



IMPACT OF ANNEXATION ON UNINCORPORATED FULTON COUNTY

Over the past decade, Fulton County's unincorporated area has changed considerably after the creation of 4 new cities (Sandy Springs, Johns Creek, Milton, and Chattahoochee Hills). In addition to these incorporations, Fulton County cities have submitted 275 annexations before the Board of Commissioners. Fulton County continues to provide municipal-type services (Fire, Police, Code Enforcement, Parks, Planning) to one remaining unincorporated area, funded through a special tax district first established in the 1980s.

With its one remaining unincorporated area, in 2015 alone Fulton County has received 10 petitions for annexation from five different cities, accounting for nearly 9.6% of the land in unincorporated Fulton County. As the unincorporated area continues to be affected by annexations, planning for future service delivery becomes more challenging.

From an operational perspective, annexations raise questions that may lie outside land use considerations, including:

- **Budget Impact** – In many cases, annexations occur after budgets are adopted, but before tax bills area issued. Therefore, the County may provide services for a period of several months, but will not receive tax revenue to cover the expense of service delivery.
- **Public Safety Impact** – The annexing city is responsible for providing public safety services such as fire and police. In some cases, the annexing city may not have the resources available to provide critical public safety services at the time an annexation takes effect.
- **Schools** – One pending 2015 Fulton County annexation case involved school system jurisdictional boundaries. If finalized, this annexation could cause students to potentially move from one school system to another. School system real estate assets could also be affected. The current law does not allow school impact as a reason to object to an annexation.

Unincorporated Fulton County 2005 - 2015

	People	Acres
Unincorporated Fulton County - 2005	208,000	192,007
Unincorporated Fulton County - January 2015	100,000 (est.)	65,367.97
<i>Annexations in 2015 (included in figure above)</i>	<i>2,480</i>	<i>6,275</i>

Policy Considerations for Potential Changes to Georgia Annexation Law:

- Additional time for counties to approve annexations to ensure smooth transition for service delivery
- Impact on public safety service delivery
- Consideration of timing of annexations with regard to budget adoption and property tax bills
- Policy consideration for public debt tied to a specific asset (such as fire station, police precinct, etc.)
- Impact on students and school assets in counties with multiple school systems

OPENING REMARKS

- Annexation is a critical function of local governments.
- HB2 from the 2007-08 Regular Session was passed in order to mitigate grievances between cities and counties over the annexation process. The primary component of that process was the creation of arbitration panels to hear and decide upon these grievances.
- **PROCESS OVERVIEW**
 - City intends to annex a parcel and notifies county of that intent prior to acting. The County is given the right to either consent or object to the proposed annexation. The City cannot annex the territory until the statutory process is concluded. [O.C.G.A. § 36-36-6, O.C.G.A. § 36-36-111]
 - County has time to review proposed annexation for potential conflicts [O.C.G.A. § 36-36-113(c)]
 - If the county determines that the proposal will materially increase burden, it may object to the annexation [O.C.G.A. § 36-36-113(a)], [O.C.G.A. § 36-36-113(b)], [O.C.G.A. § 36-36-113(d)]
 - Statute requires notification of this objection to be provided to the City [O.C.G.A. § 36-36-113(c)]
 - Within 15 days of the City receiving this notification, DCA is to appoint an arbitration panel [O.C.G.A. § 36-36-114]
 - 3 pools: current/former city elected officials, current/former county elected officials, and academia
 - In a process akin to jury selection, the parties strike names from the pools of potential panelists and the remaining the panelists are appointed by DCA to serve on the arbitration panel
 - Throughout the process, statute notes that good faith negotiations between the parties should be continued in an attempt to settle the matter outside of formal arbitration. [O.C.G.A. § 36-36-119]
 - This typically ends DCAs role in the arbitration process. From this point forward, the logistics of meetings and the conduct of hearings is the responsibility of the parties, themselves.
 - The process concludes once the panel has provided the Department with a copy of its report of findings and recommendations. [O.C.G.A. § 36-36-115]
 - The decisions of the panel are subject appeal by either party in superior court. [O.C.G.A. § 36-36-116]
 - Note, one of the primary intents of the Act is to keep these disputes from originating in the judicial system for the sake of judicial economy.
- You may have noted some gaps in that process. Those are the issues we'd like to discuss with you, today.
 - **GROUND**
 - Statute defines what grounds are valid to act as the foundation of a County's objection. However, no entity is charged with validation of those grounds until

