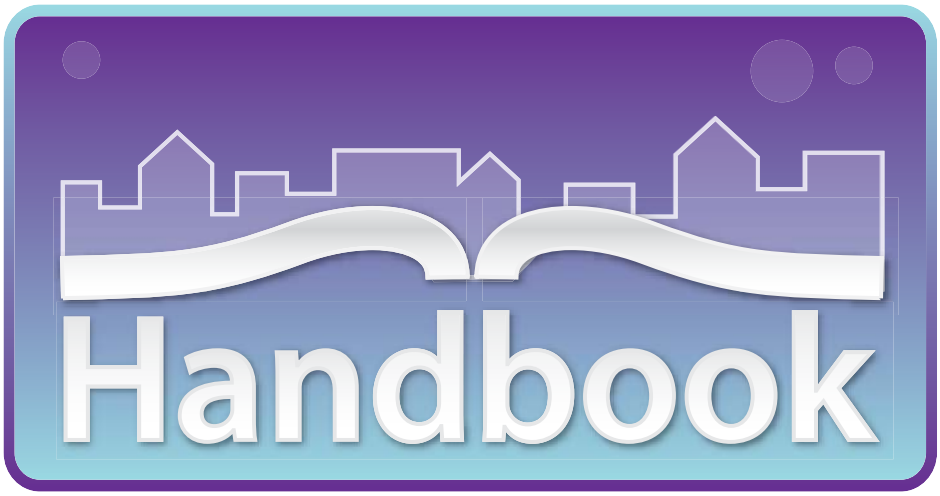


# for Georgia Mayors and Councilmembers

FIFTH EDITION

## Part Six: Intergovernmental Relations

### Service Delivery Strategy

# Service Delivery Strategy

## History and Purpose

The Georgia Service Delivery Strategy Act, adopted by the General Assembly in 1997, established a process through which local governments within each county must come to an agreement about service provision. "The process. . . . is intended to minimize inefficiencies resulting from duplication of services and competition between local governments and to provide a mechanism to resolve disputes over local government service delivery, funding equity, and land use."[1] The Act attempted to embody the recommendations of the Georgia Future Communities Commission, which had been created by the General Assembly in 1995. The Commission, comprised of state legislators, city and county officials, and business leaders, concluded that "Amendment 19"* to the Georgia Constitution, which authorized counties to provide municipal services, had led to "fruitless competition and duplication" between cities and counties.[2]

## Components

Service Delivery Strategies are intergovernmental agreements that ideally should involve participation by all the local governments in each county. Each service delivery strategy must identify all of the services currently provided or primarily funded by each local government or authority within the county along with a description of the geographic area in which the identified services are and will be provided by each jurisdiction. It must also include an identification of the funding source for each service identified and the mechanisms used to facilitate the service provision and funding sources. [3]

## Criteria

Although service delivery agreements are intended to remedy the problems of duplication of services and double taxation of city residents, it is important to note that higher levels of service offered by municipalities are not considered duplication.[4]

Another key element of service delivery agreements is that they must ensure that the cost of any service offered primarily for the benefit of the unincorporated area of a county be borne by the unincorporated area taxpayers.[5] This must be accomplished through the use of special tax districts in which property taxes, assessments, or user fees are levied.[6] An example of how this works to prevent double taxation follows:

> There are three cities in Safe County, Serve, Protect, and Defend. Both Serve and Protect have a municipal police department, as does the county. Defend does not have a police department and relies on the county for law enforcement services instead. Rather than pay for the county police department out of general tax revenues, the service delivery agreement calls for the county to create a special tax district that includes all of the unincorporated area and all of the City of Defend, but excludes the cities of Protect and Serve. The county charges 3 mills

of property tax within the special tax district to fund the county police department. The residents of Protect and Defend do not pay the special district millage since they are not in the special tax district, and instead pay a millage to their city governments to fund their municipal police departments.

## Constitutional Officers

A 2004 amendment to the Service Delivery Strategy Act excluded sheriffs, clerks of the superior court, judges of the probate court, tax commissioners, their personnel, or services provided by them from the definition of "local government".[7] The ostensible reason given for this amendment at the time was that the constitutional officers are elected countywide and provide services on a countywide basis. In some communities however, this is not the case, particularly with respect to the sheriff. Some sheriffs provide patrolling and emergency response services only in portions of the county not served by municipal police. It is worthy of note that the service delivery act still requires identification of all services provided "by each general purpose local government and each authority within the county, or provided within the county"[8] Thus, it remains unclear what the actual impact this amendment has on service delivery agreements.

