

House Bill 855

By: Representatives Welch of the 110th, Willard of the 51st, and Powell of the 171st

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 70 of Title 36 of the Official Code of Georgia Annotated,
2 relating to service delivery by counties and municipalities, so as to revise the procedures for
3 the implementation of a local government service delivery strategy; to provide for conditions,
4 limitation, and sanctions; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Article 2 of Chapter 70 of Title 36 of the Official Code of Georgia Annotated, relating to
8 service delivery by counties and municipalities, is amended by revising Code Section
9 36-70-21, relating to the deadline for implementation agreement, as follows:

10 "36-70-21.

11 Notwithstanding Code Section 36-70-22, each Each county and municipality shall execute
12 an agreement for the implementation of a local government service delivery strategy as set
13 forth in this article by ~~July 1, 1999~~ January 1 of the third year following the year of the
14 decennial census."

15 **SECTION 2.**

16 Said article is further amended by revising Code Section 36-70-22, relating to the date for
17 process initiation, as follows:

18 "36-70-22.

19 (a) As used in this article, the term:

20 (1) 'Affected municipality' means each municipality required to adopt a resolution
21 approving the local government service delivery strategy pursuant to subsection (b) of
22 Code Section 36-70-25.

23 (2) 'Service' means those services specifically enumerated in Article IX, Section II,
24 Paragraph III of the Georgia Constitution.

25 (b) Each county and affected municipality shall review, revise as necessary, and resubmit
 26 to the department the approved strategy upon the occurrence of any of the following
 27 events:

28 (1) In conjunction with the adoption of a comprehensive plan as required by Article 1 of
 29 this chapter;

30 (2) Whenever there is a change to service delivery or revenue distribution arrangements;

31 (3) By January 1 of the third year following the year of the decennial census;

32 (4) In the event of the creation, abolition, or consolidation of local governments;

33 (5) When the existing service delivery strategy agreement expires; or

34 (6) Whenever the county and affected municipalities agree to revise the strategy.

35 (c) In the event that a county or an affected municipality located within the county refuses
 36 to review, revise as necessary, and resubmit a strategy in accordance with subsection (b)
 37 of this Code section, then any of the parties may use the alternative dispute resolution and
 38 appeal procedures set forth in subsection (c) of Code Section 36-70-25.1.

39 ~~(d) Each county shall initiate the process for developing a local government service~~
 40 ~~delivery strategy after July 1, 1997, but no later than January 1, 1998. Initiation of the~~
 41 ~~strategy shall be accomplished by the provision of a written notice from the county or the~~
 42 ~~affected municipality to the other governing bodies of the county and all municipalities~~
 43 ~~located wholly or partially within the county or providing services within the county and~~
 44 ~~to other counties providing services within the county. Such notice shall state the date,~~
 45 ~~time, and place for a joint meeting at which designated representatives of all local~~
 46 ~~governing bodies shall assemble for the purpose of commencing deliberations on the~~
 47 ~~service delivery strategy. The notice shall be sent not more than 45 and not less than 15~~
 48 ~~days prior to the meeting date. In the event the county governing authority fails to initiate~~
 49 ~~the process by January 1, 1998, any municipality within the county may do so by sending~~
 50 ~~a written notice, containing the required information, to the county and all other~~
 51 ~~municipalities."~~

52 **SECTION 3.**

53 Said article is further amended by revising Code Section 36-70-24, relating to the criteria for
 54 a service delivery strategy, as follows:

55 "36-70-24.

56 In the development of a service delivery strategy, the following criteria shall be met:

57 (1) The strategy shall promote the delivery of local government services in the most
 58 efficient, effective, and responsive manner. The strategy shall identify steps which will
 59 be taken to remediate or avoid overlapping and unnecessary competition and duplication
 60 of service delivery and shall identify the time frame in which such steps shall be taken.

61 When a municipality provides a service at a higher level than the base level of service
 62 provided throughout the geographic area of the county by the county, such service shall
 63 not be considered a duplication of the county service;

64 (2)(A) The strategy shall provide that water or sewer fees charged to customers located
 65 outside the geographic boundaries of a service provider shall not be arbitrarily higher
 66 than the fees charged to customers receiving such service which are located within the
 67 geographic boundaries of the service provider.

68 (B) If a governing authority disputes the reasonableness of water and sewer rate
 69 differentials imposed within its jurisdiction by another governing authority, ~~that~~ such
 70 disputing governing authority may hold a public hearing for the purpose of reviewing
 71 the rate differential. Following the preparation of a rate study by a qualified engineer,
 72 the governing authority may challenge the arbitrary rate differentials on behalf of its
 73 residents in a court of competent jurisdiction. Prior to such challenge, the dispute shall
 74 be submitted to some form of alternative dispute resolution;

75 (3)(A) The strategy shall ensure that the cost of any service which a county provides
 76 primarily for the benefit of the unincorporated area of the county shall be borne by the
 77 unincorporated area residents, individuals, and property owners who receive the
 78 service. Further, when the county and one or more municipalities jointly fund a
 79 ~~county-wide~~ service, the county share of such funding shall be borne by the
 80 unincorporated residents, individuals, and property owners that receive the service.

