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**THE FINAL REPORT OF THE
SENATE ANNEXATION, DEANNEXATION, AND INCORPORATION
STUDY COMMITTEE**

COMMITTEE MEMBERS

**Senator Elena Parent – Chair
District 42**

**Senator John Albers
District 56**

**Senator Charlie Bethel
District 54**

**Senator Frank Ginn
District 47**

**Senator Fran Millar
District 40**

Prepared by the Senate Research Office
2015

COMMITTEE FOCUS, CREATION, AND DUTIES

The Senate Annexation, Deannexation, and Incorporation Study Committee was created by Senate Resolution 609 to review current annexation, deannexation, and municipal incorporation laws and procedures; consider ways of addressing negative impacts; and ensure that the process is clear, open, equitable, and in the best interest of the citizens of Georgia.

Senator Elena Parent of the 42nd chaired the Committee. The other members included Senator John Albers of the 56th, Senator Charlie Bethel of the 54th, Senator Frank Ginn of the 47th, and Senator Fran Millar of the 40th.

The Committee held four meetings at the State Capitol and met on August 24, 2015, September 22, 2015, October 21, 2015, and November 3, 2015.

The Committee heard official testimony from the following: Mr. Jeff Lanier, Deputy Legislative Counsel of the Office of Legislative Counsel; Mr. Todd Edwards, Associate Legislative Director for the Association County Commissioners of Georgia (ACCG); Mr. Tom Gehl, Director of Governmental Relations for the Georgia Municipal Association (GMA); Mr. Ken Jarrard, of Jarrard & Davis, LLP; Mr. Brian Johnson, Director of the Office of Planning & Environmental Management for the Department of Community Affairs (DCA); Mr. Jon West, Senior Planner, Local & Intergovernmental Programs for DCA; Ms. Sharon Whitmore, CFO of Fulton County; Ms. Jerolyn Ferrari, Supervising Attorney for Fulton County; Dr. Laura Wheeler, Senior Research Associate, Fiscal Research Center & Center for State and Local Finance, Andrew Young School of Public Policy, Georgia State University; Mr. Ted Baggett, Associate Director, Strategic Operations & Planning Assistance Carl Vinson Institute of Government, University of Georgia; Dr. Alfred Meek, Director, Innovation Strategy & Impact, The Georgia Tech Enterprise Innovation Institute; Mr. Alexander Azarian, Principal Policy Analyst of the Senate Research Office; Ms. Gina Wright, Executive Director of the Legislative and Congressional Reapportionment Office; and Mr. Robert Highsmith, of Holland & Knight.

BACKGROUND

Incorporation

Municipal incorporation is the process of forming a city with corporate powers from unincorporated territory of a county. The process shifts some local government responsibility for an unincorporated area under the jurisdiction of a county commission to a newly established city council. Reasons for pursuing incorporation vary but are usually sought for one or more of the following reasons:

1. Dissatisfaction with the county government;
2. A sense that representation is disproportionate to population;
3. To create a politically accountable governing body in a limited geographic area;
4. To improve local public services;
5. To capture revenues to support local services;
6. To give a community local control over land use planning;
7. To pursue local policy goals;
8. Local identity; and
9. A means to prevent annexation by nearby municipalities.

The laws for incorporating a city in Georgia are codified in O.C.G.A. § 36-31-1 through O.C.G.A. § 36-31-12 and are outlined below:

- The proposed area must have a population of at least 200 persons and an average population of at least 200 persons per square mile.
- Sixty percent of the area must be developed for residential, commercial, industrial, institutional, recreational, or governmental purposes.
- The enabling legislation establishing the municipal corporation is the municipal charter.
- All municipal incorporations must be passed by local or general legislation by the General Assembly.
- After successful adoption by the General Assembly, registered voters in the proposed area must adopt, by majority vote, a measure to incorporate (Not Codified).
- The incorporating legislation may provide for a transition period of up to 24 months for the orderly transition of governmental functions from the county to the new municipal corporation.

- O.C.G.A. § 36-31-11.1 specifies that the incorporating municipality may purchase county park land within the incorporated boundaries for \$100 per acre and fire stations for \$5,000 each.