## Water and Sewer Rates

The service delivery act strategy requires that water and sewer rates charged to users outside of the geographic boundary of a service provider not be arbitrary.[9] The law also provides that a governing authority may challenge such a rate differential imposed within its jurisdiction by another government by holding a public hearing to review the rate differential. After having a qualified engineer prepare a rate study and after attempting some form of alternative dispute resolution, a governing authority may challenge the rate differential in court.[10]

## Renegotiation

The original act required service delivery agreements to be in place in every county by July, 1999. However, changes in revenue distribution, service provision, and comprehensive plans[11], expiration of the existing service delivery agreement, and creation or abolition of local governments all may warrant the adoption of a new agreement.[12] Cities and counties may also agree to amend their existing agreements.[13]

In order for a service delivery strategy to be valid, it must be approved by a resolution adopted by the governing authorities of the county, every city within the county which has a population of 9,000 or more within the county, the city that serves as the county site, and by no less than 50% of the remaining cities within the county which contain at least 500 persons within the county.[14] As one might expect from such a formula, not every city stands on equal footing and thus every city official should be aware of whether their city's approval is required. The service delivery statute appears to bind cities to service delivery agreements even if they have no say in approval of the agreement. Consideration of the following hypothetical example in which some cities could be bound by service delivery agreements in which they have no say suggests that it behooves cities in such circumstances to build relationships with other local governments.

> There are five cities in Tree County: Maple, Oak, Elm, Poplar, and Pine. Maple is the only city in Tree County that is in two counties; and under the last census it has a population of 499 in the portion located in Tree County. Oak has a population of 10,000 under the last census. Elm is the county site and has a population of 5,000 under the last census. Poplar and Pine both have populations of 8,000 under the last census.
>
> Under this example, a service delivery strategy for Tree County could be adopted without the consent of Maple and without the consent of either Poplar or Pine. Thus, the consent of two of the five cities in the county are not needed for an agreement that dictates what areas within the entire county (both in the unincorporated and incorporated areas) may be served by each of the six relevant local governments. Imagine if Maple provides water and sewer service in its city and can do so more efficiently than any other government in Tree County. Under the Service Delivery Strategy Act, other local governments could decide that Maple cannot provide water and sewer service in the portion of the City of Maple that is in Tree County. City officials should be aware that the Service Delivery Strategy Act allows just such scenarios to unfold. It is thus in the interest of cities negotiating agreements to form alliances with other local governments that must be a party to the agreement.

## Sanctions and the Role of DCA

Counties are required to file the service delivery strategy agreement with the Georgia Department of Community Affairs (DCA).[15] Within 30 days of receipt of the agreement, DCA must verify that the agreement filed meets the components and criteria imposed by state law, but shall not approve or disapprove of specific elements of the strategy.[16]

If local governments are not successful in agreeing to a verified strategy, no state administered financial assistance or grant, loan, or permit, shall be issued to any local government or authority not included in the strategy or any project inconsistent with a verified strategy.[17]

## Dispute Resolution

If local governments are unable to reach an agreement prior to sanctions being imposed, some means of alternative dispute resolution shall be employed.[18] This means that that the local government must engage one or more mediators, or other neutrals to assist in resolving the dispute. If alternative dispute resolution does not result in an agreement, the neutral must prepare a report that is provided to each governing authority and becomes part of the public record. The costs of the alternative dispute resolution must be shared by the parties to the dispute on a pro rata population basis, with the county population based on the unincorporated area.[19]

If local governments are still not successful in reaching an agreement after sanctions have been imposed, the law provides that any of the parties may file a petition in superior court seeking mandatory mediation.

## NOTES

[1] O.C.G.A. § 36-70-20.
[2] A Strategy for Promoting Georgia's Future Prosperity, The Georgia Future Communities Commission, Report of Recommendations, Volume 1 at 7 (1998).
* "Amendment 19" is jargon used to refer to what is often also called the "Supplementary Powers Provision" of the Georgia Constitution. This provision, now located at Article IX, Section II, Paragraph III of the current Constitution, which allows counties to provide municipal services, was ratified in 1972 and was the 19th question on the statewide ballot that year.
[3] O.C.G.A. § 36-70-23.
[4] O.C.G.A. § 36-70-24(1);
[5] O.C.G.A. § 36-70-24(3)(A).
[6] O.C.G.A. § 36-70-24(3)(B).
[7] O.C.G.A. § 36-70-2(5.2).
[8] O.C.G.A. § 36-70-23(2).
[9] O.C.G.A. § 36-70-24(2)(A).
[10] O.C.G.A. § 36-70-24(2)(B).
[11] The Georgia Department of Community Affairs concluded in March 2010 that only a full comprehensive plan update by a county necessarily triggers a mandatory renegotiation of the service delivery strategy.
[12] O.C.G.A. § 36-70-28.
[13] Id.
[14] See O.C.G.A. § 36-70-25.
[15] O.C.G.A. § 36-70-26.
[16] O.C.G.A. § 36-70-26.
[17] O.C.G.A. § 36-70-27.
[18] O.C.G.A. § 36-70-25.1
[19] O.C.G.A. § 36-70-25.1(c).