

April 2012

# LOCAL GOVERNMENT Infrastructure Growth: Amend Title 36 of the Official Code of Georgia Annotated, Relating to Local Government, so as to Provide for the Creation of Townships; Provide a Short Title; Provide for the Requirements for the Creation of Such Townships; Provide for Boards of Township Supervisors; Provide for Powers, Duties, and Functions of Such Town Supervisors; Provide for Officers, Meetings, Elections, and Filling of Vacancies for Such Town Supervisors; to Provide for Certain Immunities; Provide that Property Within Such Townships Shall Not Be Subject to Municipal Annexation; Provide for the Enactment

### Recommended Citation

Georgia State University Law Review, *LOCAL GOVERNMENT Infrastructure Growth: Amend Title 36 of the Official Code of Georgia Annotated, Relating to Local Government, so as to Provide for the Creation of Townships; Provide a Short Title; Provide for the Requirements for the Creation of Such Townships; Provide for Boards of Township Supervisors; Provide for Powers, Duties, and Functions of Such Town Supervisors; Provide for Officers, Meetings, Elections, and Filling of Vacancies for Such Town Supervisors; to Provide for Certain Immunities; Provide that Property Within Such Townships Shall Not Be Subject to Municipal Annexation; Provide for the Enactment of Ordinances; Prohibit Certain Conflicts of Interest; Provide for an Audit; Provide for a Transition of Services: Provide that a County Shall Continue to Provide Services in the Township that are Not Delegated by Law to the Township; Conform Related Laws; Provide for Related Matters; Provide for an Effective Date and for Automatic Repeal Under Certain Circumstances; Repeal Conflicting Laws; and for Other Purposes*, 24 GA. ST. U. L. REV. (2012).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol24/iss1/12>

of Ordinances; Prohibit Certain Conflicts of Interest; Provide for an Audit; Provide for a Transition of Services: Provide that a County Shall Continue to Provide Services in the Township that are Not Delegated by Law to the Township; Conform Related Laws; Provide for Related Matters; Provide for an Effective Date and for Automatic Repeal Under Certain Circumstances; Repeal Conflicting Laws; and for Other Purposes

Georgia State University Law Review

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

---

## LOCAL GOVERNMENT

***Infrastructure Growth: Amend Title 36 of the Official Code of Georgia Annotated, Relating to Local Government, so as to Provide for the Creation of Townships; Provide a Short Title; Provide for the Requirements for the Creation of Such Townships; Provide for Boards of Township Supervisors; Provide for Powers, Duties, and Functions of Such Town Supervisors; Provide for Officers, Meetings, Elections, and Filling of Vacancies for Such Town Supervisors; to Provide for Certain Immunities; Provide that Property Within Such Townships Shall Not Be Subject to Municipal Annexation; Provide for the Enactment of Ordinances; Prohibit Certain Conflicts of Interest; Provide for an Audit; Provide for a Transition of Services; Provide that a County Shall Continue to Provide Services in the Township that are Not Specifically Delegated by Law to the Township; Conform Related Laws; Provide for Related Matters; Provide for an Effective Date and for Automatic Repeal Under Certain Circumstances; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS: O.C.G.A. §§ 36-93-1 to -13 (new), 36-66-3 (amended), 36-66A-1 to -2 (amended), 36-67-1 (amended), 36-67A-1 (amended), 36-70-1 to -5 (amended)

BILL NUMBER: SB 89

RESOLUTION NUMBER: SR 130

SUMMARY: The bill would have authorized the General Assembly to create townships. The bill's purpose is to give local residents the ability to create a township, which is a more limited form of local government than counties or municipalities. The bill would have established the requirements for creating a township. The bill provides for boards of town supervisors and establishes their authority, powers, and

duties. The bill also outlines the rules of annexation and deannexation of property, and provides for the transfer of development rights between governing bodies.

