

204 Coverdell Legislative Office Building
18 Capitol Square SW
Atlanta, Georgia 30334



Hayley Williams
Interim Director
404.656.0015

Georgia State Senate
Office of Policy and Legislative Analysis

**FINAL REPORT OF THE JOINT STUDY COMMITTEE
ON SERVICE DELIVERY STRATEGY (SR 175)**

Committee Members

Senator Frank Ginn
Chairman
District 47

Representative John LaHood
Chairman
District 175

Senator Max Burns
District 23

Representative Brian Prince
District 132

Senator Sheikh Rahman
District 5

Representative Dale Washburn
District 144

Kurt Ward
Mayor of Braselton

Wesley Corbitt
*Effingham County Board of Commissioners
Chairman*

Chris Dockery
Lumpkin County Commission Chairman

Derek Norton
Mayor of Smyrna

Prepared by the Senate Office of Policy and Legislative Analysis, 2023

TABLE OF CONTENTS

STUDY COMMITTEE CREATION, FOCUS, AND DUTIES	2
BACKGROUND.....	3
SUMMARY OF TESTIMONY AND DISCUSSION	4
MEETING ONE – SEPTEMBER 18, 2023 (STATE CAPITOL)	4
MEETING TWO – OCTOBER 3, 2023 (LOWNDES COUNTY JUDICIAL COMPLEX, VALDOSTA, GA).....	9
MEETING THREE – NOVEMBER 20, 2023 (BRASELTON CIVIC CENTER, BRASELTON, GA).....	12
MEETING FOUR – DECEMBER 4, 2023 (STATE CAPITOL)	16
MEETING FIVE – DECEMBER 21, 2023 (VIRTUAL MEETING VIA ZOOM).....	16
FINDINGS AND RECOMMENDATIONS	17

STUDY COMMITTEE CREATION, FOCUS, AND DUTIES

The Joint Study Committee on Service Delivery Strategy was created by Senate Resolution 175 during the 2023 Legislative Session of the Georgia General Assembly.¹ The Study Committee was tasked with examining the conditions, needs, issues, and problems surrounding the existing process by which counties and cities periodically renegotiate Service Delivery Strategy (SDS) agreements.

Senator Frank Ginn of the 47th served as Co-Chair of the Study Committee with Representative John LaHood of the 175th. The other Senate members were Senator Max Burns of the 23rd and Senator Sheikh Rahman of the 5th. Representative Brian Prince of the 132nd and Representative Dale Washburn of the 144th also served as members of the Study Committee.

Additional members appointed to the Study Committee included: Kurt Ward, Mayor of Braselton; Chris Dockery, Lumpkin County Commission Chairman; Wesley Corbitt, Effingham County Board of Commissioners Chairman; and Derek Norton, Mayor of Smyrna.

The following legislative staff members were assigned to the Study Committee: Sam White, Senate Press Office; Nathan Corbitt, Senate Office of Policy and Legislative Analysis; Emily Doppel, Office of Senator Frank Ginn; Shannon Willis, Office of Representative John LaHood; Molly Aziz, House Budget and Research Office; and Stuart Morelli, Office of Legislative Counsel.

¹ S.R. 175, 158th Gen. Assemb., Reg. Sess. (GA. 2023), <https://www.legis.ga.gov/api/legislation/document/20232024/220201>.

BACKGROUND

SR 175 outlines the following issues related to Service Delivery Strategy:

- 1) Service delivery Strategy (SDS) is an important local government service allocation mechanism for counties and cities;
- 2) SDS agreements require periodic renegotiations;
- 3) These renegotiations are often contentious and pit counties and cities against one another, which is harmful to their residents;
- 4) These difficulties are frequently documented in the media, providing evidence of the disagreement between counties and cities; and
- 5) Dozens of counties and cities went to mediation during the 2022 renegotiations in an effort to resolve their differences.

A thorough review of the history of Service Delivery Strategy in Georgia was provided at the first meeting of the Committee by the Association County Commissioners of Georgia and the Georgia Municipal Association. A summary of that presentation can be found in the next section of this report.

SUMMARY OF TESTIMONY AND DISCUSSION

Meeting 1- September 18, 2023 (Atlanta, GA)

The first meeting of the Joint Study Committee was held on September 18, 2023 at the Georgia State Capitol. Senator Frank Ginn (Chair), Representative John LaHood (Chair), Senator Max Burns, Senator Sheikh Rahman, Representative Brian Prince, Representative Dale Washburn, Kurt Ward, Chris Dockery, Wesley Corbitt, and Derek Norton were present for the meeting.

Presentation on the Background of Service Delivery Strategy and Associated Testimony

Jim Thornton, Director of Governmental Relations for the Georgia Municipal Association (GMA) and Rusi Patel, General Counsel for GMA joined Clint Mueller, Governmental Affairs Director for the Association of County Commissioners of Georgia (ACCG) and Larry Ramsey, General Counsel of ACCG in reviewing the history of the Georgia Service Delivery Strategy Act, O.C.G.A. §36-70-25 through §36-70-28.

