

## House Bill 23

By: Representatives Oliver of the 82<sup>nd</sup>, Drenner of the 85<sup>th</sup>, Bennett of the 94<sup>th</sup>, Evans of the 83<sup>rd</sup>, and Lopez of the 86<sup>th</sup>

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 allow affected local schools systems to participate in the  
3 annexation dispute resolution process; to provide for related matters; to repeal conflicting  
4 laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to annexation of  
8 territory, is amended by revising Article 7, relating to procedure for resolving annexation  
9 disputes, as follows:

10 "ARTICLE 7

11 36-36-110.

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

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14 36-36-111.

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

21 36-36-112.

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

29 36-36-113.

30 (a) The county governing authority or the board of education of any local school system  
31 affected by an annexation may by majority vote object to the annexation because of a  
32 material increase in burden upon the county or the local school system directly related to  
33 any one or more of the following:

- 34 (1) The proposed change in zoning or land use;  
35 (2) Proposed increase in density; and  
36 (3) Infrastructure demands related to the proposed change in zoning or land use.

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

40 (c) The objection provided for in subsection (a) of this Code section shall document the  
41 nature of the objection specifically providing evidence of any financial impact forming the  
42 basis of the objection and shall be delivered to the municipal governing authority by  
43 certified mail or statutory overnight delivery to be received not later than the end of the  
44 thirtieth calendar day following receipt of the notice provided for in Code  
45 Section 36-36-111.

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

48 (1) Result in:

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

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

55 (C) A use which will significantly impact the student capacity of schools servicing the  
56 area to be annexed; and

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

60 36-36-114.

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

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

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

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

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

100 36-36-115.

101 (a)(1) The arbitration panel appointed pursuant to Code Section 36-36-114 shall meet as  
102 soon after appointment as practicable and shall receive evidence and argument from the  
103 municipal corporation, the county, any participating objecting local school system, and  
104 the applicant or property owner and shall by majority vote render a decision which shall  
105 be binding on all parties to the dispute as provided for in this article not later than the  
106 sixtieth day following such appointment. The meetings of the panel in which evidence  
107 is submitted or arguments of the parties are made shall be open to the public pursuant to  
108 Chapter 14 of Title 50. The panel shall first determine the validity of the grounds for  
109 objection as specified in the objection. If an objection involves the financial impact on  
110 the county or a local school system as a result of a change in zoning or land use or the  
111 provision of maintenance of infrastructure, the panel shall quantify such impact in terms  
112 of cost. As to any objection which the panel has determined to be valid, the panel, in its

113 findings, may establish reasonable zoning, land use, or density conditions applicable to  
114 the annexation and may propose any reasonable mitigating measures as to an objection  
115 pertaining to infrastructure demands.

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

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

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

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

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

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

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

126 (G) Whether the infrastructure or capital outlay project which is claimed adversely  
127 impacted by the county in its objection was funded by a county-wide tax; and

128 (H) The existing and planned future capacity of local schools servicing the area of the  
129 subject property.

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

133 (4) The county shall bear at least 75 percent of the cost of the arbitration. The panel shall  
134 apportion the remaining 25 percent of the cost of the arbitration equitably between the  
135 city, any participating objecting local school system, and the county as the facts of the  
136 appeal warrant; provided, however, that if the panel determines that any party has  
137 advanced a position that is substantially frivolous, the costs shall be borne by the party  
138 that has advanced such position. In the event that the county does not object to an  
139 annexation, but one or more affected local school systems do object, then such local

140 school systems shall bear at least 75 percent of the costs of the arbitration and the  
141 remainder of costs shall be apportioned as provided in this paragraph.

142 (5) The reasonable costs of participation in the arbitration process of the property owner  
143 or owners whose property is at issue shall be borne by the county, a participating  
144 objecting local school system, and the city in the same proportion as costs are  
145 apportioned under paragraph (4) of this subsection.

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

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

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

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

158 (e) If the panel so agrees, any one or more additional annexation disputes which may arise  
159 between the parties prior to the panel's initial meeting may be consolidated for the purpose  
160 of judicial economy if there are similar issues of location or similar objections raised to  
161 such other annexations or the property to be annexed in such other annexations is within  
162 2,500 feet of the subject property.

163 36-36-116.

164 The municipal or county governing authority, a participating objecting local board of  
165 education, or an applicant for annexation may appeal the decision of the arbitration panel

166 by filing an action in the superior court of the county within ten calendar days from receipt  
167 of the panel's findings and recommendations. The sole grounds for appeal shall be to  
168 correct errors of fact or of law, the bias or misconduct of an arbitrator, or the panel's abuse  
169 of discretion. The superior court shall schedule an expedited appeal and shall render a  
170 decision within 20 days from the date of filing. If the court finds that an error of fact or law  
171 has been made, that an arbitrator was biased or engaged in misconduct, or that the panel  
172 has abused its discretion, the court shall issue such orders governing the proposed  
173 annexation as the circumstances may require, including remand to the panel. Any  
174 unappealed order shall be binding upon the parties. The appeal shall be assigned to a judge  
175 who is not a judge in the circuit in which the county is located.

176 36-36-117.

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

188 36-36-118.

189 If at any time during the proceedings the municipal corporation or applicant abandons the  
190 proposed annexation, the county shall not change the zoning, land use, or density affecting



191 the property for a period of one year unless such change is made in the service delivery  
192 agreement or comprehensive plan and adopted by the affected city and county and all  
193 required parties. A violation of the conditions set forth in this Code section may be  
194 enforced thereafter at law or in equity until such period has expired. After final resolution  
195 of any objection, whether by agreement of the parties, act of the panel, or any appeal from  
196 the panel's decision, the terms of such decision shall remain valid for the one-year period  
197 and such annexation may proceed at any time during the one year without any further  
198 action or without any further right of objection by the county or a local school system.

199 36-36-119.

200 The county, local school systems, the municipal governing authorities, and the property  
201 owner or owners shall negotiate in good faith throughout the annexation proceedings  
202 provided by this article and may at any time enter into a written agreement governing the  
203 annexation. If such agreement is reached after the arbitration panel has been appointed and  
204 before its dissolution, such agreement shall be adopted by the panel as its findings and  
205 recommendations. If such agreement is reached after an appeal is filed in the superior  
206 court and before the court issues an order, such agreement shall be made a part of the  
207 court's order. Any agreement reached as provided in this Code section shall be recorded  
208 as provided in Code Section 36-36-115."

209 **SECTION 2.**

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