(7) Procedures for determining whether information included in an unsolicited proposal shall be released as part of any request for proposals to ensure fair competition; and

(8) Procedures for identifying and appointing an independent owner adviser to the local government with expertise in architecture, engineering, or construction management to assist in the evaluation of an unsolicited proposal and to serve as owner adviser to the local government if the local government chooses to pursue any ensuing solicited bid process. The local government shall not be obligated to engage such services.

History.

Code 1981, § 36-91-112, enacted by Ga. L. 2015, p. 406, § 2/SB 59; Ga. L. 2024, p. 922, § 8-2/SB 341, effective May 6, 2024.

Amendments.

The 2024 amendment, effective May 6, 2024, substituted the current provisions of subsection (a) for the former provisions, which read: "(a) Prior to executing any comprehensive agreement for the development or operation of a qualifying project pursuant to an unsolicited proposal received by a local government under this article, the local government shall adopt either:

"(1) The model guidelines from the Partnership for Public Facilities and Infrastructure Act Guidelines Committee; or

"(2) Its own guidelines as a policy, rule, regulation, or ordinance, which shall contain each of the factors identified in subsection (b) of this Code section."

36-91-113. Unsolicited proposals.

(a) If a local government adopts a rule, regulation, or ordinance affirming its participation in the process created in this article, a private entity may submit an unsolicited proposal for a project to the local government for review and determination as a qualifying project in accordance with the guidelines established by the local government. Any such unsolicited proposal shall be accompanied by the following material and information:

(1) A project description, including the location of the project, the conceptual design of such facility or facilities, and a conceptual plan for the provision of services or technology infrastructure;

(2) A feasibility statement that includes:

(A) The method by which the private entity proposes to secure any necessary property interests required for the project;

(B) A list of all permits and approvals required for the project from local, state, or federal agencies; and

(C) A list of public utility facilities, if any, that will be crossed by the project and a statement of the plans of the private entity to accommodate such crossings;

(3) A schedule for the initiation and completion of the project to include the proposed major responsibilities and timeline for activities

to be performed by both the local government and private entity as well as a proposed schedule for obtaining the permits and approvals required in subparagraph (B) of paragraph (2) of this subsection;

(4) A financial plan setting forth the private entity's general plans for financing the project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity; a description of user fees, lease payments, and other service payments over the term of the comprehensive agreement pursuant to Code Section 36-91-115; and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time;

(5) A business case statement that shall include a basic description of any direct and indirect benefits that the private entity can provide in delivering the project, including relevant cost, quality, methodology, and process for identifying the project and time frame data;

(6) The names and addresses of the persons who may be contacted for further information concerning the unsolicited proposal; and

(7) Such additional material and information as the local government may reasonably request.

(b) For any unsolicited proposal of the development of a project received by a local government, the local government may charge and retain a reasonable fee to cover the costs of processing, reviewing, and evaluating the unsolicited proposal, including, without limitation, reasonable attorney's fees and fees for financial, technical, and other necessary advisers or consultants.

(c) The local government may reject any proposal or unsolicited proposal at any time and shall not be required to provide a reason for its denial. If the local government rejects a proposal or unsolicited proposal submitted by a private entity, it shall have no obligation to return the proposal, unsolicited proposal, or any related materials following such rejection.

(d) A private entity assumes all risk in submission of a proposal or unsolicited proposal in accordance with subsections (a) and (b) of this Code section, and a local government shall not incur any obligation to reimburse a private entity for any costs, damages, or loss of intellectual property incurred by a private entity in the creation, development, or submission of a proposal or unsolicited proposal for a qualifying project.

History.
Code 1981, § 36-91-113, enacted by Ga. L. 2015, p. 406, § 2/SB 59.

36-91-114. Approval process.

(a) The local government may approve the project in an unsolicited proposal submitted by a private entity pursuant to Code Section 36-91-113 as a qualifying project. Determination by the local government of a qualifying project shall not bind the local government or the private entity to proceed with the qualifying project.

(b) Upon the local government's determination of a qualifying project as provided in subsection (a) of this Code section, the local government shall:

(1) Seek competing proposals for the qualifying project by issuing a request for proposals for not less than 90 days; and

(2) Review all proposals submitted in response to the request for proposals based on the criteria established in the request for proposals.

(c) When the time for receiving proposals expires, the local government shall first rank the proposals in accordance with the factors set forth in the request for proposal or invitation for bids. The local government shall not be required to select the proposal with the lowest price offer, but it may consider price as one of various factors in evaluating the proposals received in response to the request for proposals for a qualifying project. Factors that may be considered include:

(1) The proposed cost of the qualifying project;

(2) The general reputation, industry experience, and financial capacity of the private entity;

(3) The proposed design of the qualifying project;

(4) The eligibility of the facility for accelerated selection, review, and documentation timelines under the local government's guidelines;

(5) Benefits to the public;

(6) The private entity's compliance with a minority business enterprise participation plan;

(7) The private entity's plans to employ local contractors and residents; and

(8) Other criteria that the local government deems appropriate.

(d) After ranking the proposals, the local government shall begin negotiations with the first ranked private entity. If the local government and the first ranked private entity do not reach a comprehensive

agreement or interim agreement, then the local government may conduct negotiations with the next ranked private entity. This process shall continue until the local government either voluntarily abandons the process or executes a comprehensive agreement or interim agreement with a private entity.