EFFECTIVE DATE:

N/A

### *History*

“To have [d]emocracy in action, you want to have government as close to the people as possible.”<sup>1</sup> Yet, Georgians currently have only two options for local government: counties and municipalities.<sup>2</sup> Many Georgians feel like this “one size fits all” approach is not appropriate for their local constituency, particularly when it comes to zoning and land use.<sup>3</sup> Thus, residents are increasingly looking at various ways to regain local control.<sup>4</sup> State senators have responded, approving a new form of local government for Georgians: the township.<sup>5</sup> The bill would not create any new townships in Georgia; it simply gives residents a third option for gaining local control by allowing later sessions of the Georgia General Assembly to pass future bills to incorporate townships.<sup>6</sup>

---

1. D.L. Bennett, *Cities Give Hope to Local Voices: Metro Governments Too Large? Creation of Smaller Municipalities Aims to Give Voters More Control of Services*, ATLANTA J-CONST., Apr. 9, 2007, at B1, available at 2007 WLNR 6735575.

2. See Video Recording of Senate Proceedings, Mar. 27, 2007 at 4 hr., 2 min., 25 sec. (remarks by Sen. David Adelman (D-42nd)), [http://www.georgia.gov/00/article/0,2086,4802\\_6107103\\_72682316,00.html](http://www.georgia.gov/00/article/0,2086,4802_6107103_72682316,00.html) [hereinafter Senate Video]. Currently, there are 159 counties and 535 municipalities in the state of Georgia. New Ga. Encyclopedia, Georgia’s County Governments, <http://www.georgiaencyclopedia.org/nge/Article.jsp?path=/GovernmentPolitics/Government/LocalGovernment&id=h-589> (last visited Dec. 12, 2007); New Ga. Encyclopedia, Georgia’s City Governments, <http://www.georgiaencyclopedia.org/nge/Article.jsp?path=/GovernmentPolitics/Government/LocalGovernment&id=h-586> (last visited Dec. 12, 2007).

3. See Senate Video, *supra* note 2, at 4 hr., 3 min., 50 sec. (remarks by Sen. David Adelman (D-42nd)). Currently, both county government and municipal government are empowered to create zoning schemes to further the proper land use for their respective areas. O.C.G.A. §§ 36-70-1, 3 (2006).

4. Bennett, *supra* note 1.

5. See SB 89 (SCS), 2007 Ga. Gen. Assem.; Georgia Senate Voting Record, SB 89 (Mar. 27, 2007).

6. See Senate Video, *supra* note 2, at 4 hr., 6 min., 10 sec. (remarks by Sen. David Adelman (D-42nd)).

In Georgia, the county is the center of political and cultural life for the majority of the state's citizens.<sup>7</sup> Counties provide a variety of services including collecting taxes, overseeing elections, conducting courts of law, and maintaining roads.<sup>8</sup> The county form of local government is advantageous because it usually has a larger tax base, resulting in more resources for public services. However, Georgians frequently feel unrepresented by this large and distant form of government.<sup>9</sup> As Georgia's population has grown, many of its residents have started to desire city-like services.<sup>10</sup> As a Sandy Springs councilman contends "[t]here's no question that as county governments grow bigger and bigger, they get more and more removed."<sup>11</sup> In particular, many Georgians feel distant from county leadership when it comes to issues involving land use and zoning.<sup>12</sup>

Currently, Georgians who feel detached from their county representation have only one method of recourse: they may petition the General Assembly to create a new municipality in the form of an incorporated city.<sup>13</sup> Current public sentiment is reflected by the fact that many residents have rushed to the General Assembly seeking to incorporate their communities into municipalities.<sup>14</sup> But, while municipalities may be in the public interest for some communities in the state, it may not be in the public interest for all communities in the state.<sup>15</sup> As Senator David Adelman (D-42nd) states, "when all you have is a hammer everything starts to look like a nail."<sup>16</sup> This

---

7. New Ga. Encyclopedia, Georgia's County Governments, <http://www.georgiaencyclopedia.org/nge/Article.jsp?path=/GovernmentPolitics/Government/LocalGovernment&id=h-589> (last visited Dec. 12, 2007).

8. *Id.*

9. See Senate Video, *supra* note 2, at 4 hr., 3 min., 50 sec. (remarks by Sen. David Adelman (D-42nd)). It is common for elected county officials in the Atlanta metropolitan area to represent over 150,000 people. The chairman of the Fulton County Board of Commissioners has nearly one million constituents. Bennett, *supra* note 1.

10. See Bennett, *supra* note 1 (quoting South Fulton nursery owner Rex Renfrow).

11. *Id.* (quoting Sandy Springs councilman Rusty Paul).

