

The Senate Committee on State and Local Governmental Operations - General offered the following substitute to HB 1166:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 30 of Title 36 of the Official Code of Georgia Annotated, relating to
2 general provisions regarding provisions applicable to municipal corporations only, so as to
3 provide for conclusive evidence of termination or continuation of certain municipal
4 corporations; to provide for a review commission for distressed municipalities; to provide
5 for investigation of distressed municipalities; to provide for reports by a review commission;
6 to provide for petition to appoint a receiver; to provide for certain hearings; to provide for
7 the appointment of a receiver; to provide for the qualifications, powers, and duties of the
8 receiver; to provide for certain restrictions on receivers; to provide for a recovery plan; to
9 provide for extensions to a recovery plan; to provide for automatic end of a receivership; to
10 provide for certain emergency assistance; to provide for a roster of certain entities and
11 individuals; to provide for a definition; to provide for related matters; to repeal conflicting
12 laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14

SECTION 1.

15 Chapter 30 of Title 36 of the Official Code of Georgia Annotated, relating to general
16 provisions regarding provisions applicable to municipal corporations only, is amended by
17 revising Code Section 36-30-7.1, relating to inactive municipalities, as follows:

18 "36-30-7.1.

19 (a) ~~On and after July 1, 1995, any~~ Any municipal corporation in this state shall be deemed
20 an inactive municipality and its charter shall be repealed by operation of law if the
21 municipal corporation fails to meet any of the minimum standards provided in subsection
22 (b) of this Code section for determining an active municipality.

23 (b) An active municipality is any incorporated municipality in this state the governing
24 body of which meets each of the following minimum standards:

25 (1) Provides at least three of the following services, either directly or by contract:

26 (A) Law enforcement;

27 (B) Fire protection (which may be furnished by a volunteer fire force) and fire safety;

28 (C) Road and street construction or maintenance;

29 (D) Solid waste management;

30 (E) Water supply or distribution or both;

31 (F) Waste-water treatment;

32 (G) Storm-water collection and disposal;

33 (H) Electric or gas utility services;

34 (I) Enforcement of building, housing, plumbing, and electrical codes and other similar
35 codes;

36 (J) Planning and zoning; and

37 (K) Recreational facilities;

38 (2) Holds at least six regular, monthly or bimonthly, officially recorded public meetings
39 within the 12 months next preceding the execution of the certificate required by
40 subsection (c) of this Code section; and

41 (3) Qualifies for and holds a regular municipal election as provided by law, other than
42 a municipality which has a governing authority ~~comprised~~ composed of commissioners
43 or other members who are appointed by a judge of the superior court.

44 ~~(c) Not later than July 1, 1994, each municipal corporation in this state shall file with the~~
45 ~~Department of Community Affairs either:~~

46 ~~(1) A certification from the governing authority that the municipal corporation meets the~~
47 ~~minimum standards for determining an active municipality enumerated in subsection (b)~~
48 ~~of this Code section; or~~

49 ~~(2) A certification from the governing authority that the municipal corporation does not~~
50 ~~meet the minimum standards for determining an active municipality enumerated in~~
51 ~~subsection (b) of this Code section, including a statement that the governing authority~~
52 ~~recognizes that its legal existence will under the provisions of this Code section be~~
53 ~~terminated as of July 1, 1995.~~

54 ~~(d) After October 15, 1994, the Department of Community Affairs shall transmit to the~~
55 ~~governing authority of each municipal corporation in the state either:~~

56 ~~(1) A statement confirming that the Department of Community Affairs has received from~~
57 ~~the municipal corporation the filing required by subsection (c) of this Code section,~~
58 ~~including a statement of which type of filing was received from that municipal~~
59 ~~corporation; or~~

60 ~~(2) A statement that the Department of Community Affairs has not received from the~~
61 ~~municipal corporation the filing required by subsection (c) of this Code section, including~~
62 ~~a statement that the municipal corporation's legal existence will be terminated as of July~~
63 ~~1, 1995, unless such filing is received by December 31, 1994.~~

64 ~~(e) A municipal corporation which does not timely make the filing required by subsection~~
65 ~~(c) of this Code section shall have a grace period until December 31, 1994, to make such~~
66 ~~filing. However, if such filing is not made by December 31, 1994, the legal status of the~~
67 ~~municipal corporation shall be the same as that of a municipal corporation which does not~~