(e) At any time during the process outlined in this Code section but before the full execution of a comprehensive agreement, the local government may, without liability to any private entity or third party, cancel its request for proposals or reject all proposals received in response to its request for proposals, including the unsolicited proposal, for any reason whatsoever.

(f) Nothing in this article shall enlarge, diminish, or affect the authority, if any, otherwise possessed by the local government to take action that would impact the debt capacity of the State of Georgia or any local government. The credit of this state shall not be pledged or loaned to any private entity. The local government shall not loan money to the private entity in order to finance all or a portion of the qualifying project. A multiyear lease entered into by a local government which is not terminable at the end of each fiscal year during the term of the lease shall be considered a debt of the local government which enters into such lease, and such lease shall apply against the debt limitations of the local government.

History.
Code 1981, § 36-91-114, enacted by Ga. L. 2015, p. 406, § 2/SB 59.

36-91-115. Comprehensive agreement.

(a) The comprehensive agreement entered into between the local government and the private entity selected in accordance with this article shall include:

(1) A thorough description of the duties of each party in the completion and operation of the qualifying project;

(2) Dates and schedules for the completion of the qualifying project;

(3) Any user fees, lease payments, or service payments as may be established by agreement of the parties, as well as any process for changing such fees or payments throughout the term of the agreement, and a copy of any service contract;

(4) Any reimbursements to be paid to the local government for services provided by the local government;

(5) A process for the review of plans and specifications for the qualifying project by the local government and approval by the local

government if the plans and specifications conform to reasonable standards acceptable to the local government;

(6) A process for the periodic and final inspection of the qualifying project by the local government to ensure that the private entity's activities are in accordance with the provisions of the comprehensive agreement;

(7) Delivery of performance and payment bonds in the amounts required in Code Sections 36-91-70 and 36-91-90 and in a form acceptable to the local government for those components of the qualifying project that involve construction, and surety bonds, letters of credit, or other forms of security acceptable to the local government for other phases and components of the development of the qualifying project;

(8) Submission of a policy or policies of public liability insurance, copies of which shall be filed with the local government accompanied by proofs of coverage, or self-insurance, each in form and amount satisfactory to the local government and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;

(9) A process for monitoring the practices of the private entity by the local government to ensure that the qualifying project is properly maintained;

(10) The filing of appropriate financial statements to the local government on a periodic basis; and

(11) Provisions governing the rights and responsibilities of the local government and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity, including conditions governing assumption of the duties and responsibilities of the private entity by the local government and the transfer or purchase of property or other interests of the private entity by the local government, including provisions compliant with state constitutional limitations on public debt by the local government. Such policies and procedures shall be consistent with Code Section 36-91-116.

(b) The comprehensive agreement may include such other terms and conditions that the local government determines will serve the public purpose of this article and to which the private entity and the local government mutually agree, including, without limitation, provisions regarding unavoidable delays and provisions where the authority and duties of the private entity under this article shall cease and the qualifying project is dedicated to the local government for public use.

(c) Any changes in the terms of the comprehensive agreement, as

may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

(d) The comprehensive agreement may provide for the development of phases or segments of the qualifying project.

History.
Code 1981, § 36-91-115, enacted by Ga. L. 2015, p. 406, § 2/SB 59.

36-91-116. Default and remedies.

(a) In the event of a material default by the private entity, the local government may terminate, with cause, the comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity, including, but not limited to, claims under the maintenance, performance, or payment bonds; other forms of security; or letters of credit required by Code Section 36-91-115.

(b) The local government may elect to assume the responsibilities and duties of the private entity of the qualifying project, and in such case, it shall succeed to all of the right, title, and interest in such qualifying project subject to statutory limitations on the availability of future appropriated or otherwise unobligated funds.

(c) The power of eminent domain shall not be delegated to any private entity with respect to any project commenced or proposed pursuant to this article. Any local government having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the private entity. Any person who has perfected a security interest in the qualifying project may participate in the condemnation proceedings with the standing of a property owner.

(d) In the event the local government elects to take over a qualifying project pursuant to subsection (b) of this Code section, the local government may develop the qualifying project, impose user fees, and impose and collect lease payments for the use thereof.

History.
Code 1981, § 36-91-116, enacted by Ga. L. 2015, p. 406, § 2/SB 59.

36-91-117. Powers.

All power or authority granted by this article to public entities shall be in addition and supplemental to, and not in substitution for, the powers conferred by any other general, special, or local law. The limitations imposed by this article shall not affect the powers conferred by any

other general, special, or local law and shall apply only to the extent that a local government elects to proceed under this article.

History.
Code 1981, § 36-91-117, enacted by Ga. L. 2015, p. 406, § 2/SB 59.

36-91-118. Sovereign or official immunity.

Nothing in this article shall be construed as or deemed a waiver of the sovereign or official immunity of any local government or any officer or employee thereof with respect to the participation in, or approval of, all or any part of the qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project.

History.
Code 1981, § 36-91-118, enacted by Ga. L. 2015, p. 406, § 2/SB 59.

36-91-119. Article inapplicable to local government procurement via competitive sealed bidding; article inapplicable to certain transportation projects; public meeting requirements.