12. See Senate Video, *supra* note 2, at 4 hr., 3 min., 50 sec. (remarks by Sen. David Adelman (D-42nd)).

13. See *id.*

14. See Bennett, *supra* note 1. In metro Atlanta, residents have created three new municipalities—Sandy Springs, Johns Creek, and Milton—and are currently seeking to create two additional municipalities: Dunwoody and South Fulton. *Id.*

15. See Senate Video, *supra* note 2, at 4 hr., 6 min., 40 sec (remarks by Sen. David Adelman (D-42nd)).

16. *Id.*

“solution” often creates a larger problem than previously existed—dividing up tax revenue and creating logistical and control problems.

Municipalities, in general, do give communities the increased local control they seek.<sup>17</sup> Municipalities handle many services that are important to local residents such as police, parks, and zoning.<sup>18</sup> Because municipalities serve a smaller population and geographic area, they tend to provide more efficient local service to their residents.<sup>19</sup> Some feel that municipalities provide better service than counties for the same amount of tax dollars.<sup>20</sup>

On the other hand, municipalities are expensive to incorporate and provide many of the same services already provided by overlapping counties: police, fire, parks, land use, and zoning.<sup>21</sup> Additionally, the creation of a new municipality has tax-related consequences, as municipalities erode the tax base that previously belonged to the counties.<sup>22</sup> Further, municipalities face the challenge of providing effective necessary services to their communities.<sup>23</sup> Some municipalities have led to corruption, with local mayors bleeding municipal coffers.<sup>24</sup> In response, the Georgia General Assembly mandated in previous legislation that municipalities provide at least three services out of a list of ten, which in turn increased the operating costs of cities.<sup>25</sup>

Many communities are becoming interested in an even more limited form of local government—the township.<sup>26</sup> Townships have smaller operating costs than municipalities or counties because they control only zoning and land-use planning, as opposed to the host of services provided by an incorporated municipality.<sup>27</sup> The township

17. See Bennett, *supra* note 1.

18. *Id.*

19. *Id.*

20. See D.L. Bennett, *Legislature 2007: Dunwoody: Proposed City Elicits Much Talk, No Answers*, ATLANTA J.-CONST., Mar. 22, 2007, at B4, available at 2007 WLNR 5403270.

21. See Bennett, *supra* note 1.

22. See Senate Video, *supra* note 2, at 4 hrs., 16 min., 25 sec. (remarks by Sen. David Adelman (D-42nd)).

23. *Id.* at 4 hrs., 15 min., 30 sec. (remarks by Sen. Steve Thompson (D-33rd)).

24. *Id.*

25. *Id.*; O.C.G.A. § 36-70-2(5.1) (2006).

26. See generally Craig Schneider, *Township Idea Gains Ground*, ATLANTA J.-CONST., Feb. 13, 2007, at B1, available at 2007 WLNR 2818080. Communities such as Tucker, St. Simons, Vinings, and Dunwoody have all expressed positive interest in this form of local government. *Id.*

27. *Id.*

may be the solution for communities that do not have the population or tax base necessary to support all the services required of municipalities, but still feel too removed from decisions made at the county level.<sup>28</sup> The current dialogue surrounding local government control clearly indicates that that local communities “want the control,” but agreeing on an effective solution so far has been a challenging task.<sup>29</sup>

### *Bill Tracking*

#### *Consideration and Passage by the Senate*

Senators David Adelman (D-42nd), Chip Pearson (R-51st), Daniel Weber (R-40th), Tim Golden (D-8th), Doug Stoner (D-6th), and J.B. Powell (D-23rd) sponsored SB 89.<sup>30</sup> On February 1, 2007, the Senate first read Senate Bill 89 and Senate Pro Tempore Eric Johnson (R-1st) assigned it to the Senate Committee on Urban Affairs.<sup>31</sup>

The committee made several substantive changes to the bill and favorably reported the committee substitute to the Senate floor on March 19, 2007.<sup>32</sup> The committee substitute made five changes, including: restricting the power to supply cable television service to counties; requiring that the township remain in compliance with Code section 36-96-2 after de-annexing township property; requiring that the county hold, conduct, finance, and certify the initial election of the board of town supervisors;<sup>33</sup> amending Code sections 36-70-1 through 5 by adding the term township to the definition of local government for the purposes of comprehensive planning; and creating new Code section 36-93-13, which requires that a township or county submit any rezoning proposal to any abutting or affected

