

Suggested Improvements on Georgia's Incorporation Process

Association County Commissioners of Georgia

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Set Rules in Statute

ACCG recommends codifying more of the rules governing the incorporation of new cities. This way there is more certainty and predictability in the process. This will also relieve the pressure legislators frequently come under to change the rules and proposed city boundaries in the middle of the process.

Require a Petition Prior to Legislative Process

Prior to any new incorporation legislation being introduced, and following the establishment of new city boundaries, a Georgia statute should require that at least 35 percent of voters (of those who voted in the last general election) who reside within the proposed boundaries sign a petition in favor of the incorporation, This:

- has precedent. The 35-percent petition requirement is what is currently used to authorize the sale of packaged distilled spirits;
- provides legislators a clear indication of whether there is broad support for the new incorporation prior to entering the incorporation legislative process; and
- can be verified through a newly-created, state-level, independent board.

Current Feasibility Study Should be Expanded and Include Service Delivery

Once the proposed boundaries of a new city have been established, the applicable Georgia statute should require that a fiscal impact study be conducted. This study should look at not only whether a new city is feasible based on the revenue it will receive, but also examine the near term and long term fiscal impact on the county, unincorporated residents and other cities.

Stated more precisely, the study should take into consideration the lost revenue to the county, what fees and revenues are gained by the new city, and whether or not the city's new-found revenue is commensurable to the services that the new municipality will provide. This would be especially pertinent in the "City-lite" scenario, where a City's powers are specifically limited – but its revenue allowances are not limited.

Part of the challenge in the current incorporation process is that the county, other cities and residents really do not know for certain what services the city will be providing, and which government entity will be providing other services through an intergovernmental agreement. Proponents representing the new city, via the fiscal impact study, should prepare a preliminary service delivery agreement prior to legislators voting on the new incorporation. This is the only way to know what city services are feasible as well as what impact the creation of a new city will have on existing service delivery areas, agreements and investments.

Regarding the latter, the General Assembly should reject any legislation that would require that infrastructure investments made by county taxpayers (i.e., police and fire stations, libraries, parks, etc.) be automatically transferred to new municipalities. Allow the county and city to work this out through internal communications, policy deliberations and intergovernmental contracts.

Knowing the fiscal feasibility of the proposed new city and the detailed fiscal and service delivery impacts on the county and existing cities will provide legislators (and later the voters) more comprehensive information on which to base their decisions in voting on the the new city referendum.

Legislative Action

ACCG recommends retaining the current process of requiring local legislation be passed by the General Assembly in order to create a new municipality in Georgia. Again, the expanded fiscal impact study will provide more adequate information on which legislators may make their determination and having the petition process successfully completed will provide legislators an indication of strong support for the new city.

Any legislation to create a new city should only be introduced in one year of the Georgia General Assembly's session and voted on in the second year, with no changes in boundaries of the proposed municipality in the second year.

The fiscal impact study could either be required in the interim between the legislative sessions, or before the legislation has been introduced in the first year.

Referendum Process

ACCG believes that statute should be changed to require a referendum to approve a new incorporation take place following the petition and legislative process. As the incorporation of a new city will likely have implications for all citizens of a county, the incorporation of a new city should be dependent on a countywide vote, not just a vote within the proposed corporate boundaries. While the referendum process is currently being used for new incorporations, the statute does not require this.

The City Lite

ACCG believes that a "city lite", as well as an existing city not appropriately providing the three services required by Georgia statute, creates undue complications on effective and efficient governance. Any notion that a newly-created "city lite" is statutorily limited to only the services it promises during the incorporation process is constitutionally flawed and is intended to mislead the voters into thinking that a city can be limited to only three services and therefore the costs of city services similarly limited. Newly created cities, up front, should be created as full service cities. Any false pretenses of a "city lite" should be discarded.

As the city is established and assumes additional services, any shifting of revenues from the county to a new city should accurately reflect the services that the city provides.

The following safeguards should be enacted to ensure that new and existing cities are, in fact, providing the minimum number of services required to be active municipalities:

- define and provide minimum thresholds for each of the possible municipal services;
- require that each service claimed be provided is in fact provided; not just on paper;
- make it clear that in order for a contract with a county to count towards the minimum number of services, the contract must be for a service, or level of service, not otherwise provided by the county to county residents generally; and
- require that a valid and enforceable contract be in place for each municipal service that is claimed. Each contract should:
 - include measurable consideration approximating the cost/value of the service provided by the contracting party to the city; and
 - be in writing and be entered into the minutes of the city and of any other public entity if it is providing the service.

Unincorporated Islands

Statute should be changed to prohibit the creation of any unincorporated islands within the boundaries of new cities.

Cities Abutting Cities

The General Assembly should reinstate the “3-mile” provision in state law to help avoid annexation and incorporation disputes between and among cities during the incorporation process.

New Incorporations within Existing City Boundaries

Whatever rules, laws, conditions and safeguards are enacted to create new cities in unincorporated areas of Georgia should also apply to creating new cities within existing municipalities.

Deannexation

The Study Committee has heard from individuals that not enough, or inadequate, notice is being provided during the legislative deannexation process. There have been suggestions that certified mail be delivered to elected city officials in the jurisdiction of the proposed deannexation. Fair enough.

Whatever procedures are implemented to notify city officials, property owners or other stakeholders of a proposed deannexation should apply to the affected parties during the legislative method of annexation as well, including the county where the annexation is to take place. The county should be notified via certified mail of any legislative annexation proposed within the county, at the same time and manner as is being suggested for city officials.

Furthermore, if annexation without a county’s approval is an inherent property right, then so should be deannexation without the city’s approval. Currently, a property owner cannot deannex from a city without the city’s permission unless done so through the legislative deannexation process. There’s no self-determination there. The pertinent statute should be changed to allow for a separate, non-legislative means to deannex without a city having unilateral veto authority. Again, the same processes, conditions and safeguards used for annexation and deannexation should mirror each other, through legislative and other means.

Thank you for soliciting ACCG’s input on this very important and impactful process.