(a) Local governments that proceed with procurement pursuant to competitive sealed bidding as defined in Code Section 36-91-2, or any other purchasing options available under current law, shall not be required to comply with this article.

(b) Nothing in this article shall apply to or affect the State Transportation Board, the Department of Transportation, or the State Road and Tollway Authority, or any project thereof.

(c) Nothing in this article shall abrogate the obligations of a local government or private entity to comply with the public meetings requirement in accordance with Chapter 14 of Title 50 or to disclose public information in accordance with Article 4 of Chapter 18 of Title 50.

History.
Code 1981, § 36-91-119, enacted by Ga. L. 2015, p. 406, § 2/SB 59.

CHAPTER 92

WAIVER OF IMMUNITY FOR MOTOR VEHICLE CLAIMS

Sec.		Sec.	
36-92-1.	Definitions.		actions against local government entities; exclusion of punitive and exemplary damages; rules of disclosure of documents; recovery against local governments; jurisdiction.
36-92-2.	Maximum waiver amount; exceptions; liability; recovery of interest.		
36-92-3.	No employee liability; parties to litigation; evidence; bar to further recovery.		
36-92-4.	Regulation of settlement of	36-92-5.	Applicability.

Law reviews.
For note on the 2002 enactment of this chapter, see 19 Ga. St. U.L. Rev. 243 (2002).

36-92-1. Definitions.

As used in this chapter, the term:

(1) "Claim" means any demand against a local government entity for money for a loss caused by negligence of a local government entity officer or employee using a covered motor vehicle while carrying out his or her official duties or employment.

(2) "Covered" motor vehicle means:

(A) Any motor vehicle owned by the local government entity; and

(B) Any motor vehicle leased or rented by the local government entity.

(3) "Local government entity" means any county, municipal corporation, or consolidated city-county government of this state. Such term shall not include a local school system.

(4) "Local government officer or employee" means:

(A) An officer, agent, servant, attorney, or employee of a local government entity; or

(B) A sheriff, deputy sheriff, or other agent, servant, or employee of a sheriff's office.

(5) "Loss" means personal injury, disease, death, damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death; pain and suffering; mental anguish; loss of consortium; and any other element of actual damages recoverable in actions for negligence.

(6) "Motor vehicle" means any automobile, bus, motorcycle, truck, trailer, or semitrailer, including its equipment, and any other equip-

ment permanently attached thereto, designed or licensed for use on the public streets, roads, and highways of the state.

(7) "Occurrence" means an accident involving a covered motor vehicle.

History.

Code 1981, § 36-92-1, enacted by Ga. L. 2002, p. 579, § 3; Ga. L. 2019, p. 781, § 1/SB 29.

Law reviews.

For annual survey on local government law, see 65 Mercer L. Rev. 205 (2013).

For article, "What's the 'Use': Vehicle Maintenance Liability Barred by Sovereign Immunity Amendment Intended to Promote Waiver," see 69 Mercer L. Rev. 651 (2018).

JUDICIAL DECISIONS

Definition of "motor vehicle" does not apply to § 33-24-51(b). — In determining if a county waived the county's sovereign immunity through the voluntary purchase of liability insurance under the second sentence of O.C.G.A. § 33-24-51(b), a trial court erred in considering the definition of "motor vehicle" provided in O.C.G.A. § 36-92-1; rather, "any motor vehicle" was defined as a vehicle that was capable of being driven on the public roads that was covered by a liability insurance policy purchased by the county. Glass v. Gates, 311 Ga. App. 563, 716 S.E.2d 611, 2011 Ga. App. LEXIS 789 (2011), aff'd, 291 Ga. 350, 729 S.E.2d 361, 2012 Ga. LEXIS 647 (2012).

Motor vehicle. — When a local entity purchases automobile liability insurance in an amount greater than the prescribed limits set forth for a waiver of sovereign immunity under O.C.G.A. § 36-92-1 et seq., the entity waives sovereign immunity to the extent of the entity's insurance coverage as required by O.C.G.A. § 33-24-51(b), and the broad definition of "any motor vehicle" set forth in § 33-24-51 applies. Therefore, in a wrongful death and survivor case, a county waived sovereign immunity to the extent of the county's insurance coverage as required by O.C.G.A. § 33-24-51(b), and the Georgia legislature did not intend to apply a narrow definition of motor vehicle under O.C.G.A. § 36-92-1 in a case involving an injury caused by a bush hog and a tractor. Gates v. Glass, 291 Ga. 350, 729 S.E.2d 361, 2012 Ga. LEXIS 647 (2012).

School district waived immunity to extent of insurance covering school bus accident. — In a parent's action against a school district for the death of the parent's child as the child tried to board a school bus, although the district had sovereign immunity, the district waived sovereign immunity to the extent of the district's purchase of liability insurance pursuant to O.C.G.A. § 33-24-51(b); the exclusion from the waiver of sovereign immunity for school districts in O.C.G.A. § 36-92-2(a) did not extend to the second sentence of § 33-24-51(b). Tift County Sch. Dist. v. Martinez, 331 Ga. App. 423, 771 S.E.2d 117, 2015 Ga. App. LEXIS 175 (2015), cert. denied, No. S15C1084, 2015 Ga. LEXIS 458 (Ga. June 15, 2015).

