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LOCAL GOVERNMENT

***General Provisions: Provide a Program of State Grants
Available to Local Governments in Assessing Potential Consolidation
and Provide Methods of Determining Which Municipalities
are Inactive and Terminating Inactive Municipalities***

CODE SECTIONS: O.C.G.A. §§ 36-30-7.1, 36-86-1 to -4 (new)
BILL NUMBERS: HB 83, HB 84
ACT NUMBERS: 564, 565
SUMMARY: HB 83 provides a program of state grants to be available to local governments interested in assessing the need for and desirability of consolidation of local government units and service delivery programs. It further provides for the availability of state grants for the purpose of planning and implementing consolidation should it be determined such consolidation is desired. HB 84 provides for a method of determining those Georgia municipalities to be declared inactive for failing to meet the minimum standards set forth. It further provides the method for terminating those municipal corporations deemed inactive under the Act.

EFFECTIVE DATE: July 1, 1993

History

In the state of Georgia, there are cities that are inactive and counties that are not economically viable.¹ Governor Zell Miller advocated a reduction of governments and in 1991 created the Local Governance Commission to study the structure of local government and the delivery of local public services.² As a result of this study, the Commission published some recommendations to resolve the problems.³ The Commission determined that it is probable that Georgia has more local governments than is necessary "to carry out its governance and service

1. Telephone Interview with Jim E. Higdon, Commissioner of the Department of Community Affairs (June 22, 1993) [hereinafter Higdon Interview].

2. Telephone Interview with James V. Burgess, Jr., Executive Director of Georgia Municipal Association (June 22, 1993) [hereinafter Burgess Interview]; see also Governor's Local Governance Commission, *A Platform for Local Government Change in Georgia*, at 3 (1992) [hereinafter Platform for Change].

3. Platform for Change, *supra* note 2.

delivery responsibilities."⁴ Although the idea of some form of consolidation of governments and services was included in the Commission's recommendations, the overall concept has been debated for years.⁵ The basis for this legislation was a need to halt the duplication of services, provide services more economically, and eliminate nonfunctioning cities.⁶

HB 83

The Local Government Efficiency Act begins by stating some key legislative findings and determinations.⁷ The findings cite changes in demographics and technical advancements as justifications for the need to modernize and reorganize local government service delivery programs.⁸ The General Assembly first attributed the need for this legislation to a dramatic shift in population and second to advancements made in service delivery equipment and systems.⁹

The Act goes on to state that services may be delivered more efficiently when service delivery programs are consolidated and, as a result, citizens may receive improved services and enjoy lower taxes.¹⁰ The Act, referred to as "the grant bill" by supporters, provides incentives to encourage cities and counties to examine and consider consolidating services.¹¹

The Act defines "service" or "local government service" in a nonexclusive list ranging from law enforcement and fire protection to public housing and recreation systems.¹² The committee substitute bill that ultimately passed added three services to the list despite its nonexclusive nature.¹³ These services were "planning and zoning," "solid waste management," and "electric or gas utility services."¹⁴

4. *Id.* at 9. The state of Georgia has 159 counties and more than 500 municipalities. *Id.*

5. Telephone Interview with Rep. Larry Walker, House District No. 141, (June 21, 1993) [hereinafter Walker Interview]; Burgess Interview *supra* note 2; Telephone Interview with Rep. Kathy B. Ashe, House District No. 46 (June 21, 1993) [hereinafter Ashe Interview]; *see also* Platform for Change, *supra* note 2, at 6.

6. Walker Interview, *supra* note 5.

7. O.C.G.A. §§ 36-86-1 to -2 (Supp. 1993).

8. *Id.* § 36-86-2 (Supp. 1993).

9. *Id.*

10. *Id.* "This is a progressive piece of legislation because it asks local governments to consider the best way to provide services to citizens in an economical manner." Higdon Interview, *supra* note 1.

