

**REPORT OF THE GEORGIA HOUSE ANNEXATION, DEANNEXATION, AND
INCORPORATION STUDY COMMITTEE**

COMMITTEE MEMBERS:

**Honorable Jan Tankersley, Chair
Representative, District 160**

**Honorable Ed Rynders
Representative, District 152**

**Honorable Tom Taylor
Representative, District 79**

**Honorable Mary Margaret Oliver
Representative, District 82**

**Honorable Beth Beskin
Representative, District 54**

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I. INTRODUCTION

The Georgia House of Representatives created the House Annexation, Deannexation, and Incorporation Study Committee in 2015 through the passage of House Resolution 743. The procedures for duly introducing and enacting local legislation involving the annexation, deannexation, and incorporation process was recognized to be of great significance that often affects a large number of individuals in a meaningful and comprehensive way. The Committee was formed to evaluate the issues relating to the local legislative process and publish its findings with recommendations by December 1, 2015.

The committee was chaired by Representative Jan Tankersley (160th) and included four (4) additional members of the House: Representative Ed Rynders (152nd); Representative Tom Taylor (79th); Representative Mary Margaret Oliver (82nd); and Representative Beth Beskin (54th). The House Budget and Research Office staff member assigned to facilitate the committee was Mr. Leonel Chancey. The Legislative Counsel Staff member assigned to the committee was Mr. Jeff Lanier.

The Committee held three public meetings in Atlanta to hear from the Office of Legislative Counsel, the Legislative and Congressional Reapportionment Office, the Carl Vinson Institute of Government (University of Georgia), representatives and legal advisors from the Georgia Municipal Association (GMA) and Association County Commissioners of Georgia (ACCG) together with testimony from concerned citizens and local officials to discuss emerging municipal and county policy issues. During the course of the public meetings, the following individuals presented testimony to the committee:

September 1st, 2015 – Atlanta, Georgia in Room 506 Coverdell Legislative Office Building

Jeff Lanier, Esq. (Office of Legislative Counsel); Susan Moore, Esq. and Marcia Rubensohn (Georgia Municipal Association); Clint Mueller and Todd Edwards (Association County Commissioners of Georgia).

September 24th, 2015 – Atlanta, Georgia in Room 506 Coverdell Legislative Office Building

Ted Baggett, Esq. (Carl Vinson Institute of Government, University of Georgia); Tom Gehl (Georgia Municipal Association); Jim Grubiak, Esq. (Association County Commissioners of Georgia General Counsel); and Van Stephens Esq. (Gwinnett County Attorney).

October 6th, 2015 – Atlanta, Georgia in Room 606 Coverdell Legislative Office Building

Gina Wright (Legislative and Congressional Reapportionment Office); Tom Gehl (Georgia Municipal Association); and Todd Edwards (Association County Commissioners of Georgia).

II. EXECUTIVE SUMMARY

There is clear evidence that Georgia cities have grown at an exponential rate over the past decade. Since 2005, we have seen the creation of Sandy Springs, Johns Creek, Milton, Chattahoochee Hills, Dunwoody, Peachtree Corners, Brookhaven, and Tucker. At the end of the 2015 Legislative Session, LaVista Hills and Tucker had pending referendums. Furthermore, the cities of South Fulton, Stonecrest, Greenhaven, and Sharon Springs are awaiting legislative approval in 2016. This trend appears to be confined primarily to Metro Georgia. From 2000 to 2007, city population in Georgia grew by 22 percent and makes up approximately 40 percent of the state's population.¹ From January 2001 to August 2015 there have been 11,097 annexations in Georgia.² Annexation, deannexation, and incorporation laws and procedures are of great significance constantly shaping the internal structures of Georgia. Such procedures can be complex and may not give sufficient notice to county and municipal residents of any proposed changes.