68 ~~meet the minimum standards for determining an active municipality enumerated in~~
69 ~~subsection (b) of this Code section; and such municipal corporation shall cease to have~~
70 ~~legal existence as of July 1, 1995.~~

71 ~~(f) As quickly as practicable after December 31, 1994, the Department of Community~~
72 ~~Affairs shall compile a listing of all municipal corporations in this state indicating those~~
73 ~~whose legal existence will be terminated as of July 1, 1995, and those whose legal~~
74 ~~existence will not be so terminated.~~

75 ~~(c)~~ A certified copy of such listing shall be the listing of all municipal corporations whose
76 existence was terminated as of July 1, 1995, or whose legal existence had not been
77 terminated on such date, which had been provided to the Secretary of State and shall be
78 conclusive evidence, acceptable in any court and recordable in any public records, of the
79 termination or continuation of existence of a municipal corporation. ~~The Secretary of State~~
80 ~~shall transmit such a certified copy of the listing to the legislative counsel for publication~~
81 ~~in the Georgia Laws for the year 1995, and all~~ All courts of this state may take judicial
82 notice of the listing so published.

83 ~~(g)~~(d) Upon the termination of existence of a municipal corporation as provided for in this
84 Code section, the existence of any local authority created by or for such municipal
85 corporation shall likewise terminate on the same date. Upon the termination of any
86 municipal corporation or local authority under this Code section, all assets, property, and
87 legal rights and obligations of the municipal corporation or local authority shall devolve
88 by operation of law upon the governing authority of the county in which the legal situs of
89 the municipal corporation or local authority was located; provided, however, that this
90 devolution of rights and obligations shall in no manner obligate the county to provide
91 continued employment for any employee of the abolished municipal corporation or local
92 authority. In the case of legal indebtedness of a municipal corporation or local authority
93 devolving upon a county under this Code section, the county shall be authorized but not
94 required to levy a special district tax, fee, or assessment within the formerly incorporated

95 territory (or a portion thereof corresponding to any special district for which the
96 indebtedness was incurred) for the purpose of retiring all or a portion of such indebtedness.
97 Assets devolved to the county governing authority pursuant to this Code section which are
98 deemed to be excess by the county shall be used to retire any indebtedness of the
99 terminated municipal corporation or local authority. Property devolved to the county
100 governing authority pursuant to this Code section which is deemed to be unnecessary by
101 the county shall be sold and the proceeds from such sale used to retire any indebtedness of
102 the terminated municipal corporation or local authority.

103 ~~(f)~~(e)(1) Upon the termination of existence of a municipal corporation as provided in this
104 Code section, the geographic area that was contained in the boundaries of the former
105 municipal corporation may continue to be identified under the same name and style as the
106 former municipal corporation, and for such purpose signs and other appropriate insignia
107 may be erected for such identification.

108 (2) The Department of Community Affairs shall establish a designation of 'historic
109 township' for communities created on or before 1900, provide for the establishment of
110 unincorporated town councils, provide a procedure for converting such municipalities to
111 townships, and for registration of such.

112 ~~(i) At the session of the General Assembly held in the year 1996 only, a new charter may~~
113 ~~be granted to a municipal corporation which ceased to exist under the provisions of this~~
114 ~~Code section solely because of a failure to make the required filing with the Department~~
115 ~~of Community Affairs (not including any case where the municipal corporation failed to~~
116 ~~meet the minimum standards of an active municipality enumerated in subsection (b) of this~~
117 ~~Code section), without regard to the minimum standards for incorporation set out in~~
118 ~~Chapter 31 of this title. In such a case the local law granting the new charter shall have~~
119 ~~attached thereto, in lieu of the certificate otherwise required by Code Section 36-31-5, a~~
120 ~~certificate by the author of the bill stating that the requirements of this subsection are met~~
121 ~~by the municipal corporation being reincorporated. In any such case assets and property~~

122 ~~and rights and obligations which devolved upon the county shall be retransferred from the~~
 123 ~~county back to the municipal corporation.~~