well after the arbitration process has started. This validation doesn't not occur until the panel itself validates them [O.C.G.A. § 36-36-115], after considerable investment of time/resources in a process that may be groundless. A municipality's disagreement with the County's reason for making an objection is the corpus of the panel, itself, and should not preclude or invalidate the arbitration process. This matter, however, is arguably vague in O.C.G.A. 36-36-113.

- NOTIFICATION TO DCA

- Further, when the County provides notice of its objection to the City, neither party is statutorily required to notify the Department and formally request arbitration. Statute simply requires DCA empanel a group to the hear the dispute having never actually received notice that an annexation is proposed or that a county objects to it. This is the crux of a meaningful problem. DCA proposes the following simple amendment to O.C.G.A. § 36-36-113(c): "...shall be delivered to the municipal governing authority and the Department of Community Affairs by certified mail or..." . DCA concedes that it does not believe the burden of notification should ever rest with the city, but should always rest with the party making the objection, the county. However, the lack of clarity in the statute has created problems.

- APPOINTING A PANEL

- When dealing with volunteer panelists we are at the mercy of their schedules. The statute currently provides 15 calendar days to appoint a panel from the date the city received the certified objection. This timing has created frequent problems, particularly around the holidays and the summer vacation season. DCA proposes the following amendment to O.C.G.A. § 36-36-114(a): "...Not later than the fifteenth calendar business days following the date the municipal corporation and the Department of Community Affairs received the first objection..." .

- QUALIFICATIONS OF ACADEMIC PANELISTS

- DCA requests proposes the following amendment to O.C.G.A. § 36-36-114(b): "...who are currently employed by a nonprofit institution of higher learning with a physical presence in this state..." .

- **Remaining Questions:**

- Is this a permissive process? If it's not, then a party cannot simply, subjectively refuse to participate.
- GMA/ACCG collaboratively developed a handbook (freely accessible on our website and actively promoted to parties at the outset of the arbitration process) providing guidance to the department and parties engaged in arbitration. This is evidence of the mutual agreement regarding the need for the statute and the process that was settled upon.

ANNEXATION REPORTING

Once an annexation process is concluded and territory has been successfully annexed by a municipality, O.C.G.A. § 36-36-3 requires them to file a report of that annexation with the Department of Community Affairs.

Presently, this report can be filed in a number of ways. Regardless of the manner of filing, however, the minimum standard for the required report provides very little useful information for ongoing tracking and the maintenance of accurate maps of local boundaries.

Further, neither DCA nor any other agency is formally charged with creating new maps for this purpose, however, the statute does require participation in the U.S. Census Bureau's Boundary and Annexation Survey ("BAS").

This survey is the mechanism the federal government uses to allocate funds for a wide swath of federal programs as well as the delineation of electoral districts.

Frequently, despite the statutory requirement, cities find that annexations they've completed are not reflected in the records of the USCB. This is typically because the required report was not filed.

DCA is not advocating for or against a modification of this process; however, if the General Assembly and our partners at GMA and ACCG would like to alleviate a problem the local governments are apparently facing, DCA would welcome the opportunity to assist. We could do this by:

- Having local government upload geospatial (GIS) files through the website when completing their forms, online. A number of specific details would need to be worked out to make that happen, but that's nothing insurmountable.
- With that information, in-hand, DCA would be able to actually complete the BAS on behalf of the municipalities.
- However, currently, even though reporting is required, it doesn't consistently occur. For this to work, all filings would need to be done electronically, and would need to include the necessary GIS files. DCA currently has no mechanism to compel municipalities to file the required report, even as they are currently structured. Which would make the potential success of this possible approach questionable, without modification to statute.