81 (B) Such funding shall be derived from special service and tax districts created by the
 82 county in which property taxes, insurance premium taxes, assessments, or user fees are
 83 levied or imposed or through such other mechanism agreed upon by the affected parties
 84 which complies with the intent of subparagraph (A) of this paragraph; and

85 (4)(A) Local governments within the same county shall, if necessary, amend their land
 86 use plans so that such plans are compatible and nonconflicting, or, as an alternative,
 87 they shall adopt a single land use plan for the unincorporated and incorporated areas of
 88 the county.

89 (B) The provision of extraterritorial water and sewer services by any jurisdiction shall
 90 be consistent with all applicable land use plans and ordinances."

91 **SECTION 4.**

92 Said article is further amended by revising Code Section 36-70-25.1, relating to dispute
 93 resolution procedures, as follows:

94 "36-70-25.1.

95 (a) ~~As used in this Code section, the term 'affected municipality' means each municipality~~
 96 ~~required to adopt a resolution approving the local government service delivery strategy~~
 97 ~~pursuant to subsection (b) of Code Section 36-70-25.~~

98 ~~(b)~~ If a county and the affected municipalities in the county do not reach an agreement on
 99 a service delivery strategy, the provisions of this Code section shall be followed as the
 100 process to resolve the dispute.

101 ~~(c)~~(b) If a county and the affected municipalities in the county are unable to reach an
 102 agreement on the strategy prior to the imposition of the sanctions provided in Code Section
 103 36-70-27, a means for facilitating an agreement through some form of alternative dispute
 104 resolution shall be employed. Where the alternative dispute resolution action is
 105 unsuccessful, the neutral party or parties shall prepare a report which shall be provided to
 106 each governing authority and made a public record. The cost of alternative dispute
 107 resolution authorized by this subsection shall be shared by the parties to the dispute pro rata
 108 based on each party's population according to the most recent United States decennial
 109 census. The county's share shall be based upon the unincorporated population of the
 110 county.

111 ~~(d)~~(c) In the event that the county and the affected municipalities in the county fail to reach
 112 an agreement after ~~the imposition of sanctions provided in Code Section 36-70-27~~
 113 unsuccessful alternative dispute resolution, then the following process is available to the
 114 parties:

115 (1)(A) The county or any affected municipality located within the county may file a
 116 petition in superior court of the county seeking mandatory mediation. Such petition
 117 shall be assigned to a judge, pursuant to Code Section 15-1-9.1 or 15-6-13, who is not
 118 a judge in the circuit in which the county is located. The judge selected may also be a
 119 senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit.

120 (B) The visiting or senior judge shall appoint a mediator within 30 days of receipt of
 121 the petition. Mediation shall commence within 30 days of the appointment of a
 122 mediator. The mandatory mediation process shall be completed within 60 days
 123 following the appointment of the mediator. A majority of the members of the
 124 governing body of the county and each affected municipality shall attend the initial
 125 mediation. Following the initial meeting, the mediation shall proceed in the manner
 126 established at the initial meeting. If there is no agreement on how the mediation should
 127 proceed, a majority of the members of the governing body of the county and each
 128 affected municipality shall be required to attend each mediation session unless another
 129 process is agreed upon. Unless otherwise provided in accordance with paragraph (2)
 130 of this subsection, the cost of alternative dispute resolution authorized by this

131 subsection shall be shared by the parties to the dispute pro rata based on each party's
 132 population according to the most recent United States decennial census. The county's
 133 share shall be based upon the unincorporated population of the county.

134 ~~(C) During the mediation process described in this subsection, the sanctions imposed~~
 135 ~~pursuant to Code Section 36-70-27 may, by order of the court, not be held in abeyance~~
 136 ~~by the judge against any or all of the parties participating in such mediation process.~~

137 ~~(D)~~ The judge may, by order of the court, substitute any mediation entered into
 138 pursuant to subsection ~~(c)~~(b) of this Code section for the mediation required pursuant
 139 to this subsection; ~~and~~

