

SERVICE DELIVERY STRATEGY NEGOTIATIONS

October 5, 2010

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Service Delivery Strategy Statute

Comprehensive Plan Trigger

Counties and cities must "review, and revise if necessary" their strategy in conjunction with the updates of their comprehensive plan. O.C.G.A. § 36-70-28 (b). Comprehensive plans must be updated every 10 years.

"Components" (O.C.G.A. § 36-70-23)

- a. an identification of services provided
- b. an assignment of which local government or authority will provide the service
- c. the geographic area in which the service will be provided
- d. the source of funding for each service
- e. an identification of agreements, ordinances, resolutions, and local acts to be used to facilitate implementation

If two or more local governments are going to provide the same service in the same area, the strategy must include an explanation of the arrangement.

Selected "Criteria" (O.C.G.A. § 36-70-24)

- a. The strategy shall promote the delivery of services in the "most efficient, effective, and responsive manner."
- b. The strategy shall remediate or avoid overlapping and unnecessary competition and duplication.
- c. When a municipality provides a service at a higher level than the base level provided by the county throughout the county, such service shall not be considered a duplication of the county service.
- d. The strategy shall ensure that the cost of any service which a county provides primarily for the benefit of the unincorporated area shall be borne by the unincorporated area residents, individuals, and property owners who receive the service.
- e. When the county and a city jointly fund a service, the county share of funding shall be borne by the unincorporated area residents that receive the service.
- f. Unincorporated area funding shall be derived from special districts in which property taxes, insurance premium taxes, assessments, or user fees are levied or imposed or through some other agreed upon mechanism.

Approval (O.C.G.A. § 36-70-25)

Approval shall be documented by a resolution by:

- a. the county
- b. cities with populations of 9,000 or more
- c. the city that is the county seat
- d. 50% of remaining cities with at least 500 residents

Dispute Resolution Procedures (O.C.G.A. § 36-70-25.1)

- a. Cities and the county must initially employ some sort of alternative dispute resolution.
- b. If this fails, the neutral or the parties must file a report, which shall be a public record.
- c. If the parties fail to reach agreement after sanctions are imposed, the county or any city may file a petition seeking mandatory mediation.
- d. The case will be assigned a judge from outside the circuit.
- e. The assigned judge shall appoint a mediator.
- f. The mediation must be completed within 60 days of the appointment of the mediator.
- g. A majority of the members of each local government must attend the initial mediation and must also attend additional mediation sessions unless agreed otherwise.
- h. The cost of the procedures shall be shared based on population, with the county's share based on the unincorporated area population.
- i. If the mediation fails, any party may petition the superior court to resolve "the remaining items in dispute" considering the "required elements" of a service delivery strategy.
- j. The judge shall conduct an evidentiary hearing.

Sanctions

- a. No state administered financial assistance or grant, loan, or permit shall be issued to any local government which is not included in a verified strategy. O.C.G.A. § 36-70-27
- b. If a petition to mediate is filed, the assigned judge may hold sanctions in abeyance during the mediation. O.C.G.A. § 36-70-25.1(d)(1)(C)
- c. If a petition for an evidentiary hearing is filed, the assigned judge may hold sanctions in abeyance pending disposition of the action. O.C.G.A. § 36-70-25.1(d)(2)

Constitutional Officers

- a. A strategy must identify “local government services”. O.C.G.A. § 36-70-23
- b. In 2004, the definition of “local government” was amended to exclude the four “constitutional officers”. O.C.G.A. § 36-70-2(5.2)

Term of Agreement

- a. An agreement implemented pursuant to the statutory dispute resolution procedure shall remain in effect until revised as required by the statute. O.C.G.A. § 36-70-25.1(f)
- b. The statute does not state whether an agreement implemented without the statutory dispute resolution procedure shall remain in effect until revised as required by the statute.

Documentation

Resolution - O.C.G.A. § 36-70-25

Agreement - O.C.G.A. § 36-70-26

DCA Forms

DCA Forms

Form 1

- list each local government and authority providing services
- list each service provided

Form 2

Section 1: Service areas

- service provided countywide by single service provider
- service provided only in unincorporated area by county
- service provided only by cities
- service provided by cities and by county in unincorporated area
- other

Section 3: Funding sources

Section 4: Changes from prior strategy

Section 5: Formal agreements

Section 6: Ordinances, resolutions, local acts

Form 3: Summary of land use agreements

Form 4: Certifications

Form 5: Certifications of Extension

"Higher level" services

Law enforcement: sheriff patrol, city police patrol

Parks and recreation: county parks and recreation services, city parks and recreation services

Services provided "primarily for" the benefit of unincorporated area residents which must be funded with unincorporated area revenues

Unincorporated area services

Fire protection

Solid waste collection, recycling

Mosquito control

Zoning

Unincorporated area revenues

Insurance premium taxes

Financial institution taxes

Alcohol beverage license fees

Alcohol beverage excise taxes

Cable franchise taxes

Occupation taxes

Solid waste collection fees

Zoning fees

Soil control permits

Services provided by counties that disproportionately benefit city residents

Emergency medical services

Libraries

Public health

Mental health

Family and children services

Service of criminal warrants

Indigent defense

Probation services

The statute does not provide unincorporated area residents any remedy for this "tax inequity."