Although not part of the municipal incorporation statute, O.C.G.A. § 36-30-7.1(b)(1) requires each municipality to provide at least three of the following services, either directly or by contract:

1. Law enforcement;
2. Fire protection (which may be furnished by a volunteer fire force) 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. Enforcement of building, housing, plumbing, and electrical codes and other similar codes;
10. Planning and zoning; and
11. Recreational facilities.

Additionally, O.C.G.A. § 36-31-7.1 requires a new city to assume the ownership, control, care, and maintenance of county road rights of way located within its boundaries, unless the city and county agree otherwise by joint resolution.

Also of note, the House Governmental Affairs Committee and the House Intragovernmental Coordination Committee have adopted a rule that requires all municipal incorporation legislation to be introduced in the first year of a biennium so that the proposal can be properly studied over a two-year span. Such bills cannot be voted out of Committee until the proposed city is found economically viable as determined by its feasibility study. The Senate State and Local Governmental Operations Committee has no such rule.

Since 2005, the General Assembly has adopted ten municipal incorporation bills, eight of which were adopted by voters in their respective referenda:

1. Sandy Springs – 2005;
2. Johns Creek – 2006
3. Milton – 2006;
4. Chattahoochee Hills – 2006;
5. City of South Fulton – 2006 (Referendum Failed);
6. Dunwoody – 2008;
7. Peachtree Corners – 2011;
8. Brookhaven – 2012;
9. LaVista Hills – 2015 (Referendum Failed); and
10. Tucker – 2015 (Referendum Adopted; City is in Transition).

Annexation and Deannexation

Georgia law provides four different methods for municipalities to annex additional land into their boundaries. These procedures are outlined in O.C.G.A. § 36-36-1 through O.C.G.A. § 36-36-119.

100 Percent of Landowners (Annexation and Deannexation)

Under this approach, municipalities have the authority to annex qualified contiguous property when 100 percent of the property owners request inclusion into the municipal boundaries. The annexing property must abut the municipal boundary by a minimum of 1/8th of the total external boundary of the annexing property, or 50 feet. This method may be used to extend the municipal boundaries into a county in which it does not currently exist only if the county posts no objection. This method also applies in the case of qualifying contiguous properties requesting deannexation.

Owners of 60 Percent of Land and 60 Percent of Voters

Under this method of annexation, the municipality is allowed to annex qualifying contiguous properties if the owners representing at least 60 percent of the land area and 60 percent of the registered voters of the annexing area request inclusion into the municipal boundaries. This method is not applicable in cases where the annexing property lies across a

county boundary in which the municipality does not already extend. This method also requires the municipality to have plans for extending services at the time of annexation into the newly annexed area.

Annexation Pursuant to Resolution and Referendum

While very uncommon, this method can be used in cases where the property is found to be contiguous to the municipal boundary; is not currently receiving water, sewer, fire or police from another government entity other than from the annexing city; and is, in general, developed for urban purposes. Moreover, the annexing municipality must prepare a report for service delivery so that the major municipal services will be available to the newly annexed area as of the date of annexation. To annex property via this method, the municipality must adopt a resolution to hold a referendum on the annexation. Only the registered voters residing in the proposed annexed area are eligible to vote.

Local Legislation of the General Assembly (Annexation and Deannexation)

This method is applicable in cases where the acreage of the annexed area is more than 50 percent residential in nature. The local legislation must include a referendum if the number of residents of the annexed land exceeds 3 percent of the annexing municipality's population or there are at least 500 persons in the area to be annexed. This method also applies in the case of qualifying contiguous properties requesting deannexation.

Annexing Unincorporated Islands

In addition to annexing new areas, municipalities are authorized, but not required, to annex areas of unincorporated islands that have been in existence since January 1, 1991. In this type of annexation case, the municipality must notify the property owner and the ordinance to annex must be adopted within 30 days. In cases of island annexation, the municipality is not required to extend municipal services to newly annexed land on any particular time frame.

County Objection Procedure

Currently, O.C.G.A. § 36-36-110 through § 36-36-119 establishes the county objection procedure for municipal annexations. This objection procedure is applicable to all annexation methods except in the case of annexation by local legislation.

