

**SERVICE DELIVERY STRATEGIES**  
**ACCG INFORMATION SERIES**  
Tax Equity Negotiations

**Association County Commissioners of Georgia**  
**April 2007**

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## **Tax Equity Negotiations**

The Service Delivery Strategies Act (commonly referred to as HB 489)<sup>1</sup> requires counties and their cities to periodically revisit and revise, if necessary, their Service Delivery Strategies (SDS) agreements. A number of counties are presently or will be preparing to renegotiate SDS agreements with their cities in the near future.

While not always the case, be aware that negotiations with your cities may become very contentious—especially with regard to tax equity negotiations. While the law presumes that cities will negotiate in good faith, and that the good of the overall community would be the basis for decisionmaking, counties should not presume that cities will approach negotiations in that manner. Oftentimes, cities will view service delivery negotiations as a chance to shift service delivery burdens to counties and to generate additional revenues for themselves regardless of the impact on the community.

While the SDS law requires that legitimate claims of double taxation be resolved, you may find that your cities will exaggerate the existence or degree of double taxation in the negotiation process and demand tax credits or even cash payments to “resolve” the problems. An example is the cost of maintaining county roads in the unincorporated areas of the county. The SDS law does not require or expect that counties treat county roads as an unincorporated service, but many cities will insist on counties taxing only unincorporated residents for the cost of the county road program. In fact, the county road system, wherever it runs, serves all the residents of the county as well as travelers from other counties and states. As such, the county road system is a legitimate countywide expenditure.

The point is, in negotiating with cities, it is important to be fully educated on the issues before proceeding.

To help untangle some of the strategies that cities may undertake in the negotiation process, this report may be useful.

If you have any questions regarding these memos, please call or e-mail the ACCG offices.

Jerry R. Griffin  
April 2007

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<sup>1</sup> *O.C.G.A. § 36-70-20 et seq.*

## CHAPTER 1.

### **Tax Equity: Revenue Considerations**

- *Scope:* During negotiations on HB 489, counties should insist on considering the “big picture.” In other words., the impact of revenue-related decisions outside of HB 489 must be taken into account.
- *General Purpose LOST / Double Taxation Already Negotiated:* Counties and cities were urged and required by law to consider double taxation when negotiating LOST distributions with their cities. Many counties did agree to higher percentages for their cities to offset any double taxation that might exist. Go back and look at any records you may have that can demonstrate this in case your cities have “forgotten” about it.
- *General Purpose LOST / Double Dip:* Remind your cities that city residents get a “double dip” from LOST sales tax revenues. Counties must roll back their LOST revenues countywide--not just in the unincorporated area--so city and unincorporated residents alike benefit from the county’s LOST revenues.

In other words, city residents get one dip as a city resident and a second dip as a county resident. This is essentially unfair to unincorporated residents who only get one share (as a county resident). There is no justification for city residents receiving a double dip. Counties should argue that double taxation, where the county agrees it exists, is paid for--at least in part--by unincorporated residents since they get less than their fair share of LOST revenues compared to city residents.

- *Point of Sale:* In the context of the General Purpose LOST and SPLOST, cities argue that they “deserve” larger revenue shares from sales taxes because in most counties a large percentage of sales taxes are generated within city limits. Even if it can be argued that points of sale tend to be inside city limits in some counties, it certainly is not universal. But more importantly it is irrelevant. Remember the point of every sale in the state of Georgia is in a county. In addition, counties’ share of sales tax revenues, especially LOST, must be applied countywide as a credit against property taxes! The bottom line: some cities will use this argument to try to convince county officials that they should give up sales tax revenues, justify higher county property taxes in the unincorporated areas, or it may be used as a “red herring” or diversion. Any attempt by cities to press point of sale as an issue should be dismissed as irrelevant.
- *Utility Franchise Fees.* Statewide, Georgia Power alone paid almost \$110 million dollars in franchise fees to cities in 2006. 45% of sales were to unincorporated customers with the \$110 million spread throughout the rate base. This means that unincorporated residents in Georgia Power’s service area paid \$49.5 million dollars in fees to cities for which those unincorporated residents received nothing. At the very least, every dollar of the utility franchise fees on Georgia Power services is paid by an unincorporated resident and, therefore, should be shown as a credit against double

taxation. Atlanta Gas and some EMCs also spread city utility franchise fees through their rate bases thereby taxing unincorporated residents to solely benefit city residents--to the tune of many, many millions of dollars. Those subsidies should also be recognized in any negotiations.