124 (j)(f) In any case in which the legal dissolution of a municipal corporation has not been
 125 certified under the provisions of subsection (f) (c) of this Code section but the municipal
 126 corporation does not in fact meet the minimum standards for determining an active
 127 municipality enumerated in subsection (b) of this Code section, any citizen of the
 128 municipal corporation or the county in which the legal situs of the municipal corporation
 129 is located may bring at any time ~~on or after July 1, 1995~~, a declaratory judgment action for
 130 a declaration of the dissolution of the municipal corporation. Any such action shall be
 131 brought in the superior court of the county wherein the legal situs of the municipal
 132 corporation is located. If a judgment is entered declaring the dissolution of the municipal
 133 corporation, the court shall file a certified copy of the judgment with the Secretary of State
 134 and the legislative counsel. A copy of such judgment shall be published in the next
 135 publication of the annual session laws with the same status and effect provided for in
 136 subsection (f) (c) of this Code section; and a certified copy of the judgment from the court
 137 or the Secretary of State shall have the same status and effect as described in subsection (f)
 138 (c) of this Code section."

139

SECTION 2.

140 Said chapter is further amended by adding a new Code section to read as follows:

141 "36-30-7.2.

142 (a) As used in this Code section, the term 'distressed municipality' means any municipal
 143 corporation in this state, or an authority controlled directly or indirectly by such municipal
 144 corporation, which failed to meet any one of the minimum standards specified for an active
 145 municipality pursuant to subsection (b) of Code Section 36-30-7.1 or has met at least two
 146 of the following criteria:

- 147 (1) The municipality has failed to comply with the requirements of Code Section 36-81-7
148 for two consecutive years;
- 149 (2) The municipality has failed to prepare and approve an annual budget for two
150 consecutive fiscal years pursuant to Code Section 36-81-5;
- 151 (3) The municipality has failed to make required payments to judgment creditors for 90
152 days beyond the date of the recording of the judgment;
- 153 (4) The municipality has contracted for one or more of the services listed in
154 subsection (1) of paragraph (b) of Code Section 36-30-7.1, owes the contractor or other
155 governing authority payments in excess of 12 months of contracted service price, and has
156 failed to reach a written agreement or judicial disposition with such contractor or
157 governing authority on repayment of such outstanding balance;
- 158 (5) The municipality's incurred debt exceeds the limits allowed by Article IX, Section V,
159 Paragraph I of the Georgia Constitution;
- 160 (6) The municipality has defaulted in payment of principal or interest on any of its bonds
161 or notes or in payment of rentals due any authority;
- 162 (7) The municipality has been unable to pay employees for 30 days;
- 163 (8) The municipality has failed to forward taxes withheld on the income of employees
164 or has failed to transfer employer or employee contributions for social security for a
165 period of at least 30 days; or
- 166 (9) The municipality has accumulated and operated a deficit equal to 5 percent or more
167 of its revenues for two consecutive fiscal years without adequate cash reserves.
- 168 (b)(1) The Governor shall appoint a review commission upon written request from the
169 majority of the Senators and Representatives whose districts include all or a portion of
170 the geographical area of a municipal corporation alleging that the municipal corporation
171 is a distressed municipality. Such request shall include the specific reasons for alleging
172 such municipal corporation is a distressed municipality. The review commission shall
173 be composed of the commissioner of community affairs and two municipal officials who

174 are not located within the same county or counties as the alleged distressed municipality.
175 The members of the review commission shall receive no compensation for their services,
176 but shall be reimbursed for any expenses incurred in connection with the investigation.
177 The funds necessary to conduct the investigation shall come from funds appropriated to
178 the executive branch of government.

179 (2)(A) The review commission shall make a written report of its findings to the
180 Governor within 14 days of appointment; provided, however, that the Governor may
181 grant a review commission additional time to report. If the review commission finds
182 that the municipal corporation is a distressed municipality, then the Governor shall
183 review such findings and may direct the Attorney General to file a petition in the
184 superior court of the judicial circuit of the alleged distressed municipality. Such
185 petition shall name an individual to be appointed, and the superior court shall have no
186 authority to appoint anyone other than the individual named in the petition.

187 (B)(i) The receiver shall have a minimum of five years of experience in local legal,
188 management, or budgetary matters and be a resident of this state. The receiver's
189 compensation and reimbursement for actual and necessary expenses shall be paid by
190 this state and compensation shall be established by the Attorney General; provided,
191 however, that the Attorney General may seek and shall be entitled to reimbursement
192 of any such expenses from the distressed municipality within five years of the end of
193 the receivership.

