

House Bill 2 (AS PASSED HOUSE AND SENATE)

By: Representative Holt of the 112th

A BILL TO BE ENTITLED
AN ACT

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

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

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

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

24 **SECTION 2.**

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

"ARTICLE 7

36-36-110.

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

36-36-111.

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

36-36-112.

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

36-36-113.

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

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

(2) Proposed increase in density; and

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

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

(c) The objection provided for in subsection (a) of this Code section shall document the nature of the objection specifically providing evidence of any financial impact forming the basis of the objection and shall be delivered to the municipal governing authority by certified mail or statutory overnight delivery to be received not later than the end of the

thirtieth calendar day following receipt of the notice provided for in Code Section 36-36-111.

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

(1) Result in:

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

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

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

36-36-114.

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

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

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

1 the county officials pool; the county shall be permitted to strike or excuse two of the names
2 chosen from the municipal officials pool; and the county and municipal corporation shall
3 each be permitted to strike or excuse one of the names chosen from the academic pool.

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

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

16 36-36-115.

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

31 (2) In arriving at its determination, the panel shall consider:

32 (A) The existing comprehensive land use plans of both the county and city;

33 (B) The existing land use patterns in the area of the subject property;

34 (C) The existing zoning patterns in the area of the subject property;

35 (D) Each jurisdiction's provision of infrastructure to the area of the subject property;

1 (E) Whether the county has approved similar changes in intensity or allowable uses on
2 similar developments in other unincorporated areas of the county;

3 (F) Whether the county has approved similar developments in other unincorporated
4 areas of the county which have a similar impact on infrastructure as complained of by
5 the county in its objection; and

6 (G) Whether the infrastructure or capital outlay project which is claimed adversely
7 impacted by the county in its objection was funded by a county-wide tax.

8 (3) The county shall provide supporting evidence that its objection is consistent with its
9 land use plan and the pattern of existing land uses and zonings in the area of the subject
10 property.

11 (4) The county shall bear at least 75 percent of the cost of the arbitration. The panel shall
12 apportion the remaining 25 percent of the cost of the arbitration equitably between the
13 city and the county as the facts of the appeal warrant; provided, however, that if the panel
14 determines that any party has advanced a position that is substantially frivolous, the costs
15 shall be borne by the party that has advanced such position.

16 (5) The reasonable costs of participation in the arbitration process of the property owner
17 or owners whose property is at issue shall be borne by the county and the city in the same
18 proportion as costs are apportioned under paragraph (4) of this subsection.

19 (6) The panel shall deliver its findings and recommendations to the parties by certified
20 mail or statutory overnight delivery.

21 (b) If the decision of the panel contains zoning, land use, or density conditions, the
22 findings and recommendations of the panel shall be recorded in the deed records of the
23 county with a caption describing the name of the current owner of the property, recording
24 reference of the current owner's acquisition deed and a general description of the property,
25 and plainly showing the expiration date of any restrictions or conditions.

26 (c) The arbitration panel shall be dissolved on the tenth day after it renders its findings and
27 recommendations but may be reconvened as provided in Code Section 36-36-116.

28 (d) The members of the arbitration panel shall receive the same per diem, expenses, and
29 allowances for their service on the committee as is authorized by law for members of
30 interim legislative study committees.

31 (e) If the panel so agrees, any one or more additional annexation disputes which may arise
32 between the parties prior to the panel's initial meeting may be consolidated for the purpose
33 of judicial economy if there are similar issues of location or similar objections raised to
34 such other annexations or the property to be annexed in such other annexations is within
35 2,500 feet of the subject property.

1 36-36-116.

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

13 36-36-117.

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

25 36-36-118.

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

1 36-36-119.

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

11 **SECTION 3.**

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