These speakers provided the following background information:

Historically, Georgia cities existed by charter throughout the state and most cities existed to provide urban services such as police, fire, water and sewer, and street maintenance. In many cities these services could not be received outside of the city limits. Counties, on the other hand, historically existed as an administrative arm of the state to provide state mandated functions such as county courts, health and welfare services, bridge and road maintenance, and agricultural services. In the mid-1900s, however, significant changes in Georgia and throughout the United States, such as infrastructure changes (the interstate system) and funding for education and homeownership (the G.I. Bill), resulted in increased suburbanization. The shift left individuals in unincorporated areas desiring the same services they had received while in the cities.

In the 1960s and 1970s, study committees in Georgia explored the problem and noted that “in terms of quality of environment, we are suffering from the effects of unplanned, uncoordinated, haphazard growth and development...” Many of these study committees determined that there needed to be an equalization constitutional amendment that would create an equal playing field for cities and counties to provide services. Local acts and local constitutional amendments, passed by the General Assembly and ratified by local citizens, had attempted to deal with who would provide certain services.²

By 1972, lawmakers proposed a more cohesive system of Service Delivery Strategy via the introduction and passage of Amendment 19, (Ga. Const. Art. IX, Sec. II, Par. III), now referred to as the Supplemental Powers Clause of the Constitution. This granted, for the first time, statewide uniform authority to cities and counties to provide a list of services without needing separate authority from the General Assembly. Cities received jurisdiction over the performance of the list of services within their city limits and counties received jurisdiction over the performance of the list of services within unincorporated areas. These could be

² Under the current Georgia Constitution of 1983, local constitutional amendments are not permissible, but before the 1983 Constitution, they were commonly used and on the ballot every two years.

changed by act of the General Assembly, by other law, or local governments could, by intergovernmental agreement, define who provides which of the list of services.

Listed services include, but are not limited to, services such as: police and fire; garbage; trash disposal; public health facilities; EMS; animal control; street and road construction and maintenance; curbside walks; parks and recreation; storm water; sewage; water treatment; housing; transportation; and libraries.

When the Supplementary Powers Clause within the text of Amendment 19 was ratified, another provision was ratified that allowed the creation of special districts to raise revenue for, and provide services within, geographic areas that might be different than the borders of the jurisdiction itself (such as a special fire district within the county not extending to the entire county). This Clause became known as the Special Districts Clause.

After the adoption of the Supplementary Powers Clause, litigation ensued out of Dekalb County in the mid-seventies with citizens arguing that the Supplementary Powers Clause meant that counties could not tax city residents for services that were just being provided in the unincorporated areas. The Supreme Court determined that the Clause functions as an authorization to provide services. While citizens were constitutionally entitled to be equally taxed, with the uniformity of taxation on the assessment side, individuals are not entitled to equal benefit from taxes that are levied.

Throughout the nineties, Georgia began new study committees and launched a task force to consider disputes between cities and counties on Service Delivery. In 1997, the Georgia General Assembly enacted the Service Delivery Strategy Act³ in an attempt to address many of the issues surrounding Service Delivery Strategy. The legislation was enacted with the intent of having local governments analyze the services they provided and identify overlap or gaps in service to determine: a rational method of providing those services; a method of funding those services; and a method for cities and counties to minimize conflicts in the provision of services.

The speakers continued by explaining the basics of Service Delivery Strategy which can be broken down into the following bullet points:

- Who? Counties and cities (entering into a negotiation). Not every county has multiple cities, and some counties may have no cities;
- What? Service definition per Constitution, Statute, and Regulation;
- When? Service Delivery Strategy (SDS) and Comprehensive Plan Term as defined by the same OCGA chapter as the SDS Act;
- Where? The Geographic Area (the boundary of the cities, county, unincorporated area and where the services are being provided);
- How? Costs, Revenues, Property Taxes; and
- Why? Incorporated area taxpayers subsidize unincorporated taxpayers and vice versa.

The speakers also explained the triggers for renegotiation under the SDS Act, specifically O.C.G.A. §36-70-28, which include:

- Comprehensive Plan Updates every ten years;

³ O.C.G.A. §36-70-20 et. seq.

- Whenever necessary to change Service Delivery or revenue distribution arrangements;
- Creation, abolition, or consolidation of local governments;
- When the existing agreement expires; and
- Whenever the county and affected municipalities agree to revise the SDS agreement.

The speakers also shared that under the Service Delivery Strategy Act, those required to participate in and sign off on Service Delivery intergovernmental agreements include all affected municipalities.⁴ This includes the county governing authority; the municipality that serves as a county seat; municipalities with a population of 9,000 or greater; and 50% of the remaining municipalities with a population of at least 500 but less than 9,000. Service Delivery Strategy Agreements must include: identification of all government services provided under the agreement; assignment of which local government will provide which service where; description of the funding source(s); and identification of the mechanisms to facilitate the implementation of the services and funding responsibilities.⁵

Jim Thornton, Director of Governmental Relations for GMA, then provided testimony that in the 1970s, citizens raised the issue of double taxation. He explained that city taxpayers are also county taxpayers and often pay in the county tax bill for the same services provided by the city, and this conversation ultimately led to the Service Delivery Strategy Act. Mr. Thornton addressed the issue of efficiency and concern regarding duplication of services; “There is no reason, if you have cities and counties both in the water business, for them to run parallel water lines down the same road. That’s a duplication of services. That’s not efficient use of taxpayer resources.”