---

28. *Id.*

29. *Id.*

30. State of Georgia Final Composite Status Sheet, SB 89, June 5, 2007.

31. *Id.*

32. *Id.*

33. The township is required to reimburse the county for costs associated with the initial election within two years. See SB 89 (SCS), 2007 Ga. Gen. Assem.

townships, counties, or municipalities and allow each entity ten days to respond with recommendations.<sup>34</sup>

The main purpose of the committee's changes was to create a sense of cooperation between local townships, municipalities, and counties by requiring that nearby townships, municipalities, and counties continue to communicate with each other.<sup>35</sup>

On March 27, 2007, Senator David Adelman introduced the bill and spoke passionately for the bill's adoption.<sup>36</sup> He emphasized that the bill would not create a single township in Georgia, but would simply provide the General Assembly a third option when considering the formation of new local governments.<sup>37</sup>

The bill may have stalled, at least partly, because during its Senate floor debate it was tied procedurally to a more controversial competing bill—SB 200.<sup>38</sup> Like SB 89, SB 200 grants certain governmental powers to a new form of local government known as “infrastructure developmental districts,” referred to colloquially as “private cities” or “IDDs.”<sup>39</sup> Under SB 200, IDD's are given broader powers than townships. While SB 89 only grants townships the power to make land use decisions and limits the townships' taxing power at \$500,000, SB 200 grants IDD's broad governmental powers.<sup>40</sup>

34. Compare SB 89, as introduced, 2007 Ga. Gen. Assem., with SB 89 (SCS), 2007 Ga. Gen. Assem. The Senate Committee substitute incorporated the word “township” where the words “municipality” and “county” appear in the sections of the Georgia Code concerning planning. See *id.* These sections include: (1) the legislative purpose of planning located at O.C.G.A. § 36-70-1; (2) planning definitions located at O.C.G.A. § 36-70-2; (3) planning powers located at O.C.G.A. § 36-70-3; (4) mandatory membership in the regional development center located at O.C.G.A. § 36-70-4; and (5) the inactive municipality provision located at O.C.G.A. § 36-70-5. *Id.*

35. Telephone Interview with Sen. David Adelman (D-42nd) (May 7, 2007) [hereinafter Adelman Interview].

36. See Senate Video, *supra* note 2, at 4 hrs., 12 min., 36 sec. (remarks by Sen. David Adelman).

37. *Id.*

38. See *Lawmakers 2007* (GPTV television broadcast Mar. 27, 2007) (remarks by Jesse Freeman) (on file with the Georgia State University Law Review) [hereinafter *Lawmakers*]. Senator Johnny Grant (R-25th), with the support of Senate Republican leadership, was able to table consideration of SB 89 until his own competing bill was reconsidered, and subsequently passed, on Crossover Day. *Id.* at 7 min., 20 sec.

39. See SB 200 (SCSFA), 2007 Ga. Gen. Assem. Under the plan proposed by SB 200, infrastructure development districts are first created by local government and then controlled by elected local residents. See SB 200 (SCSFA), 2007 Ga. Gen. Assem.

40. Compare SB 89 (SCS), 2007 Ga. Gen. Assem., with SB 200 (SCSFA), 2007 Ga. Gen. Assem. Infrastructure development districts have greater powers than townships because they are empowered to

Both bills required the passage of similar Senate resolutions before becoming law.<sup>41</sup> Had the House passed the bill, the township provisions in SB 89 would still require Georgia voters to approve the concept of townships in Senate Resolution 130 during the November 2008 general election.<sup>42</sup> Similarly, the language of SB 200 relating to IDs cannot be implemented without the approval of Senate Resolution 309 by the voting public during the 2008 general election.<sup>43</sup>

The bills became attached on the Senate floor when Senator Johnny Grant (R-25th) moved to table SR 130 until his own resolution, SR 309 (which eventually passed), was voted on for the second time.<sup>44</sup> As one commentator noted, this parliamentary move by Senator Grant drew “debate in the Senate . . . as fierce as any in the Senate this year.”<sup>45</sup>

On March 27, 2007, the Senate passed the committee substitute by vote of 41 to 10.<sup>46</sup>

### *Consideration by the House*

The House read the bill for the first time on March 28, 2007.<sup>47</sup> Speaker of the House Glenn Richardson (R-19th) assigned the bill to the House Committee on Governmental Affairs.<sup>48</sup> The House read the bill for the second time on March 29, 2007.<sup>49</sup> The House Committee on Governmental Affairs failed to discuss the bill in Committee but the bill is still alive for the 2008 General Assembly.<sup>50</sup>

---

issue bonds to fund public projects, assess taxes in the district, finance infrastructure, borrow money, and regulate land use. *See* SB 200 (SCSFA), 2007 Ga. Gen. Assem.