Authority of Court; Constitutional Issues

If a mediation fails, any party may petition the superior court to resolve "the remaining items in dispute" considering the "required elements" of a service delivery strategy.

Yet this authority of the court is limited by the Supplementary Powers provision of the Georgia Constitution and the Separation of Powers provision of the Constitution.

The Supplementary Powers provision of the Georgia Constitution gives counties and cities the power to provide certain services, including parks and recreation services, water and sewer services, libraries, arts centers. Georgia Constitution, Art. 9, § 2, ¶ 3 (a).

Unless otherwise provided by law, counties may not provide these services in cities and cities may not provide them in the unincorporated area of the county, unless agreed to by the city or county, as applicable. Georgia Constitution, Art. 9, § 2, ¶ 3 (b).

The General Assembly may not withdraw these powers. The General Assembly may regulate or limit the provision of these services only by general laws. Georgia Constitution, Art. 9, § 2, ¶ 3 (c).

The General Assembly may not act upon the provision of these services by local laws, except to allow cities to provide the services outside their limits and to allow counties to provide the services within city limits. Georgia Constitution, Art. 9, § 2, ¶ 3 (d).

A city charter provision allowing a city to provide water and sewer service outside its limits satisfies the "unless otherwise provided by law" exception to the prohibition against a city providing a listed service outside its boundaries. Coweta County v. City of Newnan, 253 Ga. 457 (1984).

The Separation of Powers provision of the Georgia Constitution provides that legislative and judicial powers shall remain separate. Georgia Constitution, Art. 1, § 2, ¶ 3 (a).

The Supreme Court has held legislative functions may not be delegated to the courts. Bentley v. Chastain, 242 Ga. 348, 351 (1978).

Based on this law:

Counties are constitutionally empowered to provide certain services in their unincorporated area. The power to provide these services cannot be abridged by the General Assembly. An interpretation of the Service Delivery Strategy Act that would allow the court to restrict a county's power to provide these services in the unincorporated area would be unconstitutional.

Cities are constitutionally empowered to provide certain services in their municipal limits. The power to provide these services cannot be abridged by the General Assembly. An interpretation of the Service Delivery Strategy Act that would allow the court to restrict a city's power to provide these services in its incorporated area would be unconstitutional.

Counties and cities have certain powers under Georgia statute. For example, counties have the statutory power to provide parks and recreation services within cities and cities have a statutory power to provide parks and recreation services in unincorporated areas. O.C.G.A. § 36-64-2. Also, cities are statutorily authorized to collect hotel-motel taxes from accommodations within their limits. O.C.G.A. § 48-13-50, et seq. An interpretation of the Service Delivery Strategy Act that would allow the court to restrict powers of counties and cities to provide services or to collect revenue established by statute would violate the Separation of Powers provision of the Georgia Constitution.

Thus, while the Service Delivery Strategy Act provides the superior court will resolve the "remaining issues in dispute", the court's power to resolve certain issues will be limited by the Supplementary Powers provision of the Constitution and the Separation of Powers provision of the Constitution. This, in turn, has the potential to influence the negotiations of the parties preliminary to a judicial procedure.

Parks and recreation

Typical arrangements

1. Service provided exclusively by the county
2. County provides service at a base level throughout the county; cities provide higher level services for their residents
3. Authority is the exclusive provider

Water and sewer service areas

1. Older, larger city systems; newer, smaller, growing county systems
2. Act requires an identification of geographic service areas
3. Act requires services to be provided in the most efficient manner
4. Act permits service by two providers in the same area with explanation of the arrangement

5. Constitutional issues: counties have a constitutional right to provide service in unincorporated areas
6. City charters typically give cities a statutory right to provide service in unincorporated areas
7. EPD permits

County Road System

Georgia Statute

- a. State highways
- b. County road system
- c. Municipal street system

County roads can extend into and/or through cities

County Argument: County roads do not "primarily benefit" unincorporated area residents and property owners

- a. County road system is regularly used by city residents and property owners
- b. County roads are regularly used by non-county residents and property owners
- c. Examples of use by city and non-county residents and property owners
 1. home-to-school travel routes
 2. home-to-work travel routes
 3. home-to-shopping travel routes
 4. home-to-recreation travel routes
 5. city business travel routes to unincorporated area customers