Mr. Thornton testified that “as a general statement of tax equity, city taxes should be used to pay for city services, that unincorporated area revenues be used to pay for unincorporated services, and when there are county-wide services...that’s an appropriate use for county-wide services.”

Mr. Thornton also testified that “where GMA and our cities are concerned about the failure of tax equity is where county-wide taxes are used to fund unincorporated area services.” According to GMA, some of the services which are of greatest concern to city residents and considered to be the most inequitable services are: sheriff, law enforcement and jail; “county roads” and public works; fire; parks and recreation; administrative services; libraries; solid waste collection and disposal; planning, zoning, and code enforcement; economic and downtown development; and water and sewer.

Mr. Mueller, Governmental Affairs Director for ACCG testified that sometimes countywide services disproportionately benefit or are used by city residents, such as libraries, court-related services, and health/EMS services. Local Option Sales Tax (LOST), he noted, can serve as a “double dip” for city residents. The flip side, Mr. Mueller noted, is that unincorporated revenues are placed in the countywide general fund. “I think some of the resistance you see across the state in doing that is because the current law doesn’t necessarily allow for them to use all of those unincorporated area revenues to pay for that. Therefore, they have to then create a millage rate to pay for it. Politically, you can see, where you are

⁴ Per O.C.G.A. §36-70-25(b).

⁵ Per O.C.G.A. §36-70-23.

creating a separate millage rate in the unincorporated area and it's a brand new millage rate that no one has ever paid before, there is some political resistance to that."

Mr. Thornton discussed road issues and how cities and counties navigate cost and apportionment of this service and inequities that can arise. He stated that some counties have gone through the process of attempting to distinguish between countywide and unincorporated roads. He noted, however, that what is more common is counties writing a tax equity check to the city to help offset this inequity. Mr. Thornton explained some other options like the county agreeing to come into the city and help maintain roads that are clearly city roads or counties providing a differential tax rollback.

Mr. Mueller noted that DCA serves a role in Service Delivery Strategy documentation, requiring forms to be filled and signed off on by local governments, and some of the best practices in this process include correctly filling out forms, and Service Delivery maps.

Representative Washburn asked if the State's holding grants for non-timely compliance with SDS renegotiations in abeyance were equally as painful to the cities and the counties, or if it could be weighted one way or the other. Mr. Mueller responded that this depends on the area, what they need, and where they are in their timeframe of application. Representative Washburn then asked for confirmation that one party then could have the upper hand over another in waiting for a resolution of the dispute. Mr. Mueller replied that this is correct.

Other Testimony

Mr. Sam Olens, Dentons US

Mr. Olens of Dentons US, and former Attorney General of Georgia, then addressed the Committee. Mr. Olens reviewed his background, having taken office as a county official in 1990. At that time, Mr. Olens noted, "we were doing 30 day extensions with DCA because we were not compliant with House Bill 489, the Service Delivery Act. When I was Chair, three years later is when we finally resolved the Service Delivery Act between the cities and Cobb, the County. It was not a quick process."

Additionally, Mr. Olens described his experience representing a client at Dentons who wished to open a doctor's practice. At the time, the county in which the practice was located had a policy that one could not seek annexation for five years. "Such a document had been signed earlier, and all these folks wanted to do was open up a doctor's practice."

Mr. Olens noted that "If you look at the code section that seems to be one of the biggest parts of the Winder-Barrow County case, it's 36-70-24(3)(A), which unartfully states 'The strategy shall ensure that the cost of any service which a county provides primarily for the benefit of the unincorporated area of the county shall be borne by the unincorporated area residents...'. That sentence doesn't make sense...A simple sentence like that doesn't work in 159 counties and 800 some-odd cities. By definition, every county is different. Cities are different. If it's a city that's 90% of the population of the county versus a city that's 10% of the population of the county, language like that candidly isn't helpful. Query whether geography is as important as the use. The people that use that park, that road, that facility. Geography alone is an artificial construct and it rarely is helpful in Service Delivery issues."

Mr. Olens continued by saying, “In summary, land use, special districts, taxation, water rates and the like all require reasonable elected officials on all sides of SDS issues. Statutory amendments may worsen the current political environment. Counties throughout the state are as different as different can be. The quality of roads, access to general aviation airports, broadband availability, healthcare facilities, etc. vary throughout our state. One size fits all language in Service Delivery Agreements generally is not good policy. Guardrails should seek to bring the parties closer together, not to dictate results that harm both sides years later. So, in a final sentence, I would suggest to you that letting ACCG and GMA potentially come forward to you with a resolution would be the best thing that you could do. It would be the best thing for the cities and counties. Now that doesn’t mean that you wouldn’t want to put a little fire on them to come to that resolution. But that is going to be far better than a legislative fix that doesn’t have their support, as that is so important.”

