

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 36 of Title 36 of the Official Code of Georgia Annotated,
2 relating to procedure for resolving annexation disputes, so as to provide for the disclosure
3 of certain financial information in notice of annexation; to authorize objections to
4 annexations based on proposed tax abatements, rebates, and other financial incentives; to
5 provide for administrative hearing officers in the annexation dispute resolution process; to
6 authorize the Department of Community Affairs to provide rules and regulations regarding
7 annexation dispute resolutions; to provide for related matters; to repeal conflicting laws; and
8 for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 7 of Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to
12 procedure for resolving annexation disputes, is amended by revising Code Section
13 36-36-111, relating to notice of annexation, as follows:

14 "36-36-111.

15 Upon receipt of a petition of annexation, a municipal corporation shall notify the governing
16 authority of the county in which the territory to be annexed is located by certified mail or

17 by statutory overnight delivery. Such notice shall include a copy of the annexation petition
 18 which shall include the proposed zoning and land use for such area. Such notice shall also
 19 disclose any proposed tax abatements, rebates, or other financial incentives that will be
 20 provided by the municipal corporation and any information the municipal corporation has
 21 on proposed tax abatements, tax rebates, or other financial incentives that a development
 22 authority, whether authorized by this title or other law, will provide regarding the
 23 annexation of the property. The municipal corporation shall take no final action on such
 24 annexation except as otherwise provided in this article."

25 SECTION 2.

26 Said article is further amended by revising Code Section 36-36-113, relating to objection to
 27 annexation, grounds, and procedures, as follows:

28 "36-36-113.

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

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

33 (2) Proposed increase in density; ~~and~~

34 (3) Infrastructure demands related to the proposed change in zoning or land use; and

35 (4) The proposed tax abatement, rebate, or any other financial incentive regarding the
 36 annexation that affect county-wide taxes.

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 paragraphs (1), (2), or (3) of subsection (a) of this
47 Code section to be valid, the proposed change 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 to the area to be annexed; and

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

57 **SECTION 3.**

58 Said article is further amended by revising Code Section 36-36-114, relating to arbitration
59 panel, composition, and membership, as follows:

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 voting members and one nonvoting
65 hearing administration officer to be selected as provided in this subsection. The
66 Department of Community Affairs shall develop three pools of arbitrators, one pool which
67 consists of persons who are currently or within the previous six years have been municipal
68 elected officials, one pool which consists of persons who are currently or within the

69 previous six years have been county elected officials, and one pool which consists of
70 persons with a master's degree or higher in public administration or planning and who are
71 currently employed by an institution of higher learning in this state, other than the Carl
72 Vinson Institute of Government of the University of Georgia. The Department of
73 Community Affairs shall also develop a pool of attorneys trained and qualified to serve as
74 hearing administration officers and who are currently or within the previous six years have
75 practiced or worked in local government law, zoning and land use, or alternative dispute
76 resolution, or have been an arbiter, hearing officer, or judge. The Each pool shall be
77 sufficiently large to ensure as nearly as practicable that no person shall be required to serve
78 on more than two panels in any one calendar year and serve on no more than one panel in
79 any given county in any one calendar year. The department is authorized to coordinate
80 with the Georgia Municipal Association, the Association County Commissioners of
81 Georgia, the Council of Local Governments, and similar organizations in developing and
82 maintaining such pools.

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

92 (c.1) Upon receiving notice of a disputed annexation, the Department of Community
93 Affairs shall choose at random the name of one hearing administration officer from the
94 pool of attorneys; provided however, that the selected hearing administration officer shall
95 not be a resident of the county in which the subject property is located or has represented

96 the county or the annexing municipality, or is the owner of the property or any of its
97 predecessors in title. The hearing administration officer shall advise and assist the selected
98 panel members in carrying out their duties under this article, including but not limited to
99 advising on legal, evidentiary, or procedural issues. The cost of the hearing officer shall
100 be evenly divided between the county and the annexing municipality.

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

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

114 (f) The department shall promulgate rules and regulations governing the procedures of
115 arbitrations occurring pursuant to this article, including but not limited to rules governing
116 prehearing matters, the disclosure of documents, and evidentiary rules."