194 (ii) A receiver appointed pursuant to this subsection shall not seek or hold a position
195 as an elected or appointed public official within this state or as a political party officer
196 during the term of the receivership and within one year of the receivership ending.
197 The receiver shall also not receive any compensation, fee, or commission from the
198 distressed municipality, or receive any fee or commission from the sale or lease of
199 property or other financial transaction involving the distressed municipality.

200 (iii) A receiver shall not be personally liable for any obligations of the distressed
201 municipality and shall enjoy sovereign immunity and official immunity and remain
202 immune from any suit except as the General Assembly shall waive such immunities.

203 (C) The Attorney General shall serve the petition appointing a receiver upon the
204 governing body of the distressed municipality and the chief executive officer of the
205 distressed municipality. Additionally, the Attorney General shall publish notice of the
206 filing of the petition in the legal organ of the county which is the legal situs of the
207 municipality or in a newspaper having a general circulation in such county at least
208 equal to that of the legal organ at least seven days before any hearing on such petition.

209 (c) The superior court shall conduct a hearing on the petition within 30 days of the
210 Attorney General filing such petition. The court shall issue an order on the petition within
211 60 days of the filing of the petition, laying out findings of fact and a determination of
212 whether a municipal corporation is a distressed municipality.

213 (d) If the superior court grants the petition and finds that the municipal corporation is a
214 distressed municipality, such court's order shall:

215 (1) Set forth findings;

216 (2) Declare the distressed municipality to be in receivership;

217 (3) Appoint a receiver for a period not to exceed two years; provided, however, the
218 Attorney General may request additional two-year extensions if further implementation
219 of a recovery plan is necessary to bring the municipality out of distress; and

220 (4) Direct the receiver to develop a recovery plan pursuant to subsection (e) of this Code
221 section within 30 days and submit such plan to the court, the Attorney General, the
222 governing body of the distressed municipality, and if applicable, the chief executive
223 officer of the distressed municipality.

224 (e)(1) The recovery plan developed by the receiver shall include:

225 (A) The continued provision of vital and necessary services;

- 226 (B) Payment of the financial obligations of the distressed municipality, including, but
227 not limited to, debt obligations, municipal securities, lease rental obligation, legal
228 obligations, and consensual modifications of existing obligations; and
229 (C) Timely deposit of required payments to the pension fund in which the distressed
230 municipality participates.
- 231 (2) The recovery plan may provide for:
- 232 (A) The sale, lease, conveyance, assignment, or other use or disposition of the assets
233 of the distressed municipality or authority;
- 234 (B) The approval, modification, rejection, renegotiation, or termination of contracts or
235 agreement of the distressed municipality, except to the extent prohibited by the
236 Constitutions of Georgia and of the United States;
- 237 (C) The execution of new contracts or agreements; and
238 (D) Other information the receiver deems appropriate.
- 239 (3) The recovery plan shall not and the receiver shall not be authorized to:
- 240 (A) Unilaterally adopt any form of taxation beyond what is authorized by law or the
241 Constitution of Georgia;
- 242 (B) Unilaterally abrogate, alter, or otherwise interfere with a lien, charge, covenant, or
243 relative priority that is held by a holder of a debt obligation of the distressed
244 municipality and granted by contract, law, rule, or regulation governing debt
245 obligations;
- 246 (C) Unilaterally impair or modify existing bonds, notes, municipal securities, or other
247 lawful contractual or legal obligations of the distressed municipality; or
248 (D) Authorize the use of the proceeds of the sale, lease, conveyance, assignment, or
249 other use or disposition of the assets of the distressed municipality without first
250 applying such proceeds to the payment of outstanding debt obligations owed by the
251 distressed municipality, subject to any lien, charge, covenant, restriction, contract, law,
252 rule, or regulation that encumbers or is otherwise applicable to the assets.

253 (f)(1) The court shall conduct a hearing on the recovery plan within 30 days of receiving
254 such plan from the receiver. The court shall confirm the recovery plan within 60 days of
255 receipt of such plan unless it finds by clear and convincing evidence that the plan is
256 arbitrary, capricious, or wholly inadequate to alleviate the fiscal emergency in the
257 distressed municipality.

258 (2) The receiver shall notify the court of any modification to the recovery plan. The
259 court may conduct a hearing on the modification plan within 30 days of receiving such
260 plan. The court shall confirm the modification of the recovery plan within 60 days of
261 receiving such plan unless it finds by clear and convincing evidence that the plan is
262 arbitrary, capricious, or wholly inadequate to alleviate the fiscal emergency in the
263 distressed municipality.