Douglas Eaves, Eaves Consulting

Mr. Eaves then presented to the Committee. He opened by stating that city and county relationships across the state are being harmed by unnecessarily litigious SDS negotiations. He affirmed that SDS negotiations have primarily functioned well since the SDS Act, but that the conflict has centered around a misunderstanding of the Primary Benefit Clause related service funding. Mr. Eaves stressed that Georgia is a Dillon State and counties only have the powers given to them by the Constitution or by Statute.

Mr. Eaves reviewed the Primary Benefit Clause of the SDS Act and noted that roads have been one of the primary points of contention in SDS Agreements, specifically with regards to who pays for upkeep. He also addressed whether only directly enumerated revenues are available (property taxes, insurance premium taxes, assessments, user fees, or other agreed-upon resources).

Mr. Eaves stated that one issue requiring clarification is whether TAVT collections over the base countywide 23% are available for unincorporated SSDs. Mr. Eaves also quoted from DCA, CVIOG, ACCG and GMA’s 1997 manual “Charting a Course to Cooperation and Collaboration.” Specifically, he testified that “Some county services are made available county-wide to all residents and, in many instances, nonresidents. Examples include services such as indigent legal defense, public health and welfare, county roads in incorporated and unincorporated areas, the county jail, and operation of county courts. These services should be paid out of the general fund.” He also noted that the text lists “special district property taxes, insurance premium taxes, business and occupation taxes, and hotel-motel taxes” as types of revenues counties should use to pay for services provided in the unincorporated area.

Mr. Eaves then proceeded to discuss the issue of the conflation of the Primary Benefit Clause with the Supplementary Powers Clause. He discussed that roads are a ministerial function of the county government, that county road maintenance preceded Amendment 19, and that roads provide a countywide benefit (citing Dekalb County v. City of Winder and Winder v. Barrow County).⁶ He also discussed the holding of Channell v. Houston and that the duties of the Sherriff cannot be relegated to a Special Service District.⁷

⁶ 247 Ga. 695 (1981) and A00A0834 (2022), respectively.

⁷ 287 Ga. 682 (2010).

Mr. Eaves concluded that the original legislative intent of the Service Delivery Strategy Act is as valid today as it was in 1997 and that the existing statutes are sound. He recommended: “Tweak available revenues for clarity.” Also, he recommended “Tweak the ‘Primary Benefit’ Clause to indicate a direct benefit to the taxpayer’s property and not universal benefit services that are governmental functions.” In summation, he stated “do not create a greater evil with a perceived and unnecessary fix.”

Meeting 2- October 3, 2023 (Valdosta, GA)

The second meeting of the Joint Study Committee was held on October 3, 2023 at the Lowndes County Judicial Complex in Valdosta, Georgia. Senator Frank Ginn (Chair), Representative John LaHood (Chair), Senator Max Burns, Senator Sheikh Rahman, Representative Brian Prince, Kurt Ward, Chris Dockery, Wesley Corbitt, and Derek Norton were present for the meeting.

Testimony

Bill Slaughter, Chair of the Lowndes County Commission

Mr. Slaughter testified that SDS is one of the few areas of conflict between Lowndes County and associated cities, reflecting that once SDS negotiations enter litigation “there really is at that point no discussion between the cities and the counties about SDS and about your issues while it’s going through that litigation process.” He also testified about the cost litigation imposes upon taxpayers who “are constantly doling out money to get through this process.”

Mr. Slaughter also highlighted how growth in the unincorporated area of Lowndes County has imposed challenges to the City and County, particularly with regards to Service Delivery Strategy. He explained that citizens moving into the unincorporated areas “are also looking for some of the same conveniences and services that they get inside the cities.” Mr. Slaughter noted the County “has had to step up and provide some of these services,” without duplication of services.

Mr. Slaughter stated that one of the biggest SDS-related issues to Valdosta and Lowndes County is water and sewer provision, which was reflected during the renegotiations of their recent SDS agreement. He stated that negotiation of the last SDS agreement lasted seven years. Mr. Slaughter emphasized that the SDS Act should promote efficient resolution of differences of opinion.

Paige Dukes, Lowndes County Manager

Ms. Dukes reflected upon witnessing every SDS renegotiation which the City and County have concluded, and stated that with each subsequent renegotiation, “the further down in the weeds we tend to get.” She recommends: “a clear, unambiguous, simple dispute resolution procedure that will facilitate efficient resolution.” Ms. Dukes also advocates “against substantive revisions to the SDS Act regarding any particular service or services.”

Ms. Dukes further recommends: clear unambiguous triggers for review and revision; a reasonable specified time for negotiation; one mediation before a mediator trained in SDS; a fixed deadline to submit a strategy to DCA; and sanctions if the strategy is not submitted by the deadline. Ms. Dukes noted that a multi-step procedure does not promote efficient resolution and a lengthy procedure protracts differences of opinion.

Also, she recommends that procedural issues in the SDS Act should be resolved; the triggers for review and revision; when a county or city may use the dispute resolution procedures; whether an existing strategy expires; when a local government becomes ineligible for financial assistance or grants, loans, or permits; and the role of DCA.