140 (2) If no service delivery strategy has been submitted for verification to the Department
 141 of Community Affairs at the conclusion of the mediation, any aggrieved party may
 142 petition the superior court and seek resolution of the items remaining in dispute. The
 143 visiting or senior judge shall conduct an evidentiary hearing or hearings as such judge
 144 deems necessary and render a decision with regard to the disputed items. ~~In rendering~~
 145 ~~the decision, the judge shall consider the required elements of a service delivery strategy~~
 146 findings of fact as to the criteria under Code Section 36-70-24 with a goal of achieving
 147 the intent of this article as specified in Code Section 36-70-20. ~~It shall be in the~~
 148 ~~discretion of the judge to hold the sanctions specified in Code Section 36-70-27 against~~
 149 ~~one or more of the parties in abeyance pending the disposition of the action. The court~~
 150 ~~is authorized to utilize its contempt powers to obtain compliance with its decision relating~~
 151 ~~to the disputed items under review. The judge shall be authorized to impose mediation~~
 152 ~~costs and court costs against any party upon a finding of bad faith; and~~

153 (3) During the process described in this subsection, the sanctions imposed pursuant to
 154 Code Section 36-70-27 may not be held in abeyance.

155 ~~(e)(d)~~ The court shall notify, or cause to be notified, the Department of Community Affairs
 156 ~~in the event that penalties are abated during the pendency of mediation or litigation held~~
 157 ~~pursuant to subsection (d) of this Code section. A notice shall also be sent in the event~~
 158 ~~penalties become applicable to the parties. of its findings. The sanctions under Code~~
 159 Section 36-70-27 shall be imposed or shall continue until the local governments approve
 160 and receive verification of a strategy consistent with the findings of the judge and
 161 requirements of this article. If the verified strategy is not implemented in whole or in part
 162 within a reasonable time after verification, the county, affected municipality, or taxpayer
 163 thereof may petition the judge for a hearing and the judge may order imposing the
 164 sanctions under Code Section 36-70-27 until the strategy is implemented.

165 ~~(f)(e)~~ Any service delivery agreement implemented as a result of the process set forth in
 166 this Code section shall remain in effect until revised pursuant to Code Section ~~36-70-28~~
 167 36-70-22."

168

SECTION 5.

169 Said article is further amended by revising Code Section 36-70-27, relating to sanctions for
 170 funding of projects inconsistent with strategy delivery, as follows:

171 "36-70-27.

172 (a) For any local government which is required under subsection (b) of Code Section
 173 36-70-22 to resubmit a strategy and fails to do so within 180 days of the triggering event
 174 under said Code section:

175 (1) No state administered financial assistance or grant, loan, or permit shall be issued to
 176 any local government or authority which is not included in a department verified strategy
 177 or for any project which is inconsistent with such strategy; provided, however, that a
 178 municipality or authority located or operating in more than one county shall be included
 179 in a department verified strategy for each county wherein the municipality or authority
 180 is located or operating; and

181 (2) Ten percent of all revenues collected by the Department of Revenue for distribution
 182 to any local government or authority which does not have a verified strategy as required
 183 by this article shall be retained by the Department of Revenue and deposited into the
 184 general fund.

185 ~~Paragraph (1) of this~~ This subsection shall not apply to any drinking water project of the
 186 Georgia Environmental Finance Authority or of any local government or authority if such
 187 project is a proposed drinking water supply reservoir or any water withdrawal, treatment,
 188 distribution, or other potable water facility associated with such reservoir and the project
 189 shall furnish potable water to wholesale users in incorporated areas in one or more
 190 counties. Within one year after such proposed drinking water supply reservoir becomes
 191 operational, the local governments and authorities in the affected county or counties shall
 192 update their service delivery strategy or strategies to be consistent with water supply
 193 arrangements resulting from the operation of such reservoir.

194 (b)(1) If a municipality containing fewer than 500 persons within the county fails to
 195 establish a process to resolve disputes as required by subparagraph (C) of paragraph (4)
 196 of Code Section 36-70-24, the sanctions specified in subsection (a) of this Code section
 197 shall not be imposed upon:

198 (A) The county within which any such municipality or portion of any such
 199 municipality is located; or

200 (B) Any other municipality located in such county.

201 (2) The provisions of this subsection shall apply only if a process to resolve disputes
 202 required by subparagraph (C) of paragraph (4) of Code Section 36-70-24 has been
 203 established between the county and each municipality containing 500 or more persons
 204 within the county.

205 (c) ~~Any local government or authority which is subject to the~~ The sanctions specified in
206 subsection (a) of this Code section shall ~~become eligible for state administered financial~~
207 ~~assistance or grants, loans, or permits~~ cease on the first day of the month following
208 verification by the department that the requirements of Code Section 36-70-26 have been
209 met."

210 **SECTION 6.**

211 Said article is further amended by repealing Code Section 36-70-28, relating to revision and
212 review of the service delivery strategy.

213 **SECTION 7.**

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