INCORPORATION→SERVICE DELIVERY STRATEGY

On the topic of the incorporation of new municipalities, DCA has few comments to provide. We have observed one particularly problematic situation that we believe could inform the process, moving forward, as well as an effective alternative.

O.C.G.A. § 36-70-28 is a section of the Service Delivery Act enacted in 1997. Essentially, it requires each county to collaborate with its municipalities to formulate a document called a Service Delivery Strategy, or SDS. This document is a distillation of all of the intergovernmental agreements, contracts, and other arrangements established between the governments for delivering public services.

The General Assembly of the late 1990s passed the act to eliminate the problems of double taxation (citizens paying taxes to multiple governments to receive the same services) and to provide taxpayers with predictability about what services are provided to what geographic areas by which local governments and how they are funded.

O.C.G.A. § 36-70-28 sets the triggers upon which the SDS is to be updated and revised. Understandably, the “creation, abolition, or consolidation of local governments” is a trigger to review, and, if necessary, revise the SDS.

Most of the acts creating or consolidating local governments in recent years have included a transitional period (e.g. Section 8.11 of HB396 in 2011, allowing incorporation of the City of Peachtree Corners) allowing “a period of time ... for an orderly transition of various government functions”.

On average, the transitional periods appear to last about two years, based upon the legislature’s desire. “Effective upon the termination of the transition period, the ...[municipality is]... a full functioning municipal corporation and subject to all general laws of this state,” including the Service Delivery Act. While DCA feels compelled to require evidence that the SDS has been properly updated to reflect the creation of the new local government at some point prior to the expiration of the transitional period, the need to do so is not always apparent to the local government.

Using the example of Peachtree Corners as an example, despite multiple attempts to communicate the necessity of updating the SDS, the parties to the SDS were caught unprepared to comply with the Act when the transitional period ended.

Such an occurrence can lead to an extended period during which, under the terms of the service delivery act, all of the local governments in the affected county are disqualified from receiving any and all state loans, grants, and permits.

Moving forward we would encourage the General Assembly to follow the model used in the recent consolidation of Macon-Bibb County. Section 23f of HB 1171 from the 2011-2012 session included language that clearly stated, “Within four years of the effective date of this charter, the restructured government shall adopt a service delivery plan.”

Due to the complexity of consolidating Macon and Bibb County, their transitional period was obviously longer than normal; however, the specific directive to update the service delivery plan (a.k.a. service delivery strategy) provides clear instructions to the local government and the Department. DCA would encourage a similar approach when the General Assembly incorporates, consolidates, or abolishes a local government.

PATH TO UNINCORPORATION

Lastly, with all the discussion of annexation and incorporation, it's easy to overlook the few cases on the other end of the spectrum. There are actually areas that don't want to be in any city. Cities that no longer feel that their own existence is worthwhile to their residents. Unfortunately, no clear, legal path exists in statute for these typically small, rural communities to fade away as they would prefer.

The Historic Townships Act is on the books-- O.C.G.A. § 36-70-28. It provides that to remain an active municipality, one must provide at least three public services, hold regular meetings of its elected body, and hold regular elections. A municipality that fails to do any of these three things, by operation of law, will cease to be an active municipality and will become a historic township (honorary designation with no legal status).

There is also a 1947 statute, O.C.G.A. § 36-30-7, which allows a municipality to voluntarily surrender its charter to its superior court if it "has not functioned under the corporate charter for a period of ten years."

Neither of these paths is acceptable to the small community that wishes to transition out of incorporation without doing meaningful disservice to its residents and the law. Halting potentially critical public services or failing to hold regular meetings and elections is and should be unconscionable. Failing to comply with the terms of a charter for ten years or more should, likewise, be.