41. *Compare* SB 89 (SCS), 2007 Ga. Gen. Assem., *with* SB 200 (SCSFA), 2007 Ga. Gen. Assem.

42. *See* SB 89 (SCS), 2007 Ga. Gen. Assem.; SR 130, as passed, 2007 Ga. Gen. Assem.

43. *See* SB 200 (SCSFA), 2007 Ga. Gen. Assem.; SR 309, as passed, 2007 Ga. Gen. Assem.

44. *See Lawmakers, supra* note 38 (remarks by Jesse Freeman). SB 200, unlike SB 89, was able to pass both chambers of the Georgia General Assembly. *See* State of Georgia Final Composite Status Sheet, SB 200, June 5, 2007.

45. *See Lawmakers, supra* note 38 (remarks by Jesse Freeman). Senator David Adelman accused the Republican Senate leadership of playing politics with his bill. *Id.* at 7 min., 55 sec. (remarks by Sen. David Adelman (D-42nd)). Additionally, Senator Robert Brown called tabling SB 89 in favor of reconsidering SB 200 “unconscionable.” *Id.* at 8 min., 20 sec. (remarks by Sen. Robert Brown (D-26th)).

46. Georgia Senate Voting Record, SB 89 (Mar. 27, 2007).

47. *See* State of Georgia Final Composite Status Sheet, SB 89, June, 5 2007.

48. *See id.*

49. *See id.*

50. *See id.*

*Resolution Tracking of SR 130**Consideration and Passage by the Senate*

Senators David Adelman (D-42nd), Chip Pearson (R-51st), Daniel Weber (R-40th), Tim Golden (D-8th), Doug Stoner (D-6th), and J.B. Powell (D-23rd) sponsored SR 130.<sup>51</sup> On February 1, 2007, the Senate first read SB 130 and Senate Pro Tempore Eric Johnson (R-1st) assigned it to the Senate Committee on Urban Affairs.<sup>52</sup>

Without any substantive changes, the Senate Committee on Urban Affairs favorably reported the resolution to the Senate floor on March 19, 2007.<sup>53</sup> On March 27, 2007, Senator Johnny Grant (R-25th) moved to table SR 130 and the motion was subsequently adopted by a vote of 35 to 9.<sup>54</sup> Later that day, the Senate passed SR 130 by a vote of 43 to 4.<sup>55</sup>

*Consideration by the House*

The House read the resolution for the first time on March 28, 2007.<sup>56</sup> Speaker of the House Glenn Richardson (R-19th) assigned the resolution to the House Committee on Governmental Affairs.<sup>57</sup> The House read the resolution for the second time on March 29, 2007.<sup>58</sup> The House Committee on Governmental Affairs failed to discuss the resolution in Committee.<sup>59</sup>

*The Bill*

The bill, if passed, would have amended Title 36 of the Official Code of Georgia Annotated by adding Chapter 93.<sup>60</sup> New Code

51. *See id.*

52. *See id.*

53. *See* State of Georgia Final Composite Status Sheet, SR 130, June 5, 2007.

54. Senate Video, *supra* note 2, at 4 hr., 24 min., 2 sec (remarks by Sen. Eric Johnson (R-1st)).

55. Georgia Senate Voting Record, SR 130 (Mar. 27, 2007); State of Georgia Final Composite Status Sheet, SR 130, June 5, 2007.

56. *See* State of Georgia Final Composite Status Sheet, SR 130, June 5, 2007.