Under the Official Code of Georgia Annotated, the General Assembly must provide for advertising a notice of intention to introduce a local bill. "No local bill shall become law unless notice of the intention to introduce such bill shall have been advertised in the newspaper in which the sheriff's advertisements for the locality affected are published one time before the bill is introduced. Such advertisement must not be more than 60 days prior to the convening date of the session at which the bill is introduced. After the advertisement has been published the bill may be introduced at any time during that session unless the advertisement is published during the session, in which event the bill may not be introduced before Monday of the calendar week following the week in which the advertisement is published."³ Furthermore, a copy of the notice which was advertised and an affidavit stating that all requirements have been met is attached to the bill and becomes a part of the bill for the remaining legislative process.

¹ Georgia Municipal Association "Growing Cities, Growing Georgia", January 2014

² Georgia Department of Community Affairs "Number of Annexations", September 1, 2015

³ Official Code of Georgia Annotated (O.C.G.A 28-1-14)

The Georgia Supreme Court once held specific interpretations of this requirement. However, the court has held that the author of the local act be solely responsible for the notice and certification to be combined with the local bill.⁴ Also, the Court has ruled on the content of the notice that no more information needs to be included than what is contained in the title of the local bill⁵. Some have argued that a legal notice of intention to introduce legislation, published in a county's legal organ, still does not provide enough notification to all affected local governments. Others have suggested that legal notices should define and provide a minimum threshold for each municipal service offered during an annexation or incorporation of a municipality. Accessibility of information regarding the future status of a county and its municipalities is important for citizens. There must be a clear understanding to what is being introduced legislatively to ensure any changes in the current level of services provided by a local government continue.

There are several factors that surround county and municipal services. Service demand can differentiate when it applies to rural and urban areas. In order to be considered an active city, a municipality should provide at least (3) three of the following minimum services: **1.** Law enforcement, **2.** Fire protection and fire safety, **3.** Road and street construction or maintenance, **4.** Solid waste management, **5.** Water supply or distribution or both, **6.** Waste-water treatment, **7.** Storm-water collection and disposal, **8.** Electric or gas utility services, **9.** Code enforcement, **10.** Planning and zoning, or **11.** Recreational facilities.⁶ However, counties are required to provide more services such as a state court, probate court, superior court, magistrate court, juvenile court, superior court clerk, sheriff, jail, vital records, coroner, tax commissioner, elections and registration, health services, public assistance and family services, property tax appraisal, emergency management, and board of equalization.⁷ Some amenities benefit from county delivery due to reduction in cost by larger income counties or because their assistance may go farther than smaller municipal corporate limits. If a service is provided from a county's general fund, then the service must be delivered equally all over the county.

⁴ Smith v. McMichael, Supreme Court of Georgia, October 24, 1947.

⁵ Walker Electrical Co. v. Walton, Supreme Court of Georgia, January 10, 1948

⁶ Official Code of Georgia Annotated (O.C.G.A 36-30-7.1)

⁷ Official Code of Georgia Annotated O.C.G.A 15-7-4, O.C.G.A 15-18-60, O.C.G.A 15-12-1, O.C.G.A 15-9-30, O.C.G.A 16-11-129, O.C.G.A 15-18-6, O.C.G.A 15-6-35, O.C.G.A 15-6-8, O.C.G.A 15-6-77, O.C.G.A 15-10-2, O.C.G.A 17-12-1, O.C.G.A 17-12-23, O.C.G.A 17-12-24, O.C.G.A 15-11-470, O.C.G.A 15-11-30.1, O.C.G.A 15-11-100, O.C.G.A 15-11-262, O.C.G.A 15-11-13, O.C.G.A 15-11-57, 15-6-61, O.C.G.A 15-6-66, O.C.G.A 37-3-120, O.C.G.A 37-4-80, O.C.G.A 42-4-4, O.C.G.A 2-6-5, O.C.G.A 21-2-40, O.C.G.A 40-2-23, O.C.G.A 48-5-127, O.C.G.A 48-5-311, O.C.G.A 48-5-263