Chairman Ginn asked Ms. Dukes if she agreed that cutting off state funds during pending successful renegotiation of an SDS agreement makes people get to the table faster for an efficient resolution. She agreed and said that this cut of funds must be “all or nothing.” Ms. Dukes also stressed that planning should begin well before the SDS renegotiations.

Chris Dockery, Chair of the Lumpkin County Commission, then commented as to the possibility of all parties actually being in agreement for renegotiation of SDS Agreements: “You’re giving a small municipality a large power to hold hostage” an SDS Agreement.

Mayor Kurt Ward of Braselton commented that smaller cities, such as Braselton, can be negatively impacted by funding withheld as part of non-compliance with the SDS timeline, as smaller cities have a much smaller rainy day fund with which to weather the period of renegotiation including any court proceedings.

Scott James Matheson, Mayor of Valdosta

Mr. Matheson emphasized the spirit of cooperation which drives daily activities in Valdosta and Lowndes County. He stated that an exception to this positive cooperation is the SDS process, where the parties “are pitted with something that you will be passing on for the next decade.” The mayor stated that he loves the idea of a deadline of 12 months and that there has to be some sort of punitive damages to not negotiating.

Chairman Ginn asked Mr. Matheson if he agrees to the necessity of the State withholding something if there is no timely agreement and Mr. Matheson agreed.

Tim Carroll, Councilman of City of Valdosta

Mr. Carroll testified concerning the cost of litigation to taxpayers. While the goal of the SDS legislation was to save taxpayers money, he stated that the reality is that the parties are paying severely for litigation cost. He estimated combined litigation costs for the City of Valdosta and other parties in their most recent SDS negotiation exceeded \$1 million dollars. He stated that he agrees “with Senator Ginn that you’ve got to have some teeth to make parties sit down together, but there has to be a process that both sides can live with that mediate that process.”

Jonathan Sumner, City Manager of Hahira

Mr. Sumner stressed the issue of smaller cities or governments being able to sign off on SDS agreements when they are made by the central city and the county. Mr. Sumner noted the existing comparison between this aspect of SDS negotiations and Local Option Sales Tax (LOST). He stated that “if LOST is going to be the standard, there is a provision which small cities can rely on, and that is population percentage. If there is an ability for smaller cities to not agree to that percentage in Local Option Sales Tax legislation, then we can always fall back on population.” Applying this to SDS, he noted that “if smaller cities are forced to agree to provisions that we might not necessarily have agreement to, what can smaller cities rely

on?...Similar provisions, that exist in LOST, perhaps if they can be proposed in the SDS law. We would very much like to see that.”

Mr. Sumner also asked the Committee to consider the possibility of parties which agree to a mediation/arbitration panel’s findings then being exempt from further sanctions. He also stated that it would be preferable if Local Option Sales Tax and SDS could be negotiated at the same time.

Clint Mueller, Governmental Affairs Director with ACCG⁸

Mr. Mueller discussed the idea of aligning comprehensive planning, Service Delivery negotiations, and Local Option Sales Tax (LOST) negotiations.

He explained that, currently with regards to LOST, all counties and cities must negotiate this at the same time in the same calendar year within two years of every census (most recently with a deadline of December 30 2022). This is unlike SDS and comprehensive planning, which are staggered. There is a five year update to the comprehensive plan and a larger comprehensive plan every ten years. Counties and cities are on different cycles.

ACCG believes comprehensive planning, SDS, and LOST negotiations should all be done at the same time with the same group of elected officials working on all of the negotiations. The cities would perform their comprehensive planning along with their county.

Mr. Mueller continued by saying that a city within multiple counties would align themselves with the county where the greatest percentage of the municipal population is located. The schedule would begin sometime between 2027 and 2037. The Regional Commissions would set the initial schedule working with their counties and cities and send that to the Department of Community Affairs (DCA). DCA would review these plans and sign off on the schedule. Waivers would be allowed initially for those counties who would have to perform this in the first five years. Once a comprehensive plan is scheduled, LOST and SDS negotiations would have to be performed within the same calendar year. The LOST agreement would still be submitted to the Department of Revenue. The SDS Agreement would be submitted to DCA.

Jim Thornton, GMA⁹

Mr. Thornton testified and provided the following points for consideration:

- There should be written, public exchanges in the negotiations process;
- This written record should be the record which is reviewed in the event of a dispute resolution process;
- If the cities and counties come together and they have not reached an agreement within sixty days, which the required signatories have signed (not requiring unanimous consent), then the process is thrown into a non-binding but incentivized arbitration process administered by DCA. This arbitration process would be modeled upon the annexation panels, but with some improvements to the arbitration/mediation process currently within the annexation panel;

⁸ Mr. Mueller indicated that his testimony included initial recommendations/considerations from a sub-committee not voted on by ACCG’s Policy Council.

⁹ Mr. Thornton indicated that his testimony included some initial recommendations and considerations from GMA’s task force and should not be considered a formal or final proposal.