"Local government entity" includes sheriffs' offices. — Term "local government entity" should not be construed so narrowly as to exclude sheriffs' offices, which though separate from a county itself, nevertheless, clearly perform governmental services on a local level. Davis v. Morrison, 344 Ga. App. 527, 810 S.E.2d 649, 2018 Ga. App. LEXIS 60 (2018), overruled in part, Collington v. Clayton County, 318 Ga. 29, 897 S.E.2d 361, 2024 Ga. LEXIS 13 (2024), overruled in part as stated in Chavez v. Hill, 372 Ga. App. 560, 905 S.E.2d 322, 2024 Ga. App. LEXIS 328 (2024).

Summary judgment was properly granted to the deputy as the deputy was

not subject to liability for the automobile accident and the plaintiff's claims against the deputy were barred because the term "local government entity" included sheriffs' offices; any local government officer or employee who committed a tort involving the use of a covered motor vehicle while in the performance of the employee's official duties was not subject to lawsuit or liability; and the deputy was employed as a county sheriff's deputy and the deputy was driving a county-owned vehicle en route to the sheriff's office's evidence room where the deputy worked as an evidence custodian when the accident with the plaintiff occurred. Davis v. Morrison, 344 Ga. App. 527, 810 S.E.2d 649, 2018 Ga. App. LEXIS 60 (2018), overruled in part, Collington v. Clayton County, 318 Ga. 29, 897 S.E.2d 361, 2024 Ga. LEXIS 13 (2024), overruled in part as stated in Chavez v. Hill, 372 Ga. App. 560, 905 S.E.2d 322, 2024 Ga. App. LEXIS 328 (2024).

36-92-2. Maximum waiver amount; exceptions; liability; recovery of interest.

(a) The sovereign immunity of local government entities for a loss arising out of claims for the negligent use of a covered motor vehicle is waived up to the following limits:

(1) $100,000.00 because of bodily injury or death of any one person in any one occurrence, an aggregate amount of $300,000.00 because of bodily injury or death of two or more persons in any one occurrence, and $50,000.00 because of injury to or destruction of property in any one occurrence, for incidents occurring on or after January 1, 2005, and until December 31, 2006;

(2) $250,000.00 because of bodily injury or death of any one person in any one occurrence, an aggregate amount of $450,000.00 because of bodily injury or death of two or more persons in any one occurrence, and $50,000.00 because of injury to or destruction of property in any one occurrence, for incidents occurring on or after January 1, 2007, and until December 31, 2007; and

(3) $500,000.00 because of bodily injury or death of any one person in any one occurrence, an aggregate amount of $700,000.00 because of bodily injury or death of two or more persons in any one occurrence, and $50,000.00 because of injury to or destruction of property in any one occurrence, for incidents occurring on or after January 1, 2008.

(b) The sovereign immunity of local government entities for a loss arising out of claims for the negligent use of a covered motor vehicle is waived only to the extent and in the manner provided in this chapter and only with respect to actions brought in the courts of this state. This chapter shall not be construed to affect any claim or cause of action otherwise permitted by law and for which the defense of sovereign immunity is not available.

(c) Local government entities shall have no liability for losses resulting from conduct on any part of local government officers or employees which was not within the scope of their official duties or employment.

(d) The waiver provided by this chapter shall be increased to the extent that:

(1) The governing body of the local governmental entity by resolution or ordinance voluntarily adopts a higher waiver;

(2) The local government entity becomes a member of an interlocal risk management agency created pursuant to Chapter 85 of this title to the extent that coverage obtained exceeds the amount of the waiver set forth in this Code section; or

(3) The local government entity purchases commercial liability insurance in an amount in excess of the waiver set forth in this Code section.

(e) Interest prior to judgment may be recovered pursuant to the "Unliquidated Damages Interest Act" as provided for in Code Section 51-12-14; however, any recovery of interest prior to judgment shall be included within the applicable aggregate amount per occurrence as set forth in this Code section.

History.

Code 1981, § 36-92-2, enacted by Ga. L. 2002, p. 579, § 3.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2002, a comma was added following "January 1, 2005" in paragraph (a)(1) and following "January 1, 2007" in paragraph (a)(2).

Law reviews.

For survey article on insurance law, see 60 Mercer L. Rev. 191 (2008).

For article, "What's the 'Use': Vehicle Maintenance Liability Barred by Sovereign Immunity Amendment Intended to Promote Waiver," see 69 Mercer L. Rev. 651 (2018).

For article with annual survey on insurance law, see 73 Mercer L. Rev. 119 (2021).

For article with annual survey on trial practice and procedure, see 73 Mercer L. Rev. 265 (2021).

For annual survey on local governments, see 74 Mercer L. Rev. 197 (2022).

For annual survey on insurance, see 74 Mercer L. Rev. 137 (2022).