O.C.G.A. § 36-36-113 states that the county objection must be because the annexation would lead to an increased burden on the county directly related to a proposed change in zoning or land use, a proposed increase in density, or increased demands on infrastructure. This objection must be supported with evidence of the increase in cost in infrastructure, or evidence of a significant change in use intensity compared to its current use. In general, the basis of the objection rests on the premise that the proposed use is sufficiently different than what is currently allowed under the county land use plan and that such alternative use would result in a significant burden to the county. The county objection must be delivered to the municipality within 30 days of the municipal notice to annex property.

If the county objects to the proposed annexation, DCA will appoint an arbitration panel. The decision of the arbitration panel is binding, but may be appealed by either party in superior court under limited grounds. The county is required to pay 75 percent of the cost of the arbitration proceedings while the remaining 25 percent is split between the county and the municipality as determined by the panel.

COMMITTEE FINDINGS

Alternatives to the General Assembly's Role in Incorporating Cities

Believing that the General Assembly's role in reviewing and approving incorporation proposals is entangled in too much politics, the Committee reviewed how creating new cities is addressed in other states. Testimony and presentations revealed that no two states approach municipal incorporation the exact same way.¹ Many states require the process to be reviewed and approved by the county commission while others may leave the review and approval process up to a local or statewide judiciary, a local or statewide review board, the General Assembly, or even an executive officer such as the Governor or Secretary of State. A summary of findings revealed the following:

- 43 states have a municipal incorporation process in statute while the other 7 states have no codified procedures for municipal incorporation due to a limited amount of, or lack of, unincorporated territory.
- 22 states authorize the county commission to review and rule on all incorporation proposals.
- 11 states authorize a statewide or local Judiciary to review and rule on all incorporation proposals.
- 7 states authorize a statewide or local boundary review board to review and rule on all incorporation proposals.
- 7 states, including Georgia, authorize the General Assembly to review and rule on incorporation proposals.
- 3 states authorize an Executive Officer, such as the Governor, to review and rule on all incorporation proposals.
- Of the 43 states that allow proposed incorporations, Georgia is the only state that does not provide for any method to petition for incorporation.²

In many states, the petition process involves much more than gathering signatures. Some states use the process to require the petitioners to prove that their proposed city can function properly, provide necessary services, and raise adequate revenue. In Iowa, for example, the petition must be signed by at least 1/3 of the voters and include:

1. A description of the area prepared by a professional land surveyor;
2. A statement of the plans for providing police and fire protection, maintaining the streets, providing water and sewer services, garbage collection, and providing administrative services, with an estimate of the costs and sources of revenue; and
3. A map that shows the existing dedicated streets, sewer interceptors and outfalls, and their proposed extensions.

In North Carolina, the petition must be submitted to the General Assembly (Municipal Incorporations Subcommittee) at least 60 days before the next regular legislative session, and must contain:

1. The signature of at least 15 percent of the voters in the proposed area;
2. A proposed charter; a statement of the estimated population and population density; assessed valuation; and degree of development;
3. A statement that the proposed city will have a budget ordinance with an ad valorem tax levy of at least 5 cents per \$100 of all taxable property; and
4. A statement that the proposed municipality will offer four services no later than the first day of the city's third fiscal year.

Although the lack of a petition requirement is almost unique to Georgia, the Committee members could not all agree that a petition process should be adopted in Georgia at the present time.

The Feasibility Study

Although every municipal incorporation proposal since Sandy Springs in 2005 has been accompanied by a feasibility study, the study is not required under Georgia law. Additionally, there are no set guidelines for what must be included in a feasibility study, what must be evaluated, and how it is evaluated. The Committee did examine how other states review proposed incorporations in the hope that the information could help in defining what should be included in a statute

¹ Testimony presented on September 22, 2015 by Dr. Laura Wheeler, Senior Research Associate, Fiscal Research Center & Center for State and Local Finance, Andrew Young School of Public Policy, Georgia State University; Mr. Ted Baggett, Associate Director, Strategic Operations & Planning Assistance Carl Vinson Institute of Government, University of Georgia; and on October 21, 2015 by Mr. Alexander Azarian, Principal Policy Analyst of the Senate Research Office.