- The panel would be made up of three individuals: one municipal elected or appointed official; one county municipal elected or appointed official not from that particular county, but from some other part of the State who had been identified and trained probably by some combination of GMA, ACCG, Carl Vinson and DCA; and a third individual registered as a registered neutral for mediation purposes with the Georgia Supreme Court;
- The rate of compensation for the panel may be set by DCA;
- This model would follow a baseball arbitration process where, prior to going to the arbitration process there would be a final, written, best offer by the parties prior to meeting with the arbitration panel; and
- The costs would be split by the parties based upon the population. Those governing authorities which accept the panel's ruling would not have the penalties imposed of loss of qualified status and those who do not accept it would have those imposed.

Larry Ramsey, General Counsel for ACCG

Mr. Ramsey shared that the underlying issue when it has come to SDS litigation has centered around one provision in the Act: the Primary Benefit Clause. He noted that this is the same provision in the Winder-Barrow case before the Georgia Supreme Court.¹⁰ In *Union Pointe v. Greene County* (2018), the Court considered the limits of the Court and said that the role of the Court is to make findings of fact about what the city and county are proposing and then send it back for the city and county to keep negotiating.¹¹ Mr. Ramsey noted that this leaves cities and counties in limbo as, if they do litigate, trial judges may look at the issues, make some findings of fact, and state that the parties should continue talking.

Rusi Patel, General Counsel for GMA

Mr. Patel testified that the Winder-Barrow litigation is a complicating factor and that the majority of their council members remain reticent to weigh in while the Winder-Barrow litigation remains undecided. Mr. Patel noted that these issues impact the citizens of cities and counties and future economic growth in these cities and counties.

Meeting 3- November 20, 2023 (Braselton, GA)

Testimony

The third meeting of the Joint Study Committee was held on November 20, 2023 at the Braselton Civic Center in Braselton, Georgia. Senator Frank Ginn (Chair), Representative John LaHood (Chair), Senator Max Burns, Senator Sheikh Rahman, Representative Brian Prince, Representative Dale Washburn, Kurt Ward, Chris Dockery, Wesley Corbitt, and Derek Norton were present for the meeting.

Prior to this meeting, the Chairmen shared an eleven-point document listing potential improvements to the Service Delivery Strategy Act. This document was shared with Committee members, as well as speakers scheduled to give testimony on November 20th. Reference was made to this document throughout the meeting.

Pat Graham, Chairman of the Barrow County Board of Commissioners

¹⁰ See *City of Winder v. Barrow County*, S23G0341, Georgia Supreme Court (docketed 07/05/2023).

¹¹ See *City of Union Point v. Greene County*, 303 Ga. 449 (2018).

Ms. Graham testified that the City of Winder and Barrow County's SDS has been pending since 2018. She stated that she reviewed the suggestions before the Committee with specific consideration towards what may have helped Winder/Barrow come to an agreement in their Service Delivery Strategy negotiations. She noted that procedurally the majority of the document's list of potential improvements would be good things to have in place.

Ms. Graham suggested the Committee consider the problem of a veto objection to a Service Delivery Agreement which cannot be overridden. She also favored shortening the period for which sanctions may be held in abeyance. Ms. Graham also discussed the possibility of withholding Local Option Sales Tax (LOST) revenues to parties which continue in dispute beyond a certain timeframe.

Additionally, she requested greater clarity on item number two on the list of recommendations which the Committee was considering.¹² She stated that she was unsure whether the Committee was trying to tie the negotiation of LOST to all three items previously mentioned. Ms. Graham also discussed item ten on the list of recommendations under consideration by the Committee, concerning mapping.¹³ She believes that procedurally this could be of benefit, but that she has concern about the second half of the text in item number ten, paraphrasing the section of concern to her as "where a jurisdiction that has a service area is reluctant or unable to serve, another jurisdiction can come in and serve."

Angela Davis, Partner at Jarrard Davis, Attorneys for Barrow County:

Ms. Davis noted that the most contentious, prolonged, and expensive SDS negotiations have been driven by one city opposed to the county as well as the other cities within the community. This is possible because of the veto power created by O.C.G.A. §36-70-25(b). Ms. Davis testified that removing the ability of one city to have a veto power may be the most effective modification that could improve the SDS Act.

Ms. Davis provided further written recommendations to the Committee with suggestions for revising this portion of the SDS Act. She noted that these suggestions include the option that if there is a holdout city then the other remaining parties, if they all agree to the SDS Agreement, can proceed without the holdout city. The holdout city would then be subject to sanctions until they decided to agree to the strategy. Another option would be to set a population threshold based upon municipal populations. If there is a holdout city, there is an

¹² Note: the text reads: "Each service delivery strategy should have a specified expiration date, which shall be based on a ten-year negotiation cycle, with the specific dates for each county and the cities within the county determined by DCA. It is recommended that DCA attempt to align the SDS negotiation cycles with the comprehensive planning cycles for each county and the affected cities, to include comprehensive planning involving Local Option Sales Tax. When the parties want to protect service agreements for a longer period than ten years, they should memorialize those agreements in a separate intergovernmental agreement, which should be attached to the SDS agreement provided to DCA."