There is significance to the timing of annexations concerning budget adoption and property tax bills. Annexations can occur after county budgets are implemented, but before tax bills are distributed. This can be a challenge as a county's population becomes less consistent due to changes in city boundaries. A county may provide services for a portion of the year, but later it may not receive tax revenue to cover the cost of service delivery. The annexing city is responsible for public safety services such as fire and police, but may not have the resources available to deliver critical public safety services at the time an annexation takes effect.⁸

School services are also impacted by annexation and deannexation where independent and county school districts operate within a county's limits. Changes in city corporate limits could cause students to potentially move from one school system to another. School system real estate assets could also be affected. Current law does not allow school impact as a reason to object to an annexation. A school district may lose a real estate property to annexation without compensation or time to plan and respond. Testimony was given to suggest that reimbursement should be allowed for a school district that loses school property to annexation or incorporation.

Decreasing or increasing an attendance boundary due to annexation or deannexation could impact the number of students served by a school. In situations where enrollment does increase, consolidated classrooms may be needed to provide necessary space for learning and teaching. An annexation can encompass a small area impacting only a handful of students but have a significant effect on the capacity available to the district to serve all students. Options would include placing a significant number of portable classrooms at the next nearest attendance zone, redistributing students through changing attendance boundaries in order to balance overcrowding among schools, and/or planning the construction of a new high school. Students displaced from the annexation as well as the receiving school population could be impacted by redistribution.⁹

Given that the needs of urban and rural Georgia are certainly great and diverse; counties and municipalities should act promptly to communicate before introducing the necessary authorizing legislation that would allow for the renewal of local government to exist and thrive. This study committee report describes the general problems faced by both county and municipal authorities. It concludes by highlighting possible considerations that could bring alleviation to varying problems when dealing with the annexation, deannexation, and incorporation process.

⁸ Fulton County Board of Commissioners, "Impact on Annexation on Unincorporated Fulton County, September 2015

⁹ Fulton County Board of Education, "Overview of Annexation Impact on Local School District, September 2015

III. FINDINGS

This committee recognizes local government authority comes with multiple benefits to Georgia. To understand the process, opportunities, and challenges the committee heard testimony from experts on local government policy. Discussion from the committee focused on different strategies and approaches to the development of county and municipal government.

Annexation

Traditionally, annexations in Georgia have been accomplished by local act of the General Assembly. Local legislation amends the charter of the city to extend the corporate limits and include territory adjacent to the city once approved by referendum. Dillon's Rule states that municipalities can exercise only the powers that the state specifically grants and only if those powers are lawfully granted.¹⁰ Municipal governments use annexation as part of a long-term growth strategy and to accommodate or control urban expansion. Benefits of annexation include contiguity, land management, environmental protection, economic interests, expanding the tax base and promoting economic growth.

In counties that provide few services or low levels of service, annexation alleviates public pressure to supply urban services that are already available from a municipality. For property owners, annexation may offer the opportunity to receive services, or a higher level of service, not currently available from the county. Others may consider the new services to be unequal to the increased tax burdens and may oppose annexation proposals. Urban counties may face more complicated issues than rural counties such as zoning regulations and changes in land use. Annexation laws in Georgia provide methods which require the consent of at least a majority of the citizens living in an area to be annexed into a city.

The 100 percent method allows a city to annex qualified parcels if it receives approval from all property owners in the proposed annexed area. This law is a common technique of annexation that must have city council support. In the past, a city could use the "spoke" method that takes place along the length of a road, river, or right-of-way to reach a desirable piece of property distant from the boundary of the city if the county agrees. As of 2000, either one-eighth of the area boundary or 50 feet of the area to be annexed must directly touch the municipality in order to legitimately change city boundaries.

¹⁰ John Forrest Dillon, *The Law of Municipal Corporations*, 1872

The 60 percent method allows municipalities with populations of at least 200 the power of annexation under the following requirements:

1. The application for annexation must be signed by the owners of not less than 60 percent of the property sought to be annexed, by acreage.
2. Not less than 60 percent of the electors living in the area must sign the application for annexation.
3. The municipality must prepare a plan for extending municipal services to the area annexed.