² Like Georgia, Alaska (not codified), Florida (except for Miami-Dade), Nevada, New York (not codified), and Maine authorize the General Assembly to approve municipal incorporations without a petition. However, they do have alternative methods for incorporation that do require petitioning. North Carolina requires its Legislature to be petitioned directly.

requiring a feasibility study.³ For example, 16 states require the approving entity to consider the impact the proposed incorporation will have on the unincorporated areas of the county and sometimes even neighboring cities.⁴

In Florida, Iowa, Kansas, Michigan, Minnesota, Missouri, and Oregon, the approving entity must take into consideration the level and cost of services being presently provided, compared to the potential level and cost of proposed services.

Oregon requires the submitted feasibility study to contain the proposed first and third year budgets for the new city demonstrating its economic feasibility.

Tennessee requires petitioners to submit a proposed five-year operational budget, including projected revenues and expenditures with the petition to incorporate.

Florida requires proposed cities to submit a five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets.

The Impact of Annexation and Municipal Incorporation on the County and Surrounding Cities

ACCG testified on the potential impact a new city or annexation has on a county and surrounding existing cities.⁵ Generally after a municipal incorporation occurs, whatever services are either shared or divided between cities and counties, or what services are left to the county, often lead to tension over the sharing and redistribution of revenues. ACCG did acknowledge that counties will still receive the overall property tax and that the county is required to provide fewer services to the newly incorporated area, but the loss of other revenue is still significant to the county. Especially harmful to the county are situations in which it must continue to provide the bulk of costly services, yet the revenue used to provide them is now redirected to the new city that provides very few services. Major revenues that counties rely on to finance the delivery of services, but are ultimately redirected to city treasuries, include the following:

- Local Option Sales Tax (LOST) Distribution – Renegotiation is triggered whenever a new city is created. Depending on whether the relative proportion of incorporated population (including the new city) to the total population in the county is less or more than 80 percent, the existing LOST proceeds to either the county or other cities will be reduced and transferred to the new city.
- Business Occupation Tax – A county can only levy this tax in the unincorporated area, so businesses located in the new city or annexed area will no longer be subject to taxation by the county even if the city chooses not to levy a business and occupation tax.
- Insurance Premium Tax – This tax is collected by the Insurance Commissioner and distributed to local governments. The proceeds received by a county are based on the population of the unincorporated area of each county relative to the municipal population in the county. Proceeds to the county can only be used to fund services to the unincorporated area of the county (or for a reduction in ad valorem taxes in the unincorporated area if certain services are not provided). Proceeds to the cities have no use restrictions.
- Local Maintenance and Improvement Grants – The funds are made available to counties and cities based on a ratio of the county/city public road mileage and population to total public road mileage and population in the state. County roads could be in a city and maintained by the county unless the city establishes its own road system. Cities receive grant funding based solely on population regardless of whether they provide road services.
- Hotel-Motel Tax – If a new city is created, or an area is annexed, in a county which levies this tax, the county hotel-motel tax ceases in the city limits if the city chooses to impose its own levy.
- Alcohol Taxes – Cities collect taxes on alcoholic beverages sold in the city while counties collect this tax on retailers located in the unincorporated area.

³ Testimony presented by Mr. Alexander Azarian, Principal Policy Analyst of the Senate Research Office; October 21, 2015.

⁴ California, Florida, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nevada, North Carolina, North Dakota, Ohio, West Virginia, Washington, and Wisconsin.

⁵ Testimony presented by Mr. Todd Edwards, Associate Legislative Director of ACCG; August 24, 2015.