We encourage the General Assembly to explore the modification of either or both of these statutes to facilitate the responsible transition to unincorporation for those communities that would choose that path. They are out there and they currently see no prudent path for themselves.

ARTICLE 7

PROCEDURE FOR RESOLVING ANNEXATION DISPUTES

36-36-110. Applicability.

The procedures of this article shall apply to all annexations pursuant to this chapter but shall not apply to annexations by local Acts of the General Assembly.

(Code 1981, § 36-36-110, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

36-36-111. Notice of annexation.

Upon receipt of a petition of annexation, a municipal corporation shall notify the governing authority of the county in which the territory to be annexed is located by certified mail or by statutory overnight delivery. Such notice shall include a copy of the annexation petition which shall include the proposed zoning and land use for such area. The municipal corporation shall take no final action on such annexation except as otherwise provided in this article.

(Code 1981, § 36-36-111, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

36-36-112. Prohibition on a change in zoning or land use.

If no objection is received as provided in Code Section 36-36-113, the annexation may proceed as otherwise provided by law; provided, however, that as a condition of the annexation the municipal corporation shall not change the zoning or land use plan relating to the annexed property to a more intense density than that stated in the notice provided for in Code Section 36-36-111 for one year after the effective date of the annexation unless such change is made in the service delivery agreement or comprehensive plan and is adopted by the affected city and county and all required parties.

(Code 1981, § 36-36-112, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

36-36-113. Objection to annexation; grounds and procedures.

(a) The county governing authority may by majority vote object to the annexation because of a material increase in burden upon the county directly related to any one or more of the following:

- (1) The proposed change in zoning or land use;
 - (2) Proposed increase in density; and
 - (3) Infrastructure demands related to the proposed change in zoning or land use.
- (b) Delivery of services may not be a basis for a valid objection but may be used in support of a valid objection if directly related to one or more of the subjects enumerated in paragraphs (1), (2), and (3) of subsection (a) of this Code section.
- (c) The objection provided for in subsection (a) of this Code section shall document the nature of the objection specifically providing evidence of any financial impact forming the basis of the objection and shall be delivered to the municipal governing authority by certified mail or statutory overnight delivery to be received not later than the end of the thirtieth calendar day following receipt of the notice provided for in Code Section 36-36-111.

(d) In order for an objection pursuant to this Code section to be valid, the proposed change in zoning or land use must:

- (1) Result in:
 - (A) A substantial change in the intensity of the allowable use of the property or a change to a significantly different allowable use; or
 - (B) A use which significantly increases the net cost of infrastructure or significantly diminishes the value or useful life of a capital outlay project, as such term is defined in Code Section 48-8-110, which is furnished by the county to the area to be annexed; and
- (2) Differ substantially from the existing uses suggested for the property by the county's comprehensive land use plan or permitted for the property pursuant to the county's zoning ordinance or its land use ordinances.

(Code 1981, § 36-36-113, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

36-36-114. Arbitration panel; composition and membership.