11. Higdon Interview, *supra* note 1; *see also* O.C.G.A. § 36-86-2 (Supp. 1993).

12. O.C.G.A. § 36-86-3(2)(A)-(M) (Supp. 1993).

13. *Id.*

14. Compare HB 83, as introduced, 1993 Ga. Gen. Assem. with O.C.G.A. § 36-86-3(K)-(M) (Supp. 1993).

The heart of this legislation provides for the establishment of a local governmental efficiency grant program within the Department of Community Affairs.¹⁵ The Department of Community Affairs is responsible for establishing guidelines to provide these grants to local governments.¹⁶ There are three sequential categories for accessing the grant funds.

The first category involves "[e]fficiency assessment grants."¹⁷ This grant program provides some funds to local governments interested in studying the benefits and feasibility of consolidating service delivery programs or governmental units.¹⁸ The Act is not mandatory, so no local government is required to conduct assessment studies "unless funds are appropriated for [that] purpose."¹⁹

The second category covers "[c]onsolidation planning grants."²⁰ This grant program kicks in once a local government decides to consolidate government units or service delivery programs.²¹ These funds are intended to be used to plan the potential consolidation.²² Because the Act is not mandatory, no local government that takes advantage of an efficiency assessment grant under the first category will be "compelled to consolidate local government units or local government service delivery programs as a result of the findings."²³

The third category in the sequence covers "consolidation implementation grants."²⁴ This final category provides interested entities with the necessary funds to effectuate a consolidation once categories one and two have been completed.²⁵

HB 84

The bottom line effect of this legislation is to provide for the termination of municipalities determined to be inactive because they fail to meet certain minimum standards.²⁶ In other words, inactive cities will cease to be cities in the technical sense.²⁷ Once a municipal

15. O.C.G.A. § 36-86-4(a) (Supp. 1993)

16. Walker Interview, *supra* note 5. Rep. Walker was not only responsible for introducing this legislation, but also played a key role in allocating \$750,000 of the budget to fund this bill. *Id.* The Act sets October 1, 1993 as the deadline for the Department of Community Affairs to promulgate these rules and regulations. O.C.G.A. § 36-86-4(b) (Supp. 1993).

17. *Id.* § 36-86-4(a)(1) (Supp. 1993).

18. Higdon Interview, *supra* note 1; *see also* O.C.G.A. § 36-86-4(a)(1) (Supp. 1993).

19. O.C.G.A. § 36-86-4(g) (Supp. 1993).

20. *Id.* § 36-86-4(a)(2) (Supp. 1993).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* § 36-86-4(a)(3) (Supp. 1993).

25. *Id.*

26. *Id.* § 36-30-7.1 (Supp. 1993).

27. It is estimated that thirty-five Georgia cities will lose their charters when this

corporation is terminated, the Act provides that the same geographic area "may continue to be identified under the same name and style as the former municipal corporation."²⁸ If the community was established on or before 1900, the Act allows the Department of Community Affairs to designate the community as a "historical township."²⁹

There are those who believe that the government system in Georgia is archaic because there is too much duplication of services and too much government.³⁰ "Nonfunctioning cities are not economically capable of providing to their citizens what the constitution requires."³¹ In addition, once entities receive charters to incorporate they often have access to certain state and federal grant funds.³² There are some Georgia cities that do not deliver any services or hold elections and town meetings, yet they still receive grants and rebates.³³

Initially this substantial piece of legislation met with strong opposition.³⁴ HB 84 as originally drafted would have eliminated numerous smaller cities across the state.³⁵ A committee of city officials representing cities of various sizes across the state assisted in redrafting the legislation.³⁶ The committee essentially defined a "city" using a three tiered test to determine viability.³⁷ The Act, as passed, requires cities to satisfy each of the three tiers to avoid termination of their charters.³⁸

The first tier requires all incorporated municipalities in Georgia to provide at least three of the services delineated in the Act.³⁹ The bill as it was originally drafted required each municipality to provide a

Act plays out in 1995. Higdon Interview, *supra* note 1. Santa Claus, Georgia is not a viable city and will likely lose its charter, not because it consists of just five families but because it fails to meet the necessary criteria. Burgess Interview, *supra* note 2.

28. O.C.G.A. § 36-30-7.1(h) (Supp. 1993). Thus, even if a city like Santa Claus loses its charter, it will still be allowed to keep its name under the Act. Higdon Interview, *supra* note 1.