JUDICIAL DECISIONS

Notice to county sheriff. — Trial court erred in denying the defendants' motion to dismiss on the ground that the plaintiff's claim against the sheriff was barred by the plaintiff's failure to provide the Sheriff's Office with notice of such claim under O.C.G.A. § 36-11-1 because the plaintiff was legally precluded from even naming the county as the proper defendant, and given that § 36-11-1 did not mandate otherwise, presentment of a claim for which the sheriff can be held vicariously liable must be directed to the sheriff. Moats v. Mendez, 349 Ga. App. 811, 824 S.E.2d 808, 2019 Ga. App. LEXIS 196 (2019), cert. denied, 310 Ga. 114, 852 S.E.2d 816, 2020 Ga. LEXIS 810 (2020), overruled in part, Collington v. Clayton County, 318 Ga. 29, 897 S.E.2d 361, 2024 Ga. LEXIS 13 (2024), overruled in part as stated in Chavez v. Hill, 372 Ga. App. 560, 905 S.E.2d 322, 2024 Ga. App. LEXIS 328 (2024).

Sovereign immunity not waived. — In an action arising out of an arrest, despite the way the arrestee was treated, the trial court properly dismissed a complaint against a county, and granted summary judgment on the same complaint against a city, on sovereign immunity grounds since the arrestee failed to show that the immunity had been waived. Scott

v. City of Valdosta, 280 Ga. App. 481, 634 S.E.2d 472, 2006 Ga. App. LEXIS 877 (2006).

Trial court erred in denying a county's motion for summary judgment in a driver's action alleging that the county was negligent for failing to maintain and repair a roadway or failing to warn of a known hazard because there was no evidence that the county waived the county's sovereign immunity under O.C.G.A. § 36-92-2, and there was no evidence that a county vehicle caused the hole in the roadway; the plaintiff, not the defendants, has the burden of establishing that a county has waived sovereign immunity by purchasing liability insurance protection covering the plaintiff's claim. Effingham County v. Rhodes, 307 Ga. App. 504, 705 S.E.2d 856, 2010 Ga. App. LEXIS 1149 (2010).

Trial court erred in denying a county and a county commissioner summary judgment in a driver's action alleging that the county and the commissioner were negligent for failing to maintain and repair a roadway or failing to warn of a known hazard because a suit against the commissioner in the commissioner's official capacity was a claim against the county, and the commissioner could raise any defense available to the county, including sovereign immunity; the driver advanced no argument that an act of the General Assembly specifically waived the sovereign immunity protecting the commissioner. Effingham County v. Rhodes, 307 Ga. App. 504, 705 S.E.2d 856, 2010 Ga. App. LEXIS 1149 (2010).

Bus driver failed to show that the waiver of sovereign immunity under O.C.G.A. § 36-92-2(a) for the negligent use of motor vehicles applied to the driver's claims for wrongful discharge, false arrest, and malicious prosecution because the school district's alleged liability for those claims was not predicated upon the school district's negligent use of a motor vehicle. Bomia v. Ben Hill County Sch. Dist., 320 Ga. App. 423, 740 S.E.2d 185, 2013 Ga. App. LEXIS 205 (2013).

Court of appeals incorrectly ruled that the city's insurance policy increased the sovereign immunity waiver notwithstanding the immunity endorsements, which expressly precluded coverage when a sovereign immunity defense applied, as the insurance contract between the city and its insurer did not provide more than $700,000 of coverage for the plaintiffs' claims because, while the statutory defenses of sovereign and governmental immunity were clearly not applicable to losses from the plaintiffs' claims up to $700,000, pursuant to the endorsements, the insurance that the city purchased did not cover claims for damages to which the defenses of sovereign and governmental immunity did apply. Atlantic Specialty Ins. Co. v. City of College Park, 313 Ga. 294, 869 S.E.2d 492, 2022 Ga. LEXIS 22 (2022).

Defendant officer's use of a police vehicle to kill the decedent was not a use of a covered motor vehicle and, therefore, defendant city did not waive its sovereign immunity, because the record contained explicit testimony that defendant officer made a deliberate decision to use the vehicle to strike the decedent to protect the general public. Upshaw v. Columbus Consolidated Government, 369 Ga. App. 524, 894 S.E.2d 75, 2023 Ga. App. LEXIS 493 (2023).

Trial court did not err by granting the county and its sheriff summary judgment in the arrestee's lawsuit for false arrest and false imprisonment based on sovereign immunity because the allegations did not amount to the negligent use of a covered motor vehicle so as to give rise to a waiver of sovereign immunity under O.C.G.A. § 36-92-2. The arrestee alleged that the officer intentionally used a vehicle to detain and transport the arrestee as part of her alleged false arrest and imprisonment. Hooks v. Rockdale County, 373 Ga. App. 48, 907 S.E.2d 342, 2024 Ga. App. LEXIS 385 (2024).

Although appellant agreed to furnish an ambulance to another county, the other county did not transfer the right to possession and use of its ambulance to defendant and, therefore, defendant did not lease the ambulance owned by the other county, and the ambulance was not a "covered" motor vehicle for which defendant waived sovereign immunity. Montgomery County v. Rountree, 374 Ga.

App. 551, 913 S.E.2d 415, 2025 Ga. App. LEXIS 89 (2025).