- (a) Not later than the fifteenth calendar day following the date the municipal corporation received the first objection provided for in Code Section 36-36-113, an arbitration panel shall be appointed as provided in this Code section.
- (b) The arbitration panel shall be composed of five members to be selected as provided in this subsection. The Department of Community Affairs shall develop three pools of arbitrators, one pool which consists of persons who are currently or within the previous six years have been municipal elected officials, one pool which consists of persons who are currently or within the previous six years have been county elected officials, and one pool which consists of persons with a master's degree or higher in public administration or planning and who are currently employed by an institution of higher learning in this state, other than the Carl Vinson Institute of Government. The pool shall be sufficiently large to ensure as nearly as practicable that no person shall be required to serve on more than two panels in any one calendar year and serve on no more than one panel in any given county in any one calendar year. The department is authorized to coordinate with the Georgia Municipal Association, the Association County Commissioners of Georgia, the Council of Local Governments, and similar organizations in developing and maintaining such pools.
- (c) Upon receiving notice of a disputed annexation, the department shall choose at random four names from the pool of municipal officials, four names from the pool of county officials, and three names from the pool of academics; provided, however, that none of such selections shall include a person who is a resident of the county which has interposed the objection or any municipal corporation located wholly or partially in such county. The municipal corporation shall be permitted to strike or excuse two of the names chosen from the county officials pool; the county shall be permitted to strike or excuse two of the names chosen from the municipal officials pool; and the county and municipal corporation shall each be permitted to strike or excuse one of the names chosen from the academic pool.
- (d) Prior to being eligible to serve on any of the three pools, persons interested in serving on such panels shall receive joint training in alternative dispute resolution together with zoning and land use training, which may be designed and overseen by the Carl Vinson Institute of Government in conjunction with the Association County Commissioners of Georgia and the Georgia Municipal Association, provided such training is available.
- (e) At the time any person is selected to serve on a panel for any particular annexation dispute, he or she shall sign the following oath: "I do solemnly swear or affirm that I will faithfully perform my duties as an arbitrator in a fair and impartial manner without favor or

affection to any party, and that I have not and will not have any ex parte communication regarding the facts and circumstances of the matters to be determined, other than communications with my fellow arbitrators, and will only consider, in making my determination, those matters which may lawfully come before me."

(Code 1981, § 36-36-114, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

Law reviews. - For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

36-36-115. Meetings of arbitration panel; duties; findings and recommendations; compensation.

(a) (1) The arbitration panel appointed pursuant to Code Section 36-36-114 shall meet as soon after appointment as practicable and shall receive evidence and argument from the municipal corporation, the county, and the applicant or property owner and shall by majority vote render a decision which shall be binding on all parties to the dispute as provided for in this article not later than the sixtieth day following such appointment. The meetings of the panel in which evidence is submitted or arguments of the parties are made shall be open to the public pursuant to Chapter 14 of Title 50. The panel shall first determine the validity of the grounds for objection as specified in the objection. If an objection involves the financial impact on the county as a result of a change in zoning or land use or the provision of maintenance of infrastructure, the panel shall quantify such impact in terms of cost. As to any objection which the panel has determined to be valid, the panel, in its findings, may establish reasonable zoning, land use, or density conditions applicable to the annexation and propose any reasonable mitigating measures as to an objection pertaining to infrastructure demands.

(2) In arriving at its determination, the panel shall consider:

- (A) The existing comprehensive land use plans of both the county and city;
- (B) The existing land use patterns in the area of the subject property;
- (C) The existing zoning patterns in the area of the subject property;
- (D) Each jurisdiction's provision of infrastructure to the area of the subject property;
- (E) Whether the county has approved similar changes in intensity or allowable uses on similar developments in other unincorporated areas of the county;
- (F) Whether the county has approved similar developments in other unincorporated areas of

the county which have a similar impact on infrastructure as complained of by the county in its objection; and

(G) Whether the infrastructure or capital outlay project which is claimed adversely impacted by the county in its objection was funded by a county-wide tax.

(3) The county shall provide supporting evidence that its objection is consistent with its land use plan and the pattern of existing land uses and zonings in the area of the subject property.

(4) The county shall bear at least 75 percent of the cost of the arbitration. The panel shall apportion the remaining 25 percent of the cost of the arbitration equitably between the city and the county as the facts of the appeal warrant; provided, however, that if the panel determines that any party has advanced a position that is substantially frivolous, the costs shall be borne by the party that has advanced such position.

(5) The reasonable costs of participation in the arbitration process of the property owner or owners whose property is at issue shall be borne by the county and the city in the same proportion as costs are apportioned under paragraph (4) of this subsection.

(6) The panel shall deliver its findings and recommendations to the parties by certified mail or statutory overnight delivery.