- Alcoholic Beverage Licenses – In addition to the excise tax on alcoholic beverages, county governing authorities are authorized to impose an annual license fee, with the limitation that they may not charge dealers in distilled spirits more than \$5,000 annually for each license. These license fees go to a city when issued within municipal boundaries.
- Cable Franchise Fees – The fee is intended to reimburse the county for the use of public right-of-way and for other public services associated with the operation of cable television. Cities collect these fees for areas within the corporate limits even if they do not maintain their road system/right-of-way. The county fees must terminate in areas that incorporate.
- Sales Tax Portion of TAVT Distribution – The tax is collected by the county tax commissioner and dispersed to the state, county, school district, and cities based upon the formulas prescribed by law. The distribution essentially follows sales tax distribution so in many cases, if a new city is created, that county's share of TAVT will decrease.
- Energy Excise Tax – A county energy excise tax that is in place when a new city is created continues to be levied in the city limits as long as the new city does not levy the tax. Since the amount distributed to the county and each city is determined by the distribution of LOST and SPLOST proceeds to each, energy excise taxes distributed to the county and existing cities are proportionately reduced to provide the proceeds to the new city.
- Impact Fees – Development impact fees are charged to new developments at the time a building permit is issued and are used to finance public facilities (water, sewer, roads, bridges, storm-water management, parks, greenspace, police, fire, emergency medical, rescue, and libraries) that are impacted by the growth. Even though current law permits cities to allow counties to levy county impact fees within city limits, as a rule, counties only collect these fees in unincorporated areas while cities collect them within municipal boundaries even if the fees were being collected by the county for facilities built by the county in the newly-incorporated areas.

City Lite Concept

The Committee heard testimony on the legality of the "City Lite" concept.⁶ Although there is no legal definition for a "City Lite," it is generally considered a city whose charter expressly restricts the number of services the city may provide to only certain limited services, unless voter approval is granted through a referendum for the city to provide additional services. Under Georgia law, a city must provide at least three of the services listed in O.C.G.A. § 36-30-7.1(b).

Under the Georgia Constitution, a city possesses certain supplementary powers regarding the provision of local government services under the Supplementary Powers Clause.⁷ The Clause provides that these powers may be regulated, restricted, or limited by the General Assembly only by "general law," but it may not withdraw any such powers.⁸ A general law is one that operates uniformly statewide while a local law operates only within a limited area of the state, such as a city charter or a law affecting a specific county. Thus, the General Assembly may regulate, restrict, or limit the powers and services of a city, but it cannot withdraw any of the enumerated powers or services available to cities without a constitutional amendment.

Although the one existing "City Lite," Peachtree Corners, as well as the City of Tucker (in transition), and the proposed City of Sharon Springs (House Bill 660) all provide for the minimum requirement of three services, these municipalities are limited in providing services beyond those authorized in the charter without voter approval in a referendum. Proponents of this method argue that requirement for voter approval of the exercise of a power is not a regulation, restriction, or limit on the power but a procedural mechanism for the use of the power. That is, the city has the power to perform the act if it chooses and the actual power itself is not regulated, restricted, or limited. However, Mr. Jeff Lanier, Deputy Legislative Counsel of the Office of Legislative Counsel, indicated that the stronger argument would appear to be that the process of requiring voter approval before a city may provide a specific service is a limitation on the powers of the city by a local law, which would run afoul of the Supplementary Powers Clause since the General Assembly is authorized to regulate, restrict, or limit the powers and services of a city only by a general law.

⁶The Committee was provided with written legal opinions on the "City Lite" concept from Mr. Jeff Lanier, Deputy Legislative Counsel of the Office of Legislative Counsel; Mr. Ken Jarrard, of Jarrard & Davis, LLP; and Mr. Norman S. Fletcher of Brinson, Askew, Berry, Seigler, Richardson & Davis, LLP which can be found at <http://www.senate.ga.gov/committees/en-US/CurrentStudyCommittees.aspx>. The Committee also heard testimony from Mr. Jeff Lanier and Mr. Ken Jarrard; August 24, 2015 and November 3, 2015.

⁷ Article IX, Section II, Paragraph III(a)

⁸ Article IX, Section II, Paragraph III(c)

Mr. Lanier surmised that in the event a court finds the “City Lite” concept unconstitutional, it would likely strike that provision from the city’s charter and allow the charter to remain in existence without the limitations of power.