57. *See id.*

58. *See id.*

59. *See id.*

60. SB 89 (SCS), 2007 Ga. Gen. Assem.

section 36-93-1 would have granted the General Assembly the power to create a new form of local government in the unincorporated areas of one or more counties—the township.<sup>61</sup> This new Code section would have been known as the “Georgia Township Act.”<sup>62</sup>

New Code section 36-93-2 would have required a local act creating a township to contain the following: (1) the name of township; (2) a description of the area included in the township; (3) the number of members of the board of supervisors; (4) whether members of board of supervisors will be elected at large or by district; (5) the initial terms of office and date of initial election for the board of supervisors; (6) whether election will be by majority or plurality; (7) the amount and nature of compensation for the board of supervisors; and (8) the number of members of board of supervisors who must be present for a quorum.<sup>63</sup>

New Code section 36-93-3 outlines the activities and powers of a township.<sup>64</sup> The bill also would have established the authority, power, and duties granted to the board of town supervisors, when the board will hold regular meetings, and the public availability of all board meetings and documents.<sup>65</sup>

New Code section 36-93-4 would have granted the board of town supervisors and township employees the same privileges and immunities as those granted to municipalities.<sup>66</sup>

New Code section 36-93-5 would have limited the ability of local municipalities to annex township land and outlines the requirements by which a township may become a municipality.<sup>67</sup> The new section also outlines procedures for the annexation and deannexation of township land.<sup>68</sup>

New Code section 36-93-6 would have allowed all qualified Georgia voters who are bona fide residents of the township to vote in the election.<sup>69</sup> In addition, it would have required that all elections be

---

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. SB 89 (SCS), 2007 Ga. Gen. Assem.

67. *Id.*

68. *Id.*

69. *Id.*

held and conducted in accordance with the “Georgia Election Code,” which establishes the date of the election, the time when township board service will begin, and how vacancies on the board will be filled.<sup>70</sup>

New Code section 36-93-7 would have established limitations on the conduct of elected officials, appointed officers, and employees of the township and requirements for disclosure of such person’s private interests.<sup>71</sup>

New Code section 36-93-8 would have required an annual independent audit of all township accounts, funds, and financial transactions by a certified public accountant selected by the board of supervisors.<sup>72</sup>

New Code section 36-93-9 would have established that the township would still be subject to the laws of the county except for the powers the bill expressly grants to the township.<sup>73</sup>

New Code section 36-93-10 would have established the rules and procedures for proposing and adopting ordinances.<sup>74</sup>

New Code section 36-93-11 would have required the board of town supervisors to select a chairperson and a vice chairperson at their first meeting of each calendar year.<sup>75</sup>

New Code section 36-93-12 would have established that the county in which the township is located would continue to be responsible for planning and zoning functions and the enforcement of land use provisions until July 1 of the year following the election of the initial board of town supervisors, but after this date it would not exercise any of these functions in the township.<sup>76</sup> The bill further would have required the county to hold, conduct, certify, and fund the initial election.<sup>77</sup>

New Code section 36-93-13 would have required that when a township or county receives specified requests—for rezoning; a change in the land use plan; the creation of a subdivision; an

---

70. *Id.*

71. *Id.*

72. SB 89 (SCS), 2007 Ga. Gen. Assem.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

amendment to the township's planning, development ordinance, or subdivision regulations; new ordinances or an amendment to existing ordinances—the township or county submit the proposed ordinance to either the county, if a township, or a township, if a county.<sup>78</sup> The bill also would have required a township to submit these requests to abutting townships and municipalities if the request affects abutting or contiguous property.<sup>79</sup> The neighboring local government would then have ten days to respond, in writing, with recommendations to mitigate any possible adverse consequences it may suffer because of the request.<sup>80</sup> The county, township, or municipality receiving this response would then have to take into account all recommendations.<sup>81</sup>

The bill would have amended Code sections 36-66-3, 36-66A-1 to 2, 36-67-1, 36-67A-1, and 36-70-1 through 5, adding townships to the definition of local government entities for the purpose of defining and granting the following powers: (1) definitions for the transfer of development rights; (2) procedures, methods, and standards for the transfer of development rights; (3) applicability and definitions of procedures for reviewing zoning proposals; (4) definitions of conflicts of interest in zoning actions; and (5) the development of comprehensive plans.<sup>82</sup>

### *The Resolution*

In addition, SB 89 was accompanied by Senate Resolution 130, which would have allowed for the amendment of the State Constitution upon voter approval of the concept of townships in the November 2008 general election.<sup>83</sup>

### *Analysis*

In general, the bill adds a new limited form of government for Georgians—the township.<sup>84</sup> The main purpose of the bill is to give

---

78. SB 89 (SCS), 2007 Ga. Gen. Assem..

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. SR 130, as passed Senate, 2007 Ga. Gen. Assem.