117 **SECTION 4.**

118 Said article is further amended by revising Code Section 36-36-115, relating to meetings of
119 arbitration panel, duties, findings, recommendations, and compensation, as follows:

120 "36-36-115.

121 (a)(1) The arbitration panel appointed pursuant to Code Section 36-36-114 shall meet as
122 soon after appointment as practicable and shall receive evidence and argument from the
123 municipal corporation, the county, and the applicant or property owner and shall by
124 majority vote render a decision which shall be binding on all parties to the dispute as
125 provided for in this article not later than the sixtieth day following such appointment.
126 The meetings of the panel in which evidence is submitted or arguments of the parties are
127 made shall be open to the public pursuant to Chapter 14 of Title 50. The panel shall first
128 determine the validity of the grounds for objection as specified in the objection. If an
129 objection involves the financial impact on the county as a result of a change in zoning or
130 land use, ~~or the provision of maintenance of infrastructure, or the issuance of tax~~
131 abatements, rebates, or other financial incentives the panel shall quantify such impact in
132 terms of cost. As to any objection which the panel has determined to be valid, the panel,
133 in its findings, may establish reasonable zoning, land use, or density conditions applicable
134 to the annexation, ~~and propose any reasonable mitigating measures as to an objection~~
135 pertaining to infrastructure demands, and establish reasonable conditions on any tax
136 abatements, rebates, or other financial incentives applicable to the annexation.

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

- 138 (A) The existing comprehensive land use plans of both the county and city;
139 (B) The existing land use patterns in the area of the subject property;
140 (C) The existing zoning patterns in the area of the subject property;
141 (D) Each jurisdiction's provision of infrastructure to the area of the subject property;
142 (E) Whether the county has approved similar changes in intensity or allowable uses on
143 similar developments in other unincorporated areas of the county;
144 (F) Whether the county has approved similar developments in other unincorporated
145 areas of the county which have a similar impact on infrastructure as complained of by
146 the county in its objection; ~~and~~

- 147 (G) Whether the infrastructure or capital outlay project which is claimed adversely
148 impacted by the county in its objection was funded by a county-wide tax;
- 149 (H) The potential effect any proposed tax abatement, rebate, or other financial
150 incentive for the annexation which is claimed to have a significant adverse impact on
151 the county.
- 152 (3) The county when objecting pursuant to paragraphs (1) through (3) of subsection (a)
153 of Code Section 36-36-113, shall provide supporting evidence that its objection is
154 consistent with its land use plan and the pattern of existing land uses and zonings in the
155 area of the subject property.
- 156 (3.1) The county, when objecting pursuant to paragraph (4) of subsection (a) of Code
157 Section 36-36-113, shall provide supporting evidence of the potential effect of any
158 proposed tax abatement, rebate, or other financial incentive for the annexation which is
159 claimed to have a significant adverse impact on the county.
- 160 (4) The county shall bear at least 75 percent of the cost of the arbitration. The panel shall
161 apportion the remaining 25 percent of the cost of the arbitration equitably between the
162 city and the county as the facts of the appeal warrant; provided, however, that if the panel
163 determines that any party has advanced a position that is substantially frivolous, the costs
164 shall be borne by the party that has advanced such position.
- 165 (5) The reasonable costs of participation in the arbitration process of the property owner
166 or owners whose property is at issue shall be borne by the county and the city in the same
167 proportion as costs are apportioned under paragraph (4) of this subsection.
- 168 (6) The panel shall deliver its findings and recommendations to the parties by certified
169 mail or statutory overnight delivery.
- 170 (b) If the decision of the panel contains zoning, land use, or density conditions, or
171 limitations on the issuance of tax abatements, rebates, or other financial incentives the
172 findings and recommendations of the panel shall be recorded in the deed records of the
173 county with a caption describing the name of the current owner of the property, recording

174 reference of the current owner's acquisition deed and a general description of the property,
175 and plainly showing the expiration date of any restrictions or conditions.

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

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

181 (e) If the panel so agrees, any one or more additional annexation disputes which may arise
182 between the parties prior to the panel's initial meeting may be consolidated for the purpose
183 of judicial economy if there are similar issues of location or similar objections raised to
184 such other annexations or the property to be annexed in such other annexations is within
185 2,500 feet of the subject property."

186

SECTION 5.

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