(b) If the decision of the panel contains zoning, land use, or density conditions, the findings and recommendations of the panel shall be recorded in the deed records of the county with a caption describing the name of the current owner of the property, recording reference of the current owner's acquisition deed and a general description of the property, and plainly showing the expiration date of any restrictions or conditions.

(c) The arbitration panel shall be dissolved on the tenth day after it renders its findings and recommendations but may be reconvened as provided in Code Section 36-36-116.

(d) The members of the arbitration panel shall receive the same per diem, expenses, and allowances for their service on the committee as is authorized by law for members of interim legislative study committees.

(e) If the panel so agrees, any one or more additional annexation disputes which may arise between the parties prior to the panel's initial meeting may be consolidated for the purpose of judicial economy if there are similar issues of location or similar objections raised to such other annexations or the property to be annexed in such other annexations is within 2,500 feet of the subject property.

(Code 1981, § 36-36-115, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

36-36-116. Appeal.

The municipal or county governing authority or an applicant for annexation may appeal the decision of the arbitration panel by filing an action in the superior court of the county within ten calendar days from receipt of the panel's findings and recommendations. The sole grounds for appeal shall be to correct errors of fact or of law, the bias or misconduct of an arbitrator, or the panel's abuse of discretion. The superior court shall schedule an expedited appeal and shall render a decision within 20 days from the date of filing. If the court finds that an error of fact or law has been made, that an arbitrator was biased or engaged in misconduct, or that the panel has abused its discretion, the court shall issue such orders governing the proposed annexation as the circumstances may require, including remand to the panel. Any unappealed order shall be binding upon the parties. The appeal shall be assigned to a judge who is not a judge in the circuit in which the county is located.

(Code 1981, § 36-36-116, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

Law reviews. - For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

36-36-117. Annexation after conclusion of procedures; remedies for violations of conditions.

If the annexation is completed after final resolution of any objection, whether by agreement of the parties, act of the panel, or court order as a result of an appeal, the municipal corporation shall not change the zoning, land use, or density of the annexed property for a period of one year unless such change is made in the service delivery agreement or comprehensive plan and adopted by the affected city and county and all required parties. Following the conclusion of the dispute resolution process outlined in this article, the municipal corporation and an applicant for annexation may either accept the recommendations of the arbitration panel and proceed with the remaining annexation process or abandon the annexation proceeding. A violation of the conditions set forth in this Code section may be enforced thereafter at law or in equity until such conditions have expired as provided in this Code section.

(Code 1981, § 36-36-117, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

36-36-118. Abandonment of proposed annexation; remedies for violations of conditions.

If at any time during the proceedings the municipal corporation or applicant abandons the proposed annexation, the county shall not change the zoning, land use, or density affecting the property for a period of one year unless such change is made in the service delivery agreement or comprehensive plan and adopted by the affected city and county and all required parties. A violation of the conditions set forth in this Code section may be enforced thereafter at law or in equity until such period has expired. After final resolution of any objection, whether by agreement of the parties, act of the panel, or any appeal from the panel's decision, the terms of such decision shall remain valid for the one-year period and such annexation may proceed at any time during the one year without any further action or without any further right of objection by the county.

(Code 1981, § 36-36-118, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

36-36-119. Good faith negotiations; written agreement governing terms of annexation.

The county, the municipal governing authorities, and the property owner or owners shall negotiate in good faith throughout the annexation proceedings provided by this article and may at any time enter into a written agreement governing the annexation. If such agreement is reached after the arbitration panel has been appointed and before its dissolution, such agreement shall be adopted by the panel as its findings and recommendations. If such agreement is reached after an appeal is filed in the superior court and before the court issues an order, such agreement shall be made a part of the court's order. Any agreement reached as provided in this Code section shall be recorded as provided in Code Section 36-36-115.

(Code 1981, § 36-36-119, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

Law reviews. - For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).