Property owners or voters may request a Superior Court declaratory ruling on the legitimacy of the annexation ordinance. The city council must also approve the annexation.

To utilize the **Resolution and Referendum method**, municipalities must hold a public hearing, present the annexation and service plan to the residents of both the unincorporated area and the city, adopt a resolution annexing the area, and hold a referendum in the area proposed to be annexed. Georgia law requires the annexing municipality to create a basic plan for extending police and fire protection, garbage, water, sewer, and street maintenance services to the annexed area on substantially the same basis and in the same manner as they were required to before the annexation.¹¹ The area must be adjacent or connecting to the city's boundaries and at least one-eighth of the aggregate external boundaries of the area must coincide with the city's boundary. No part of the area may be in another city or county and no part of the area may be receiving water, sewer, police, or fire protection from any unit of government other than the annexing city, unless an intergovernmental agreement is established. This method is applicable for urban areas with a population density of at least two persons per square acre.¹²

In 1992, the Georgia General Assembly enacted an additional method of annexation to address the issue of unincorporated islands. To improve service-provisions efficiency, municipalities of at least 200 people were permitted to annex unincorporated islands. Georgia cities were permitted to individually annex property without the application of property owners or voters or the provision of a public hearing as long as the property met the definition of an unincorporated island and was contiguous to the annexing city. Cities were prohibited from

¹¹ Official Code of Georgia Annotated O.C.G.A 36-36-51 (4)

¹² Georgia State University, Andrew Young School Fiscal Research Center, Report on Laws of Incorporation and Annexation of Georgia Municipalities, 2014

creating new unincorporated islands by any future annexations or deannexations. Municipalities have the discretion to annex unincorporated islands, but are not obligated to do so.¹³ If more than one city surrounds an unincorporated island, then the city with the largest percentage along its external border is permitted to annex the area unless a different agreement is created with another city.

Annexation laws do have requirements and restrictions relative to when annexations become effective and require the annexing municipality to provide maps and surveys of the annexed area to both the Secretary of State and the county governing authority. Municipalities must acquire any county-owned property or facilities within an annexed area if the property or facility is no longer usable for service to the county as a result of the annexation. Furthermore, the municipality must assume ownership, control, care and maintenance of a county right-of-way when it annexes land on both sides of the right-of-way, unless the city and county agree on different arrangements.

Since 2007, a county may object to an annexation if there is clear evidence there will be an increase burden on the county due to planned changes in zoning or land use. Other reasons for a county objection include possible increase in density and greater infrastructure demands. One problem that arises in annexations is when an area is designated as residential and suddenly becomes commercial when the city takes control. Another problem is that some counties and cities have had difficulty coming up with a procedure to resolve land use disputes. However, objections do not apply to annexations by local act of the General Assembly which may inspire this annexation method to circumvent county objections.

Local legislation that proposes an annexation where more than half of the acreage annexed is property less than five acres containing a house may not have a requirement for a referendum. If the proposed annexed area has more than 500 people or more than 3 percent of the city's population, then the local legislation must require a referendum to approve the proposed annexation. When a city proposes the annexation, it is required to pay for the cost of the referendum.¹⁴ Before the annexation takes place, the city must provide zoning for the annexed property after the city receives notice of intention to introduce local legislation on the proposed annexation from the General Assembly.