¹³ Note, the full text of item number ten reads: "The SDS act should also be clarified to require, where applicable, territorial maps associated with each particular service provided to a geographic area. Such maps should be attached to the agreement and may be updated from time to time by the affected parties. Such territorial maps as to utilities for areas that are included in a provider's service area but are not actually being served by that provider should be deemed to provide a right for that particular party to provide the specified service. In the event the party with the right to provide the service either does not have the capability to meet the requirements of the intended recipient or declines to provide the service when requested, any other party which provides the same service but in a different territory or has the authority to contract for the service or implement the service may provide the service upon request of the intended recipient."

override by a supermajority in agreement with the terms of the SDS Agreement. All parties then, except for the holdout city, could proceed.

She also noted that her primary objections to the Committee's items for consideration include:

- Binding arbitration or even mandatory arbitration which she believes would be unconstitutional and take away home rule powers to local governments. She believes there should be a choice between mediation and arbitration;
- The involvement of DCA, given DCA's existing responsibilities;
- The suggestion for an approved panel for arbitration and mediation, as she believes that the parties are best suited to select an arbitrator or mediator based upon their needs and the circumstance;
- Current or former elected officials or staff should not be placed on an approved panel for arbitration and mediation because of the complexity of the legal issues under consideration and the presence of a lawyer or judge could be beneficial; and
- Item 10 of the Committee's recommendations for consideration. The automatic trigger of what happens if a party cannot provide a service could be a dangerous result for an opportunistic county or city and could create a free-for-all territorial grab.

Mr. David Maynard, Mayor of the City of Winder

Mr. Maynard noted the City of Winder has negotiated 39 out of 41 services in their pending Service Delivery Strategy Agreement. Mr. Maynard stated that he is not certain that these failures to reach agreement result from a failure of the SDS Act. One change he suggested is that once a utility territory map is agreed on, it should remain fixed. He noted that the successful negotiation of ambulance service between the parties suggests that the SDS Act is working.

Mr. Maynard also provided a written supplement to the Committee. Mr. Maynard's comments within this supplement include, but are not limited to, suggesting that the Committee maintain the essence of the SDS Act in its current form and protect and preserve the historical utility territories for cities and counties at the time the negotiation fails, unless all parties agree to a revision, for a period of time after negotiations on a new SDS fail.

Mr. Andrew Welch, Partner at Smith, Welch, Webb, and White Law, Attorneys for Winder

Mr. Welch testified that the SDS Act has worked very well for three decades. However, he believes that there is room for the Act to be improved. He suggests that: the involvement of attorneys and consultants in the process can be problematic; sanctions should be in effect throughout litigation proceedings; and prolonged litigation and the abeyance of sanctions are not helping the process. Mr. Welch also testified that the ultimate decision making authority in SDS should remain with the Superior Court. He also reflected upon House Bill 855 from the 2013-2014 Legislative Session as possible help in terms of guidance.

Mark Beatty, Director of Planning and Government Services, Northeast Georgia Regional Commission

Mr. Beatty presented on the role of GIS in Service Delivery Strategy and the role of the Georgia Association of Regional Commissions (GARC), composed of the twelve Regional Commissions in Georgia. He explained that GARC is an important part of the Service Delivery system in Georgia, providing regional planning, public administration, and

technical resources to the cities and counties in their regions. He stated that Regional Commissions also work with local state, federal, and other partners to advance state and regional priorities through collaboration, partnerships, and strategy implementation.

Mr. Beatty reviewed the functions and benefits of GIS, which connects data to a map integrating location data with system information. He said that for Service Delivery, the benefits of GIS include improved communication and efficiency as well as better management and decision making possibilities. GIS mapping can help minimize any duplication or competition amongst local governments.

He continued by explaining that within the Service Delivery Strategy Agreement itself, service area maps frequently appear as attachments to DCA's Form 2. Form 2 functions as a summary of the service arrangement and a unique Form 2 is completed by the parties for each service offered under the Service Delivery Strategy Agreement (for example: one Form 2 for water, one Form 2 for sewer, etc.). Maps are not tied to every Form 2, but most of the time they are tied to water and sewer, 911, or EMS delivery. Mr. Beatty stated that the attachment of maps is not a requirement under the Act.

Additionally, Mr. Beatty testified that there is no standardization for maps attached to Service Delivery Strategy Agreements, and the form of the map is up to the local government. He explained that this can lead to confusion, especially during an SDS dispute, as maps may require user inference. He also explained the implications of bad maps that may include unclear service boundaries, leading to confusion from the providers and to the public at boundary parcels and complications during staff turnover. Bad maps may also lead to duplication of services and/or service inefficiencies.

Mark Smith, CEO/Owner of Water Utility Management

Mr. Smith described his experience as the CEO and owner of the largest private water company in Georgia, and how his business is impacted by Georgia's SDS statute. The SDS Act, Mr. Smith stated, does not recognize the role that private companies play in Service Delivery. Existing SDS agreements between city and county governments do not provide a window of opportunity for private water providers. Mr. Smith requested the Committee consider granting private providers, such as his company, the right to expand their systems.

Clint Mueller, Director of Governmental Affairs, ACCG

Jim Thornton, Director of Governmental Relations, GMA

Clint Mueller and Jim Thornton presented an update on the status of ACCG/GMA's joint task force working on SDS and LOST. The task force is considering a formula option for LOST and eliminating the dispute resolution process for LOST. The task force is also considering a different dispute resolution process for SDS to include non-binding arbitration or mediation, instead of a full panel hearing the dispute.