Millage Rate Caps

Ad valorem millage rate caps usually take the form of a provision in a city charter that limits the millage rate that a city may impose without some further action being taken, such as voter approval.⁹ Like the “City Lite” concept, a millage cap is designed to limit the burden on the taxpayers of a city while reducing the scope of a city’s government by reducing the funds available to it. The Committee questioned the legality of a millage cap and also inquired if a city council can alter or remove such a cap. Citing an Attorney General opinion (Op. Att’y Gen. U83-191), Mr. Jeff Lanier of Legislative Counsel confirmed that millage caps do not appear to be prohibited in Georgia.¹⁰ Citing the same Attorney General opinion, he indicated that the limitations of municipal home rule found in O.C.G.A. § 36-35-6 do not preclude a city council from altering or even removing a millage cap through home rule powers.

Ambiguous Annexation Arbitration Process

As explained earlier, when a county objects to a proposed annexation, DCA empanels a group to arbitrate the dispute. DCA testified that the statutes detailing the arbitration process are vague and need clarifying.¹¹ For example, when the county provides notice of its objection to the city, neither party is statutorily required to notify DCA and formally request arbitration. Oftentimes, DCA is expected to appoint a panel to hear the dispute while having never actually received notice that an annexation is proposed or that a county objected to it. Additionally, no attempt is made to review and validate the grounds for the county objection until the appointed panel itself validates them after considerable investment of time and resources in a process that may result in them being groundless from the start.

Service Delivery Strategy Renegotiations after Incorporation Occurs

DCA also commented on one particular problem involving the creation of a new city and the need to renegotiate a new Service Delivery Strategy Agreement. Under O.C.G.A. § 36-70-28, each county is required to collaborate with its municipalities to formulate a Service Delivery Strategy, or SDS. This document is the description of all of the intergovernmental agreements, contracts, and other arrangements established between the governments for delivering public services. The “creation, abolition, or consolidation of local governments” is a trigger to review and revise the SDS.¹² Most of the Acts creating new cities in recent years have a two-year transitional period for the orderly transition of various government functions and services. The SDS must be revised and updated to reflect the creation of the new city within that transitional period. DCA pointed out that this has caused issues in at least one newly created city when Peachtree Corners and Gwinnett County failed to update their SDS prior to the expiration of the transitional period due mainly to a lack of understanding and awareness of the requirement.

⁹ Charters containing ad valorem millage rate caps include Sandy Springs, Johns Creek, Milton, Dunwoody, Peachtree Corners, Brookhaven, LaVista Hills, and Tucker. The bills creating South Fulton, Stonecrest, Greenhaven, and Sharon Springs as they presently exist also contain caps.

¹⁰ Testimony presented by Mr. Jeff Lanier, Deputy Legislative Counsel of the Office of Legislative Counsel; November 3, 2015.

¹¹ Testimony presented by Mr. Brian Johnson, Director of the Office of Planning & Environmental Management of DCA and by Mr. Jon West, Senior Planner, Local & Intergovernmental Programs for DCA; September 22, 2015.

¹² O.C.G.A. § 36-70-28(b)(4)

RECOMMENDATIONS

Future Study of Township/Village Concept

In light of the potential unconstitutionality of the City Lite concept, the Committee recommends that an alternative to creating fully-functioning cities should be studied. This new concept may include the development of a Township/Village model that cannot exercise any municipal powers or services other than the power to control land use and local zoning. The Township/Village may be governed by a Board of Town Supervisors. A similar attempt to create this model was attempted in 2008 when Senate Bill 89 was adopted by the Senate, approved by the House Governmental Affairs Committee, but failed to reach the House Floor.

Codify Feasibility Study

Although a feasibility study has been conducted for every newly created city since Sandy Springs, the study is not required under Georgia law. The Committee recommends that a study requirement should be codified with general guidelines on what should be addressed in a study, such as:

- Potential revenue;
- Impact on the county, neighboring cities, and other local government entities; and
- The current and projected costs of providing services to the territory proposed to be incorporated.

A feasibility study should also be included for any annexation that has a land mass of more than 20 percent of the annexing city.

Codify House Committee Rule on Municipal Incorporation Legislation

Currently, the House Governmental Affairs Committee and the House Intragovernmental Coordination Committee have adopted a rule that requires all municipal incorporation legislation to be introduced in the first year of a biennium so that the proposal can be properly studied over a two-year span. Such bills cannot be voted out of Committee until the proposed city is found economically viable as determined by its feasibility study. The Committee recommends that this House Rule be codified into state law.