84. See Senate Video, *supra* note 2, at 4 hr., 2 min., 25 sec.

local communities, rather than a large municipal government, the power to control local land use and planning decisions.<sup>85</sup> An important aspect of the bill is that it does not create a single township—it simply gives the General Assembly the power to create townships in the future if needed.<sup>86</sup> While many tout the benefits of townships, some groups worry that creation of townships may cause unintended consequences or give rise to new issues.<sup>87</sup>

### *Township Annexation*

One such concern is that the bill only allows annexation upon approval by the board of town supervisors and the electors of the township in a referendum.<sup>88</sup> Such a requirement would create substantial difficulties for current members of the township who would like to be annexed by a neighboring municipality.<sup>89</sup> The Georgia Municipal Association (GMA) feels that local landowners should be able to decide whether to remain part of the township or whether to join a local municipality.<sup>90</sup> In addition, as the bill is currently structured, no property owner in the unincorporated area of a county could be annexed into a township without the consent of the county.<sup>91</sup> Such a procedure would give counties a veto power over the growth and area of a township.<sup>92</sup>

Conversely, the bill fails to allow municipal residents to be annexed by a neighboring township.<sup>93</sup> The bill requires that a municipal resident first de-annex from the city before annexation by a township, thus creating another hurdle for joining the desired form of government.<sup>94</sup>

---

85. *Id.*

86. *See* Adelman Interview, *supra* note 35.

87. *See* Telephone Interview with Susan Moore, General Counsel, Georgia Municipal Association (Apr. 26, 2007) [hereinafter Moore Interview].

88. *See id.*; SB 89 (SCS), 2007 Ga. Gen. Assem.

89. *See* Moore Interview, *supra* note 87.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

### *Service Delivery*

Second, the bill fails to address various complications with the Service Delivery Strategy Act.<sup>95</sup> In particular, although the bill requires that all services not expressly delivered by the township will be performed by the county, this provision ignores the fact that not all counties provide all services, and the bill does not provide a solution for situations in which a county does not provide a particular service.<sup>96</sup> The text of the bill limits a township's power to controlling land use and planning, however, leaving all other service requirements to the county.<sup>97</sup> Further, the bill allows counties to establish special service districts within the county to provide additional services, thus providing a means for the county to turn the township into a "city controlled by the county."<sup>98</sup>

### *Domino Effect*

Third, the Georgia Municipal Association has articulated concerns about the purpose of townships.<sup>99</sup> Because townships appear to be "municipalities on training wheels," the concern is that a domino effect may take place—a community will first become a township with the power to deal only with land use, then an initial amendment will occur granting it the power to control services, and then subsequent amendments will grant the township even more power.<sup>100</sup> Such a scenario creates the possibility that townships will quickly become de facto municipalities.<sup>101</sup>

On the other hand, some people argue that creating "municipalities on training wheels" may not be a bad idea.<sup>102</sup> While there is no plan to add further amendments to the bill that would allow for townships

---

95. See Moore Interview, *supra* note 87; O.C.G.A. § 36-70-20 et seq. (2006). The Service Delivery Strategy Act requires overlapping counties and municipalities to document and plan how they will provide services to shared residents and how they will share funding of those provided services. O.C.G.A. § 36-70-23 (2006).

96. See Moore Interview, *supra* note 87.

97. See SB 89 (SCS), 2007 Ga. Gen. Assem.

98. See Moore Interview, *supra* note 87.

99. *Id.*

100. *Id.*

101. *Id.*

102. See Adelman Interview, *supra* note 35.

to acquire other governmental powers, townships could function as a useful precursor to the incorporation of a community into a city.<sup>103</sup> Local residents who create a township would experience some of the duties and privileges of local control without the expense of fully incorporating a city, then later determine whether the local community would be well served by incorporating as a full-fledged municipality.<sup>104</sup>

### *Government Relationships*

Lastly, the bill does not show how townships will fit into the regional relationship between municipalities and counties.<sup>105</sup> In large metropolitan areas like Atlanta, main roads run through multiple counties.<sup>106</sup> If township residents wanted to reduce traffic volume, under SB 89 they could attempt to rezone the road, severely disrupting area traffic.<sup>107</sup> Another regional relationship concern is that SB 89 allows townships to straddle county lines, which creates jurisdictional problems surrounding taxation and service provision.<sup>108</sup> SB 89 may allow small geographical and residential density areas to become townships, which would create an overabundance of subdivision-sized government units.<sup>109</sup> Lastly, SB 89 does not have a

103. *Id.*

104. *Id.*

105. Telephone Interview with James Grubiak, General Counsel for Association of County Commissioners of Georgia (Apr. 27, 2007) [hereinafter Grubiak Interview].

