

19

SECTION 2.

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

23 "36-30-7.1.

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25 an inactive municipality and its charter shall be repealed by operation of law if the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

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

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

31 (A) Law enforcement;

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

33 (C) Road and street construction or maintenance;

34 (D) Solid waste management;

35 (E) Water supply or distribution or both;

36 (F) Waste-water treatment;

37 (G) Storm-water collection and disposal;

38 (H) Electric or gas utility services;

39 (I) Enforcement of building, housing, plumbing, and electrical codes and other similar
40 codes;

41 (J) Planning and zoning; and

42 (K) Recreational facilities;

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

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

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

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

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

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

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

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

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

73 ~~which does not meet the minimum standards for determining an active municipality~~
74 ~~enumerated in subsection (b) of this Code section; and such municipal corporation shall~~
75 ~~cease to have legal existence as of July 1, 1995.~~

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

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

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

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

108 ~~(fr)~~(e)(1) Upon the termination of existence of a municipal corporation as provided in this
109 Code section, the geographic area that was contained in the boundaries of the former
110 municipal corporation may continue to be identified under the same name and style as the
111 former municipal corporation, and for such purpose signs and other appropriate insignia
112 may be erected for such identification.

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

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

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

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

144

SECTION 3.

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

146 "36-30-7.2.

147 (a) As used in this Code section, the term 'distressed municipality' means any municipal
148 corporation in this state, or an authority controlled directly or indirectly by such municipal
149 corporation, which failed to meet any one of the minimum standards specified for an active
150 municipality pursuant to subsection (b) of Code Section 36-30-7.1 or has met at least two
151 of the following criteria, within the immediately preceding ten-year period:

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

179 notice sent by United States mail, postage prepaid, addressed to the governing authority
180 of the municipality at the official address of such governing authority shall satisfy the
181 requirements of this paragraph. Such request shall include the specific reasons for
182 alleging such municipal corporation is a distressed municipality. The review commission
183 shall be composed of the commissioner of community affairs and two municipal officials
184 who are not located within the same county or counties as the alleged distressed
185 municipality. The members of the review commission shall receive no compensation for
186 their services, but shall be reimbursed for any expenses incurred in connection with the
187 investigation. The funds necessary to conduct the investigation shall come from funds
188 appropriated to the executive branch of government.

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

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

204 (ii) A receiver appointed pursuant to this subsection shall not seek or hold a position
205 as an elected or appointed public official within this state or as a political party officer

206 during the term of the receivership and within one year of the receivership ending.
207 The receiver shall also not receive any compensation, fee, or commission from the
208 distressed municipality, or receive any fee or commission from the sale or lease of
209 property or other financial transaction involving the distressed municipality.

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

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

219 (c) The superior court shall conduct a hearing on the petition within 30 days of the
220 Attorney General filing such petition. The court shall issue an order on the petition within
221 60 days of the filing of the petition, laying out findings of fact and a determination of
222 whether a municipal corporation is a distressed municipality.

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

225 (1) Set forth findings;

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

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

230 (4) Direct the receiver to develop a recovery plan pursuant to subsection (e) of this Code
231 section within 30 days and submit such plan to the court, the Attorney General, the

232 governing body of the distressed municipality, and if applicable, the chief executive
233 officer of the distressed municipality.

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

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

236 (B) Payment of the financial obligations of the distressed municipality, including, but
237 not limited to, debt obligations, municipal securities, lease rental obligation, legal
238 obligations, and consensual modifications of existing obligations; and

239 (C) Timely deposit of required payments to the pension fund in which the distressed
240 municipality participates.

241 (2) The recovery plan may provide for:

242 (A) The sale, lease, conveyance, assignment, or other use or disposition of the assets
243 of the distressed municipality or authority;

244 (B) The approval, modification, rejection, renegotiation, or termination of contracts or
245 agreement of the distressed municipality, except to the extent prohibited by the
246 Constitutions of Georgia and of the United States;

247 (C) The execution of new contracts or agreements; and

248 (D) Other information the receiver deems appropriate.

249 (3) The recovery plan shall not and the receiver shall not be authorized to:

250 (A) Unilaterally adopt any form of taxation beyond what is authorized by law or the
251 Constitution of Georgia;

252 (B) Unilaterally abrogate, alter, or otherwise interfere with a lien, charge, covenant, or
253 relative priority that is held by a holder of a debt obligation of the distressed
254 municipality and granted by contract, law, rule, or regulation governing debt
255 obligations;

256 (C) Unilaterally impair or modify existing bonds, notes, municipal securities, or other
257 lawful contractual or legal obligations of the distressed municipality; or

258 (D) Authorize the use of the proceeds of the sale, lease, conveyance, assignment, or
259 other use or disposition of the assets of the distressed municipality without first
260 applying such proceeds to the payment of outstanding debt obligations owed by the
261 distressed municipality, subject to any lien, charge, covenant, restriction, contract, law,
262 rule, or regulation that encumbers or is otherwise applicable to the assets.

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

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

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

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

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

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

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

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

290 (6) To approve, disapprove, modify, reject, terminate, or renegotiate contracts and
291 agreements with the distressed municipality except to the extent prohibited by the
292 Constitutions of Georgia and of the United States;

293 (7) To direct the distressed municipality to take any other action to implement the
294 recovery plan;

295 (8) To attend open and closed meetings of the governing body of the distressed
296 municipality and make reports to the public on implementation of such plan;

297 (9) To employ financial or legal experts deemed necessary to develop and implement the
298 recovery plan; provided, however, that notwithstanding any law to the contrary, the
299 employment of such experts shall not be subject to any contractual competitive bidding
300 procedures;

301 (10) To make a recommendation to the Attorney General that the municipality be
302 disincorporated; and

303 (11) To make a recommendation to the Attorney General and the court that the
304 municipality be removed from receivership.

305 (h)(1) A receiver appointed pursuant to this Code section shall have the power to issue
306 orders to elected or appointed officials of the distressed municipality to implement any
307 provision of the recovery plan and to refrain from taking any action which would
308 interfere with the powers granted to the receiver or the goals of the recovery plan. Any
309 such order shall be enforceable by bringing an action pursuant to Article 2 of Chapter 6

310 of Title 9; provided, however, that the court shall grant or deny the relief from such action
311 within 14 days of the filing of any such action.

312 (2) Any elected or appointed official or other interested party of a distressed municipality
313 may petition the court to enjoin any action of the receiver that is contrary to this Code
314 section.

315 (i) Except as otherwise provided for in this Code section, the receivership shall expire two
316 years after the appointment of the receiver.

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

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

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

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

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

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

339 (3) The Department of Administrative Services shall conduct a competitive solicitation
340 to establish the initial roster and shall update such roster no less frequently than every
341 three years. The Governor may utilize the roster to procure specialist services for any
342 local government subject to emergency process pursuant to this Code section, using the
343 expedited procurement process authorized pursuant to subsection (j) of this Code section.

344 (l) During any period of time when a receiver has been appointed for a distressed
345 municipality, such municipality shall be eligible and entitled to any due state financial
346 assistance, funds, or grants which have otherwise been withheld."

347 **SECTION 4.**

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