264 (g) Notwithstanding any other provision of law to the contrary, the receiver shall have the
265 following powers and duties:

266 (1) To require the distressed municipality or authority to take actions necessary to
267 implement the recovery plan;

268 (2) To modify the recovery plan as necessary to achieve the financial stability of the
269 distressed municipality;

270 (3) To require the distressed municipality to negotiate intergovernmental agreements
271 between itself and another political subdivision of this state to eliminate and avoid
272 deficits, maintain sound budgetary practices, and avoid interruption of municipal
273 services;

274 (4) To submit quarterly reports to the governing body and, if applicable, the chief
275 executive officer of the distressed municipality and to the Attorney General. Such reports
276 shall be posted on a publicly accessible website maintained by the distressed
277 municipality;

278 (5) To require the distressed municipality to cause the sale, lease, conveyance,
279 assignment, or other use or disposition of the distressed municipality's assets;

- 280 (6) To approve, disapprove, modify, reject, terminate, or renegotiate contracts and
281 agreements with the distressed municipality except to the extent prohibited by the
282 Constitutions of Georgia and of the United States;
- 283 (7) To direct the distressed municipality to take any other action to implement the
284 recovery plan;
- 285 (8) To attend open and closed meetings of the governing body of the distressed
286 municipality and make reports to the public on implementation of such plan;
- 287 (9) To employ financial or legal experts deemed necessary to develop and implement the
288 recovery plan; provided, however, that notwithstanding any law to the contrary, the
289 employment of such experts shall not be subject to any contractual competitive bidding
290 procedures;
- 291 (10) To make a recommendation to the Attorney General that the municipality be
292 disincorporated; and
- 293 (11) To make a recommendation to the Attorney General and the court that the
294 municipality be removed from receivership.
- 295 (h)(1) A receiver appointed pursuant to this Code section shall have the power to issue
296 orders to elected or appointed officials of the distressed municipality to implement any
297 provision of the recovery plan and to refrain from taking any action which would
298 interfere with the powers granted to the receiver or the goals of the recovery plan. Any
299 such order shall be enforceable by bringing an action pursuant to Article 2 of Chapter 6
300 of Title 9; provided, however, that the court shall grant or deny the relief from such action
301 within 14 days of the filing of any such action.
- 302 (2) Any elected or appointed official or other interested party of a distressed municipality
303 may petition the court to enjoin any action of the receiver that is contrary to this Code
304 section.
- 305 (i) Except as otherwise provided for in this Code section, the receivership shall expire two
306 years after the appointment of the receiver.

307 (j) Notwithstanding any other provision of law to the contrary, if the Governor determines
308 that the need for state assistance for, oversight of, or intervention for a distressed
309 municipality is of an emergency nature such that a delay in action would cause material
310 harm to the provision of public services or to the financial interests of this state, the
311 Governor may direct the Department of Administrative Services to authorize an emergency
312 procurement pursuant to Code Section 50-5-71, or to utilize existing state-wide contracts
313 or prequalified vender rosters established pursuant to subsection (k) of this Code section
314 to secure necessary staffing or professional services in an expeditious manner. Any such
315 emergency procurement shall be reported to the chairpersons of the Senate Finance
316 Committee and the House Committee on Ways and Means within ten business days.

317 (k)(1) The Department of Administrative Services, in consultation with the state auditor
318 and the Department of Community Affairs, shall establish and maintain a master
319 state-wide contract roster for local government turnaround specialists pursuant to Code
320 Section 50-5-57.

321 (2) To qualify for inclusion on such roster, a firm or individual shall demonstrate;

322 (A) Experience in providing fiscal recovery or financial advisory services to
323 governmental entities of comparable complexity;

324 (B) Professional credentials in governmental accounting, public administration, or
325 municipal finance, including, but not limited to, certified public accountants or
326 equivalent licensure or certification; and

327 (C) No disqualifying conflicts of interest with this state or any of its political
328 subdivisions.

329 (3) The Department of Administrative Services shall conduct a competitive solicitation
330 to establish the initial roster and shall update such roster no less frequently than every
331 three years. The Governor may utilize the roster to procure specialist services for any
332 local government subject to emergency process pursuant to this Code section, using the

333 expedited procurement process authorized pursuant to subsection (j) of this Code section."

334

SECTION 3.

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