Waiver of immunity. — When a local entity purchases automobile liability insurance in an amount greater than the prescribed limits set forth for a waiver of sovereign immunity under O.C.G.A. § 36-92-1 et seq., the entity waives sovereign immunity to the extent of the entity's insurance coverage as required by O.C.G.A. § 33-24-51(b), and the broad definition of "any motor vehicle" set forth in § 33-24-51 applies. Therefore, in a wrongful death and survivor case, a county waived sovereign immunity to the extent of the county's insurance coverage as required by § 33-24-51(b), and the Georgia legislature did not intend to apply a narrow definition of motor vehicle under O.C.G.A. § 36-92-1 when the case involved an injury caused by a bush hog and a tractor. Gates v. Glass, 291 Ga. 350, 729 S.E.2d 361, 2012 Ga. LEXIS 647 (2012).

Use of a motor vehicle as provided in O.C.G.A. §§ 33-24-51(b) and 36-92-2 was not limited by the terms actively in use as a vehicle and loading a person into and restraining a person in a patrol car constituted a use of a patrol car as to which sovereign immunity was waived under O.C.G.A. §§ 33-24-51(b) and 36-92-2. McBrayer v. Scarbrough, 317 Ga. 387, 893 S.E.2d 660, 2023 Ga. LEXIS 221 (2023).

By reading into O.C.G.A. §§ 33-24-51(b) and 36-92-2(a) the terms actively and as a vehicle, the Georgia Court of Appeals altered the plain meaning of "use" and restricted the scope of the local government's waiver of sovereign immunity; thus, the Georgia Supreme Court overruled that court's precedent construing use of a motor vehicle in O.C.G.A. § 33-24-51(b) and O.C.G.A. § 36-92-2(a) as being limited to the active use of the motor vehicle as a vehicle. McBrayer v. Scarbrough, 317 Ga. 387, 893 S.E.2d 660, 2023 Ga. LEXIS 221 (2023).

School district waived immunity to extent of insurance covering school bus accident. — In a parent's action against a school district for the death of the parent's child as the child tried to board a school bus, although the district had sovereign immunity, the district waived sovereign immunity to the extent of the district's purchase of liability insurance pursuant to O.C.G.A. § 33-24-51(b); the exclusion from the waiver of sovereign immunity for school districts in O.C.G.A. § 36-92-2(a) did not extend to the second sentence of § 33-24-51(b). Tift County Sch. Dist. v. Martinez, 331 Ga. App. 423, 771 S.E.2d 117, 2015 Ga. App. LEXIS 175 (2015), cert. denied, No. S15C1084, 2015 Ga. LEXIS 458 (Ga. June 15, 2015).

Negligent use of a city or county owned motor vehicle. — In a wrongful death action by a decedent's estate and the decedent's children against the county sheriff, the sheriff's sovereign immunity was waived pursuant to O.C.G.A. § 36-92-2(a) because the claim of reckless disregard for proper law enforcement procedures in pursuing a fleeing suspect came within the ambit of a claim for negligent use of a city or county owned motor vehicle. Strength v. Lovett, 311 Ga. App. 35, 714 S.E.2d 723, 2011 Ga. App. LEXIS 688 (2011), cert. denied, No. S11C1794, 2011 Ga. LEXIS 979 (Ga. Nov. 30, 2011).

Purchase of general liability insurance policy waived immunity for injuries from tar machine. — In a worker's suit alleging negligence on the part of a county with regard to the county allegedly failing to properly instruct and supervise the worker in the use of a portable tar kettle machine, the trial court erred by granting the county's motion for a judgment on the pleadings based on sovereign immunity as the worker sufficiently alleged that the machine was a vehicle as contemplated by O.C.G.A. § 33-24-51, which established a waiver of sovereign immunity if the county purchased liability insurance to cover damages and injuries arising from the use of motor vehicles under the county's management. Hewell v. Walton County, 292 Ga. App. 510, 664 S.E.2d 875, 2008 Ga. App. LEXIS 806 (2008).

Injured driver could establish extent of damages caused by collision. — Driver's employer's uninsured motorist (UM) coverage was available to the driver because the policy

promised to pay sums the driver was "legally entitled to recover" from a UM, even though the driver had collided with a county vehicle and the county's partial sovereign immunity prevented the driver from establishing in a lawsuit that the driver was legally entitled to recover the full amount of the driver's damages from the county. FCCI Ins. Co. v. McLendon Enters., 297 Ga. 136, 772 S.E.2d 651, 2015 Ga. LEXIS 308 (2015).

Claim against sheriff's deputy barred. — Trial court erred in denying the defendants' motion to dismiss the deputy on the ground that the plaintiff's tort claim was barred by O.C.G.A. § 36-92-3(a) because the deputy was not a governmental entity; rather, the deputy was an employee of the county sheriff's department, was on duty, and was driving a county-owned patrol vehicle when the accident that injured the plaintiff occurred; thus, the deputy was not subject to liability for the accident and the claims against the deputy were barred. Moats v. Mendez, 349 Ga. App. 811, 824 S.E.2d 808, 2019 Ga. App. LEXIS 196 (2019), cert. denied, 310 Ga. 114, 852 S.E.2d 816, 2020 Ga. LEXIS 810 (2020), overruled in part, Collington v. Clayton County, 318 Ga. 29, 897 S.E.2d 361, 2024 Ga. LEXIS 13 (2024), overruled in part as stated in Chavez v. Hill, 372 Ga. App. 560, 905 S.E.2d 322, 2024 Ga. App. LEXIS 328 (2024).