106. *Id.* For instance, Johnson Ferry Road in Northwest Atlanta runs through both Cobb and Fulton County.

107. *Id.* For instance, Cobb County rezoned Johnson Ferry Road in the early 1990's from a two lane road to a four lane highway. When adjacent Fulton County refused to rezone its portion of Johnson Ferry Road, traffic created a severe bottleneck. This intergovernmental road management would be exacerbated if another governmental entity, the township, controlled another segment of roads such as Johnson Ferry Road. See Hayes Interview, *infra*, note 111. See generally Ga. Dep't of Transp., Johnson Ferry Road and Abernathy Road Corridor Project History, <http://www.dot.state.ga.us/informationcenter/activeprojects/stateroute/johnsonferry/pages/history.aspx> (last accessed on Mar. 25, 2008).

108. *Id.*; see also SB 89, proposed § 36-93-5(c) (listing requirements for township's annexation of contiguous land, but not requiring that contiguous land be a part of same county).

109. See Grubiak Interview, *supra* note 105; see also SB 89, proposed § 36-93-2(2) (requiring an area of 500 acres and population density of 200 persons per square mile).

dispute resolution process to settle planning issues that arise between the township and county.<sup>110</sup>

One method of solving such jurisdictional and service issues already exists here in Georgia—the Special Service and Taxing District, often referred to as a Special Service District or a Special Tax District.<sup>111</sup> A Special Service District gives city or county elected officials the opportunity to provide services, or higher levels of existing service, to designated geographic areas of a community—without the cumbersome process of incorporating as a city.<sup>112</sup> This is done by allowing city or county elected officials to impose a tax or fee within a geographically defined district for a specific purpose.<sup>113</sup> For instance, when residents of Sea Island, in Glynn County Georgia, wanted additional police services, Glynn County could not justify providing a higher level of police services to the Island than was provided countywide.<sup>114</sup> The Island residents approached the County Commission about establishing a Special Service District, which allowed it to levy a tax on Sea Island property to raise the needed revenue in order to provide additional police services.<sup>115</sup> However, like all other forms of local government, the Special Purpose District has its own shortcomings.<sup>116</sup> Once established the revenue cannot be used for purposes other than the specific purpose imposed for the District.<sup>117</sup> If the residents desire additional services, each service needs its own designated district.<sup>118</sup>

While many of these concerns are legitimate, the bill has built-in checks and balances to compensate for many of the issues raised.<sup>119</sup> For example, if a city decides that it is in its best interest to become a

110. See Grubiak Interview, *supra* note 105. SB 89 requires a township, on a petition for rezoning, to “consider the county’s response and . . . attempt to mitigate any adverse consequences or impacts identified by the county,” but it does not give a dispute resolution process if the county disagrees with the township’s decision. See SB 89, proposed O.C.G.A. § 36-93-13(a).

111. Telephone Interview with Harry Hayes, Public Service Associate/Local Government Project Director, Carl Vinson Institute of Government, University of Georgia (May 4, 2007) [hereinafter Hayes Interview].

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. Hayes Interview, *supra* note 111.

118. *Id.*

119. See Adelman Interview, *supra* note 35.

township, it must go through a relatively arduous process to accomplish this goal.<sup>120</sup> First, delegates of the county where the community is located must pass legislation through the General Assembly that meets all of the requirements of the bill.<sup>121</sup> Second, the governor must sign the bill.<sup>122</sup> Third, a referendum must be passed by a simple majority of the residents of the community seeking to become a township.<sup>123</sup> Fourth, the local residents must go to the ballot boxes and elect a board of supervisors to make decisions for the township.<sup>124</sup> Lastly, the board of town supervisors must make decisions for the new township.<sup>125</sup> Clearly this process includes many inherent checks and balances to ensure that any potential and unintended consequences of township creation will be thoroughly discussed and reviewed by various constituencies before a township comes into being.<sup>126</sup>

*Dustin Covello & Jeffrey C. Phillips*

---

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *See Adelman Interview, supra note 35.*

126. *Id.*