

House Bill 24

By: Representatives Oliver of the 82<sup>nd</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 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

H. B. 24

- 1 -

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.