29. O.C.G.A. § 36-30-7.1(h) (Supp. 1993).

30. Walker Interview, *supra* note 5. Rep. Walker, the chief sponsor of HB 83 and 84, has been busy making speeches all over the State of Georgia soliciting support to streamline government. *Id.*

31. Higdon Interview, *supra* note 1.

32. *Id.*

33. Walker Interview, *supra* note 5.

34. *Id.* "Initially this legislation will not be too popular, but ultimately it's probably the best thing for Georgia." Telephone Interview with Rep. Louise McBee, House District No. 88 (June 21, 1993) [hereinafter McBee Interview].

35. Burgess Interview, *supra* note 2. Burgess was one who actively opposed the bill as it was introduced. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*; see also O.C.G.A. § 36-30-7.1 (Supp. 1993).

39. O.C.G.A. § 36-30-7.1(b)(1) (Supp. 1993).

minimum of *five* of the listed services.⁴⁰ The original bill was also altered to allow these services to be provided either directly or by contract.⁴¹ This enables the city to contract with the county or a private entity to provide the service without losing its charter.⁴² For example, the city can contract with a private garbage collection service rather than have its own city owned service provider.⁴³

The Act, as passed, also expanded the list of services of which three must be provided.⁴⁴ The list now provides for the fire protection service to be a volunteer service and adds the following services to the list: "[s]olid waste management," "[e]lectric or gas utility services," and "[p]lanning and zoning."⁴⁵

The second tier is a meeting requirement. The incorporated municipality must "[h]old at least six regular, monthly or bi-monthly officially recorded public meetings."⁴⁶ The third and final tier requires that the incorporated municipality hold regular elections.⁴⁷

The Act sets July 1, 1994 as the deadline for filing with the Department of Community Affairs either a certification claiming that the municipal corporation does or does not meet the minimum standards for establishing an active municipality.⁴⁸ By July 1, 1995, the Department of Community Affairs will compile a list of those municipal corporations whose legal status will be terminated.⁴⁹

The General Assembly stated in its findings under HB 83 its purpose to consolidate local government units and service delivery programs "where such consolidation will improve efficiency and cost effectiveness, without disturbing territorial arrangements which already operate in

40. HB 84, as introduced, 1993 Ga. Gen. Assem.

41. Compare HB 84, as introduced, 1993 Ga. Gen. Assem. with O.C.G.A. § 36-30-7.1(b)(1) (Supp. 1993). Jim E. Higdon, Commissioner of Department of Community Affairs said he "can't imagine any truly viable community losing its charter since the provision allowing for the contracting of services was added." Higdon Interview, *supra* note 1.

42. Burgess Interview, *supra* note 2.

43. *Id.* The city is still the provider of service via contract; it just does not provide the service on its own. *Id.*

44. Compare HB 84, as introduced, 1993 Ga. Gen. Assem. with O.C.G.A. § 36-30-7.1(b)(1) (Supp. 1993).

45. *Id.*

46. O.C.G.A. § 36-30-7.1(b)(2) (Supp. 1993).

47. *Id.* § 36-30-7.1(b)(3) (Supp. 1993). The Georgia Municipal Association once decided to present a plaque to the individual who had served the most years as a mayor in the State of Georgia. Higdon Interview, *supra* note 1. The plaque was awarded to the mayor of Taliaferro, Georgia, for serving forty-seven years. *Id.* Later the Association was surprised to discover that this mayor had served for forty-seven years because there had not been an election in forty-seven years. *Id.*

48. O.C.G.A. § 36-30-7.1(c)(1)-(2) (Supp. 1993).

49. *Id.* § 36-30-7.1(f) (Supp. 1993).

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an efficient and cost-effective manner.”⁵⁰ The Act successfully meets this purpose.⁵¹ “The small city may be the last pure democratic society remaining.”⁵²

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50. *Id.* § 36-86-2 (Supp. 1993).

51. Burgess Interview, *supra* note 2.

52. *Id.* Many of these small cities remain free of pressure from interest groups. *Id.* As a result, these cities frequently have simplistic yet efficient programs providing a more responsive delivery of services and better protection of property. *Id.*