Referendum Process

Although municipal incorporation bills include a provision requiring the voters in the territory proposed to be incorporated to vote on the incorporation, there is nothing in state law explicitly requiring a referendum. The Committee recommends that a referendum requirement be codified.

Prohibit the City Lite Concept

Although there is no legal definition for a "City Lite," it is generally considered a city whose charter expressly restricts the number of services the city may provide unless voter approval is granted through a referendum to provide additional services. It is Legislative Counsel's opinion that the City Lite concept appears to be unconstitutional because the process of requiring voter approval before a city may provide a specific service is a limitation on the powers of the city by a local law, which would run afoul of the Supplementary Powers Clause since only the General Assembly is authorized to regulate, restrict, or limit the powers and services of a city by general law.

In light of this, the Committee recommends prohibiting the "City Lite" concept from being included in future municipal incorporation proposals. Additionally, the "City Lite" provisions should be closely reviewed in the charters of Peachtree Corners, Tucker, and in any pending incorporation proposals.

Proposed Incorporation Bills Containing a Millage Rate Cap Should Specify that the Cap can be Adjusted

It was brought to the Committee's attention by Legislative Counsel that although imposing an ad valorem millage rate cap in a municipal charter is constitutionally permissible, it can be removed by the municipality under its home rule powers. This may inadvertently mislead some voters who are voting on a proposed incorporation into thinking that the cap cannot be increased without a referendum. Because of the potential for confusion, the Committee recommends that language be inserted into charters including a millage cap that clarifies that the caps can indeed be increased by a city council through its home rule powers and without voter approval.

Local Legislation – Direct Notification and Legal Notices

The Committee recommends that every affected local government should be directly notified whenever local legislation is proposed. Moreover, the requirements for publishing legal notices for proposed local legislation should be enhanced to include more detailed information as to what the local legislation's proposed purpose is and to ensure that every affected local government can review the actual notice.

Clarify Annexation Arbitration Process

Under current law, when a county objects to a proposed annexation, it notifies the annexing city of its objection. The Committee recommends that the objecting county must also notify the Department of Community Affairs to help facilitate the arbitration process. The Committee also recommends that the arbitration process should be clarified to indicate that it is an obligatory process in which both parties must participate in good faith once an objection has been made. Currently, a city may refuse to participate in the process without penalty.

Service Delivery Strategy Renegotiations after Incorporation Occurs

Under current law, the creation of a new city is a trigger to review, and if necessary, revise an existing Service Delivery Strategy (SDS). Most of the Acts creating new cities in recent years have a two-year transitional period for the orderly transition of various government functions and services. The SDS must be revised and updated to reflect the creation of the new city within that transitional period. This has caused issues in at least one newly created city when Peachtree Corners and Gwinnett County failed to update their SDS prior to the expiration of the transitional period. The Committee recommends following the model used in the recent Macon-Bibb consolidation legislation, which clearly states that a new Service Delivery Agreement must be adopted before the end of the transitional period.


Orderly Transfer of Property after an Annexation or Incorporation Occurs

After an annexation or incorporation occurs, there are times when property or facilities of a county may fall within the boundaries of a city in which the city may have no need. Although this issue is addressed narrowly in O.C.G.A. § 36-31-11.1, which specifies that the incorporating municipality may purchase county park land within the incorporated boundaries for \$100 per acre and fire stations for \$5,000 each, it does not address other facilities or property. Further, O.C.G.A. § 36-36-7 provides that county land and buildings falling within municipal boundaries due to annexations remain county property. However, if the property is no longer suitable for county use, the municipality must purchase the property based on a fair market value. This Code section fails to address a situation in which territory containing a county school is annexed into a city operating an independent school system.

The Committee recommends that the current process of transfer and compensation of property due to annexations and incorporation be studied further in order to establish a more uniform and equitable method.

Respectfully Submitted,

**THE SENATE ANNEXATION, DEANNEXATION, AND INCORPORATION
STUDY COMMITTEE**



**Senator Elena Parent – Chair
District 42**