36-92-3. No employee liability; parties to litigation; evidence; bar to further recovery.

(a) Any local government officer or employee who commits a tort involving the use of a covered motor vehicle while in the performance of his or her official duties is not subject to lawsuit or liability therefor. Nothing in this chapter, however, shall be construed to give the local government officer or employee immunity from suit and liability if it is proved that the local government officer's or employee's conduct was not within the performance of his or her official duties.

(b) A person bringing an action against a local government entity under the provisions of this chapter shall name as a party defendant the local government entity for which the officer or employee was acting and shall not name the local government officer or employee individually. In the event that the local government officer or employee is individually named for an act for which the local government entity is liable under this chapter, the local government entity for which the local government officer or employee was acting shall be substituted as the party defendant.

(c) For the purpose of presenting evidence at the trial of a case brought under the waiver provisions of this chapter, a plaintiff calling as a witness the present or former local government officer or employee whose alleged tort forms the basis of the claim against the local government entity defendant shall be allowed to subject such witness to cross-examination.

(d) Subject to the provisions contained in Code Sections 51-1-32 through 51-1-34, a settlement or judgment in an action or settlement on a claim brought pursuant to this chapter constitutes a complete bar to any further action by the claimant against a local government officer or

employee or the local government entity by reason of the same occurrence.

(e) This chapter shall not waive the workers' compensation exclusive remedy when local government officers or employees are injured on the job.

History.

Code 1981, § 36-92-3, enacted by Ga. L. 2002, p. 579, § 3.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2002, in subsection (d), a comma was added following "51-1-34" and a comma was deleted following "or employee".

JUDICIAL DECISIONS

Construction. — General Assembly in O.C.G.A. § 36-92-3 does not eliminate the ability of a plaintiff to recover for his or her injuries but simply shifts the responsibility to pay damages in certain situations from the individual employee to the local government entity, which comports with the General Assembly's general authority to modify common law rights of action. DeLoach v. Elliott, 289 Ga. 319, 710 S.E.2d 763, 2011 Ga. LEXIS 381 (2011).

Claim against police officer barred. — Trial court did not err in granting a police officer summary judgment in the officer's individual capacity on the ground that the officer was protected from suit under O.C.G.A. § 36-92-3(a) because a driver brought a claim against the officer and a city pursuant to § 36-92-3, and the trial court granted summary judgment to the city; because the driver did not enumerate that decision, it was final and, pursuant to § 36-92-3(d), provided a "complete bar" to any future suit brought by the driver against the city or the employee and involving the tortious act at issue in the case. DeLoach v. Elliott, 289 Ga. 319, 710 S.E.2d 763, 2011 Ga. LEXIS 381 (2011).

Trial court properly concluded that O.C.G.A. § 36-92-3 barred the driver and the driver's spouse from recovering against the officer in the officer's official capacity and, thus, properly dismissed the officer from the case. Ray v. City of Griffin, 318 Ga. App. 426, 736 S.E.2d 110, 2012 Ga. App. LEXIS 931 (2012), cert. denied, No. S13C0455, 2013 Ga. LEXIS 388 (Ga. Apr. 29, 2013).

Claim against sheriff's deputy barred. — Summary judgment was properly granted to the deputy as the deputy was not subject to liability for the automobile accident, and the plaintiff's claims against the deputy were barred because the term "local government entity" included sheriffs' offices; any local government officer or employee who committed a tort involving the use of a covered motor vehicle while in the performance of the employee's official duties was not subject to lawsuit or liability; and the deputy was employed as a county sheriff's deputy and the deputy was driving a county-owned vehicle en route to the sheriff's office's evidence room where the deputy worked as an evidence custodian when the accident with the plaintiff occurred. Davis v. Morrison, 344 Ga. App. 527, 810 S.E.2d 649, 2018 Ga. App. LEXIS 60 (2018), overruled in part, Collington v. Clayton County, 318 Ga. 29, 897 S.E.2d 361, 2024 Ga. LEXIS 13 (2024), overruled in part as stated in Chavez v. Hill, 372 Ga. App. 560, 905 S.E.2d 322, 2024 Ga. App. LEXIS 328 (2024).

Trial court erred in denying the defendants' motion to dismiss the deputy on the ground that the plaintiff's tort claim was barred by O.C.G.A. § 36-92-3(a) because the deputy was not a governmental entity; rather, the deputy was an employee of the county sheriff's department, was on duty, and was driving a county-owned patrol

vehicle when the accident that injured the plaintiff occurred; thus, the deputy was not subject to liability for the accident and the claims against the deputy were barred. Moats v. Mendez, 349 Ga. App. 811, 824 S.E.2d 808, 2019 Ga. App. LEXIS 196 (2019), cert. denied, 310 Ga. 114, 852 S.E.2d 816, 2020 Ga. LEXIS 810 (2020), overruled in part, Collington v. Clayton County, 318 Ga. 29, 897 S.E.2d 361, 2024 Ga. LEXIS 13 (2024), overruled in part as stated in Chavez v. Hill, 372 Ga. App. 560, 905 S.E.2d 322, 2024 Ga. App. LEXIS 328 (2024).