¹³ Official Code of Georgia Annotated O.C.G.A 36-36-92

¹⁴ Official Code of Georgia Annotated O.C.G.A 36-36-7

Deannexation

Upon the written and signed requests of all the owners of all the land, authority is granted under Georgia Code Section 36-36-22 for municipal corporations to deannex an area of existing municipal corporate boundaries. However, this does not apply to the land owners of any public roads, highways, or right of ways. Regardless of the number of property owners in a city, any lands to be deannexed are treated as one body. When the application to deannex is acted upon by the municipal governing authority, the land is deannexed from the city limits by ordinance. An identification of the property deannexed is required and filed with the Department of Community Affairs. The county must agree to the deannexation in the same way. If the General Assembly deannexes property by local legislation, it may not be annexed again by the same city for three years.¹⁵

Some home owners have identified the basic process to deannex property problematic, especially for homeowners whose taxes have increased and are restricted by city ordinances on how to maintain their property. Under Georgia law, a property owner cannot deannex from a city without the approval from the city governing authority, unless it is done through the General Assembly by a local act. Others have suggested that, “The pertinent statute should be changed to allow for a separate, non-legislative means to deannex without a city having unilateral veto authority.”¹⁶ Some have argued that the annexation and deannexation process should be equivalent to each other. The *Resolution and Referendum method, 100 percent, and 60 percent methods* are reasonable procedures for property owners to use in the withdrawal of municipal boundaries. The pragmatic difficulty is that once a city begins to receive new taxes and revenue there are more financial reasons to discourage property owners from leaving the corporate limits.

The study committee heard several testimonies that enough notice is not being provided during a legislative deannexation process. There have been suggestions that certified mail notices be delivered to elected city officials in the jurisdiction of the proposed deannexation before any legislation is introduced. It was also suggested the same methods to notify city officials, property owners and county officials should be applied to all affected parties. It is understood by members of the committee that cities need to be able to count on stable boundaries. However, the argument for self-government should also apply for citizens who are unhappy with municipal encumbrances, restrictive ordinances, and other inconveniences.

¹⁵ Official Code of Georgia Annotated O.C.G.A 36-35-2(b)

¹⁶ ACCG, “Suggested Improvements on Georgia’s Incorporation Process, October 6, 2015

Incorporation

The Georgia General Assembly has the authority to prescribe certain minimum standards which must exist for original municipal incorporation. To be eligible for original incorporation as a city, the minimum standards needed are a total resident population of 200 people. The city council or other governing body of a municipal corporation has the responsibility in the management and disposition of its property. When a municipality is created by a local act of the General Assembly, services shall not apply for two years from the date the first elected officials take office. The governing authority of the municipal corporation then must certify with the Georgia Department of Community Affairs declaring whether services meet or does not meet the standards for an active municipality.

Since 2005, newly created cities in Georgia typically have been assigned to the House Committee on Governmental Affairs with the exception of Peachtree Corners. By committee rule, any legislation to create new cities must be introduced in the first year of the General Assembly's biennial session and voted upon in the second year. During the interim between sessions, a comprehensive financial viability study is conducted to determine economic and financial factors in addition to historical identity, economies of scale in governmental operations, the creation of rational service delivery areas, the capture of accumulated economies, efficient local and regional economic development planning, zoning for an identified community and business interests, tax equity and service delivery equity, and appropriate or just allocation of revenues to services.¹⁷

The Supplementary Powers clause of the State Constitution in Georgia provides for a number of services and powers any county or municipality may exercise. Some have argued the notion that a newly-created city that promises and limits itself to three services during the incorporation process is constitutionally flawed. The General Assembly may only regulate, restrict, or limit a municipality's authority to provide services, but a local act may not limit the services that a municipality provides.¹⁸ The key difference is that a city is not required to provide all the services authorized by the State's Constitution. If a power is not found in a city's charter for the provision of these services, then the power of services is still authorized to the municipality but just not being exercised. Municipalities can make revisions to their charters without the involvement of the legislature but only by passage of a referendum.

¹⁷ Carl Vinson Institute of Government, "Remarks prepared for Senate Study Committee on the Incorporation of the City of DeKalb in DeKalb County", November 29, 2012

¹⁸ Official Code of Georgia Annotated O.C.G.A 36-35-2(a)

If a city chooses to provide only three services, the General Assembly is unable to regulate and restrict when or how a municipality may provide the services that are constitutionally authorized. The “three services” rule in O.C.G.A 36-30-7.7(b) was established to determine if existing cities were to be placed on active or inactive status. To remain on active status, an existing municipality must provide a minimum of three standards listed in this Code section. Cities that are already created and provide a minimum of three services are considered active and legally authorized as a municipal corporation under Georgia law.