Rusty Haygood, Deputy Commissioner, Department of Community Affairs

Deputy Commissioner Haygood testified that while the SDS Act is almost a quarter of a century old, the forms used in the process are virtually unchanged. He explained that since the SDS Act did not call for the promulgation of rules, DCA follows the statute as the foundation. He stated that DCA has witnessed the transformation of mapping over time from basic representations of a county drawn by hand to more sophisticated mapping. He echoed Mr. Beatty's comments that a digital representation of the service area is advantageous.

Deputy Commissioner Haygood also testified that absence of any ramifications means that resolution gets put on the back burner. He shared that in situations of consolidated governments where there is only one entity within the jurisdiction, DCA supports not making the single entity go through “unnecessary paperwork saying this is our Service Delivery Strategy. There is no conflict within this one party.” DCA also supports a ten year window for SDS renegotiation.

The Deputy Commissioner cautioned that as the Committee reviews the language which is currently in the statute, there are triggers which necessitate revision and an interim-update. The triggers may include the creation and dissolution of cities within a ten year window. As an administrative agency, DCA requests greater explanation of expectations for these situations.

Meeting 4- December 4, 2023 (Atlanta, GA)

Summary

The fourth meeting of the Joint Study Committee was held on December 4, 2023 at the Georgia State Capitol in Atlanta, Georgia. Senator Frank Ginn (Chair), Representative John LaHood (Chair), Senator Max Burns, Senator Sheikh Rahman, Representative Brian Prince, Representative Dale Washburn, Kurt Ward, and Chris Dockery were present for the meeting.

The Committee discussed the draft report and recommendations. Chairman LaHood and Chairman Ginn requested that ACCG and GMA review the draft recommendations and provide joint feedback prior to December 15, 2023.

Meeting 5- December 21, 2023 (Virtual Meeting Via Zoom)

Summary

The fifth and final meeting of the Joint Study Committee was held on December 21, 2023 virtually via Zoom. Senator Frank Ginn (Chair), Representative John LaHood (Chair), Representative Brian Prince, Kurt Ward, Chris Dockery, and Derek Norton were present for the meeting.

The Study Committee discussed and adopted this Report and Recommendations.

FINDINGS AND RECOMMENDATIONS

Based on the testimony and research presented, the Joint Study Committee on Service Delivery Strategy recommends:

1. Statewide mapping standards are needed for SDS agreements. The standards should require mapping of service areas at the parcel and jurisdiction level. DCA should have rule-making authority to implement the mapping standards, and DCA as well as other service providers such as the Georgia Geospatial Information Office and the various regional commissions should be involved in assisting local governments in implementing these standards.*
2. All portions of the city and county should be assigned to a service area. If no services are currently being provided to a defined area, that area shall be assigned to the local government in which it lies.
3. Consolidated governments should be exempt from SDS if there are no other cities located within the county boundaries of the consolidated government.*
4. All parties to the negotiation of a service delivery strategy should provide all other parties with a written analysis of all services to be provided in such party's jurisdiction and the proposed funding for each such service. This written analysis should be considered a public record and be made available to residents of the affected communities. The written analysis may be modified during negotiations with notice to the other parties but must be finalized before entering into a dispute resolution process on unresolved issues.*
5. Additional alternative dispute resolution processes should be available to the parties to an SDS negotiation. Those processes should be based on the record of the final written analysis provided by the parties. Specifically, mediation should be mandatory for all parties upon their failure to reach an agreement prior to the deadline for imposition of sanctions. In addition, non-binding arbitration should be an option for the parties. The final report of any such arbitration should not be binding on the parties but should be made publicly available. If all the parties necessary for a valid SDS agreement agree to participate in non-binding arbitration, sanctions would be held in abeyance during the period set forth in the law for such non-binding arbitration process.*
6. Upon the failure of the parties to reach an agreement by the deadline imposed by law for a revised strategy, DCA will notify the parties and all relevant state agencies that such parties are out of compliance with the SDS law. When any such parties are out of compliance, all state agencies shall withhold state funding and state permits until such time as the parties file an SDS agreement and DCA certifies that their agreement is in compliance with the statute.*
7. DCA should be given limited rule-making authority as necessary to implement the specific statutory requirements and recommendations, such as implementation of statewide mapping standards and the process for notification and imposition of sanctions. But DCA's rule-making should be limited to those specific areas of the statute as to which such authority is granted.*

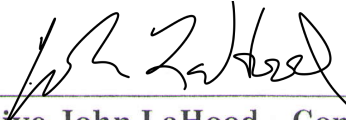
NOTE: Recommendations which are followed by an asterisk were drafted and submitted jointly to the Committee by ACCG and GMA for the Committee's consideration. They were approved by ACCG and GMA's legislative policy councils.

Respectfully Submitted,

**FINAL REPORT OF THE JOINT STUDY COMMITTEE
ON SERVICE DELIVERY STRATEGY (SR 175)**



**Senator Frank Ginn – Committee Chairman
District 47**



**Representative John LaHood – Committee Chairman
District 175**