Construction with O.C.G.A. § 50-21-25. — Due to the nearly identical language between O.C.G.A. §§ 36-92-3 and 50-21-25, the General Assembly intended to provide immunity for municipal employees in the context of torts involving a covered motor vehicle, which is comparable to the immunity granted to state employees in the context of all torts, as long as the pertinent conditions have been satisfied; thus, by the passage of O.C.G.A. § 36-92-3, the legislature intended to foreclose all recovery against municipal employees for torts committed within the scope of employment and involving the use of a covered motor vehicle. DeLoach v. Elliott, 289 Ga. 319, 710 S.E.2d 763, 2011 Ga. LEXIS 381 (2011).

Government entity substituted as party. — Intent of O.C.G.A. § 36-92-3(b) is that the government entity should be substituted as a party to a suit whenever one of the entity's employees has committed "an act for which the local government entity is liable under this chapter;" the selected phrase is merely a description of when the government entity should replace the employee because if the government entity would not be liable under O.C.G.A. § 36-92-1 et seq., as when the employee committed the tort using an uncovered motor vehicle, then the government entity is not "liable under this chapter" and need not be substituted. DeLoach v. Elliott, 289 Ga. 319, 710 S.E.2d 763, 2011 Ga. LEXIS 381 (2011).

Employee acting within scope of employment. — Driver's argument that a city employee was acting outside the scope of employment at the time of an accident was without merit because the employee's act of crossing a private shopping center before pulling onto the road was not unlawful under O.C.G.A. § 40-6-20(e) (disregard of a traffic signal) or O.C.G.A. § 16-7-21(b)(1) (criminal trespass); the employee was, therefore, immune from suit and liability based on O.C.G.A. § 36-92-3. Guice v. Brown, 334 Ga. App. 199, 778 S.E.2d 823, 2015 Ga. App. LEXIS 601 (2015).

Employee acting outside scope of employment by negligent driving of county vehicle. — Given the couple's assertion that the county worker acted outside the scope of employment by driving a county vehicle negligently, the trial court erred in concluding, based solely on allegations of the complaint, that the county worker was entitled to immunity under O.C.G.A. § 36-92-3(a) and, therefore, the county worker was not entitled to dismissal of the claims. Thomas v. Henry County Water Auth., 367 Ga. App. 469, 886 S.E.2d 857, 2023 Ga. App. LEXIS 168 (2023).

36-92-4. Regulation of settlement of actions against local government entities; exclusion of punitive and exemplary damages; rules of disclosure of documents; recovery against local governments; jurisdiction.

(a) Local government entities may provide for the payment of claims, settlements and judgments, and their associated costs through any method including, but not limited to, self-insurance, use of a fund within the local government's budget for the payment of claims, the purchase of liability insurance, participation in an interlocal risk management agency organized pursuant to Chapter 85 of Title 36, or a combination thereof.

(b) No award for damages under this chapter shall include punitive or exemplary damages.

(c) Notwithstanding any law to the contrary, any document or information which pertains to the requesting or giving of legal advice or the disclosure of reports or evaluations of persons, including adjusters, assigned to evaluate and adjust claims concerning or pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against a local government entity under this chapter shall be considered privileged and confidential and shall not be subject to disclosure until final disposition of a claim. Notwithstanding the provisions of this subsection, upon filing a lawsuit pursuant to this chapter, Chapter 11 of Title 9 and any other law applicable to cases in litigation shall apply.

(d) Nothing in this chapter shall be construed to authorize an execution or levy against any local government entity's property or funds. Execution or levy against a local government entity's property or funds is expressly prohibited. However, nothing in this Code section shall bar the pursuit of any other remedies that exist to enforce a judgment under state law.

(e) Where policies of insurance or contracts of indemnity have not been purchased or entered into by a local government entity for the purposes of paying claims and judgments under this chapter, the fiscal year aggregate liability of any local government entity under this chapter shall not exceed any self-insurance or other reserve or fund established to pay claims arising out of this chapter. Where policies of insurance or contracts of indemnity have been purchased or entered into and the local government entity also self-insures or establishes another reserve or fund to pay claims arising out of this chapter, the fiscal year aggregate liability of any local government entity under this chapter shall not exceed such entity's policies of insurance or contracts of indemnity and the amount of any self-insurance or other reserve or fund established to pay claims arising out of this chapter. Any judgment obtained in excess of this limitation on annual aggregate liability shall not be void. Such excess judgments shall be paid by the local government entity no later than six months from the end of the local government entity's fiscal year in which the final judgment was entered. If there are multiple judgments, the judgments shall be paid in the order in which each final judgment was entered by the court following any appeals.

(f) The existence or amount of the waiver of immunity specified in Code Section 36-92-2 shall not be disclosed or suggested to the jury.

(g) As a condition of the waiver of sovereign immunity authorized by this chapter, all tort actions filed against a local government entity under this chapter, including any action filed against a local govern-

ment entity as a joint tort-feasor, shall be brought in the state or superior court of the county wherein the local government entity resides.

History.
Code 1981, § 36-92-4, enacted by Ga. L. 2002, p. 579, § 3; Ga. L. 2012, p. 775, § 36/HB 942.

36-92-5. Applicability.

This chapter shall apply to all claims and causes of actions arising out of events occurring on or after January 1, 2005.

History.
Code 1981, § 36-92-5, enacted by Ga. L. 2002, p. 579, § 3.

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