The creation of new cities of previously unincorporated vicinities has several consequences for counties. When incorporation of a new municipality occurs, the tax revenue related to that area no longer transpires to the county’s designated services funds. All business licenses, insurance premium taxes, and other remunerations are transferred to the new municipality. These returns are crucially important and the loss of revenue to the county is substantial. As more areas become incorporated, the tax base of the remaining unincorporated areas could see a reduction in value which would establish less revenue. Property owners in the remaining unincorporated areas of the county then could experience a millage rate increase in order to maintain the neighboring current level of the new municipal services provided. Also, the “pension legacy” issue remains to be a challenge that should be resolved so that new cities continue to be obligated to provide pension contributions for county employees who are employed by the county prior to the time of incorporation. Unincorporated areas in the county can become increasingly separated making them problematic and costly to support.

There are several alternatives to incorporating a new municipality that provide a more orderly process and decrease the negative financial impact to the county. Some different options that could be used are Special Service Districts which are local government entities designed to target taxes and services to a particular area within the county. Community Improvement Districts (CID) are self-taxing districts that impose taxes only on businesses that are controlled by its district members. The CID members determine how funds are spent for projects and other amenities. Other states, such as Missouri and Pennsylvania, have reviewed the idea to create Residential Improvement Districts. This is a new concept similar to CIDs but only uses residential property. The Mercatus Center at George Mason University wrote a publication stating that “... Residential Improvement Districts (RIDs) could be a successful remedy for varying urban neighborhood problems.”¹⁹

¹⁹ Robert Nelson, Kyle McKenzie, and Eileen Norcross, "From BIDs to RIDs: Creating Residential Improvement Districts." Mercatus Policy Series, Mercatus Center at George Mason University, May 2008.

IV. RECOMMENDATIONS

This Study Committee has considered ways of addressing negative impacts and ensuring that the process is clear, open, equitable, and in the best interest of Georgia. A look at possible legislation to expand and define a proper legal notice to ensure all local governments are informed during an annexation, deannexation, or incorporation of a municipality is under consideration. Potential legislation may include but is not limited to specific definitions of services to be provided or offered, binding legal notice and a time frame of services to go in effect for those who are annexed into a municipality.

There are clear inherent problems with inactive municipalities whose residents are fewer than 200 and unincorporated areas that receive minimal services. However, the concept of “city-lite” is not defined in Georgia Code. We recognize that clear standards may be needed for future municipal considerations. The study committee acknowledges and has taken testimony regarding the process for municipal incorporation, while also understanding the need for uniformity and for allowing local government control and self-determination. Only the population in a proposed city boundary should have the vote on incorporation.

Motivations for incorporation include a desire for different services, protection from annexation, and more control over planning and zoning. A proposed city trying to meet the two-year requirement would have to have a defined map, scope of services, and feasibility study completed the first year of a two-year session. The committee rule that requires a city to be filed in one year and held until passage on the second year could be clarified so that the two-year process could be any two consecutive years, and not only the beginning year of a two-year term.

Several concerns were brought before the study committee that could possibly be addressed by committee rule changes or new procedures. For example, the chairman of the House Intragovernmental Coordination Committee has the discretion to create an annexation sub-committee to determine the impacts of an annexation bill on specific school systems, county distribution of services, and economic stability of other municipal governments. The sub-committee could have the ability to determine if an annexation is undermining the process for a proposed incorporation of a municipality that may potentially interfere with a pending fiscal study. Also, the Intragovernmental Coordination Committee could adopt a similar committee rule for municipal incorporations which require a fiscal study but include the impacts of an annexation on the county government and neighboring cities. As a result of the discussions and activities undertaken during the 2015 interim, the House Annexation, Deannexation, and Incorporation Study Committee does hereby offer these recommendations.