- *Unincorporated Tax Revenues:* While one revenue source counties must tap to address any double taxation that might exist is the insurance premium tax, be sure to separate out any other revenues received from business and occupation taxes, hotel-motel taxes and alcoholic beverage taxes and use those taxes to pay for any services the county may be providing primarily to unincorporated residents.
- *Fees for Services:* Look carefully at your fees charged for unincorporated services (such as building inspections). You may find that you are subsidizing some services out of the general fund that could or should be paid for entirely out of user fees. To the extent unincorporated services are paid for via fees, city double taxation complaints by your cities can be minimized.

## CHAPTER 2.

### **Housing City Inmates in the County Jail**

*Scope:* In a number of counties, city officials are claiming that H.B. 489 requires counties to accept city prisoners in the county jail without the city having to compensate the county. There is no such requirement in H.B. 489.

- *Cities Choose to Operate Municipal Jails or House City Inmates in County Jail:* Most cities have opted not to operate jails to house those individuals sentenced to imprisonment through the municipal court system for certain misdemeanor offenses occurring within the city such as city ordinance violations, minor drug offenses, shoplifting and traffic violations. Instead, those cities typically contract with counties to use space in the county jail, detention center or correctional institution.
- *Housing City Prisoners is a City Service.* Providing jail space to city prisoners is a city service separate from the county-wide service of housing inmates awaiting trial or convicted of violating state criminal laws. Its a variation on privatization; i.e., rather than build their own jail, the city contracts with the county for the service.
- *Fine Add-Ons in Municipal Court Only Partly Finances Housing of City Prisoners in County Jails.* According to the “Jail Construction and Staffing Act,” O.C.G.A. § 15-21-90 et seq., when the county and the city enter into a service agreement after January 1, 1990, to house city prisoners in county jails, detention centers or correctional institutions, an additional penalty may be imposed and collected by the municipal court on the original fine or bail/bond forfeiture to help fund a portion of the cost of constructing, maintaining and staffing the county facility.
- *The Additional Penalty is Insufficient to Cover Cost of Housing City Prisoners.* The additional penalty paid into the county jail fund is only 10% of the original fine for the offense. Except where otherwise established by local law or city charter, the *maximum* fines for these offenses range from \$300 to \$1000, while the city prisoners may be housed in the county facility for as long as 12 months. In cases where the municipal court judge imposes imprisonment and no fine, the county receives no compensation for the city inmate from the add-on penalty.

While the add-on penalty is designed to assist in the cost to construct, maintain and staff the county facility, it does not cover any of the other costs and liabilities involved with housing city prisoners (e.g., food, clothing, hospital and other outside medical treatment, over the counter and prescription medication, dental treatment, inmate lawsuits, etc.), nor does it compensate for the loss of bed space in many of the already overcrowded county facilities.

- *City Should Pay Full Cost of Housing City Inmates.* The county’s actual cost of housing city inmates should be determined so that the city can supplement the add-on penalty, rather than having this city service subsidized by the county taxpayers. In

fact, given that cities will be pressing to eliminate double taxation by counties, counties should not bear the additional cost of housing city inmates unless the full cost is covered.

- *County Can Terminate Agreement Housing City Prisoners.* The nature of the relationship between the county and the city for the housing of city inmates is contractual. Unless local legislation has been enacted to the contrary, the county is not required to house city prisoners. Subject to the terms of the intergovernmental agreement, the arrangement may be terminated if the city fails to meet its financial responsibility for its prisoners. In sum, cities simply want the revenues from the arrests; but not the costs associated with it.

## CHAPTER 3.

### **Recreation**

- *Scope:* City officials may press county commissioners to agree that recreation services offered by the county are services that primarily benefit the unincorporated residents of the county and, therefore, must be paid for out of unincorporated revenues rather than the general fund.
- *Availability of County Recreation Services / Effect on Double Taxation:* Generally speaking, recreation services offered by a county are available to every resident of the county as well as visitors to the county. Parks, boat ramps, picnic areas and similar facilities would be examples of recreation services available to anyone who chooses to use the service. As such, there is no reason why the county would be obliged to pay for those recreation services out of unincorporated revenues.

On the other hand, there may be some recreation services that are not available to persons living in the city or living outside the county. If a county provides such services, the county should look at unincorporated revenues including fees to pay for those services--especially adult recreation services where consideration should be given to paying the entire cost out of fees levied.

- *County-City Contracts / Source of County's Funding:* Many counties have jointly funded recreation programs with their cities and may have contracts with those cities where the funding is divided between the county and city. Example: The county pays 50% of the cost and City A pays 50% of the cost with the county paying its share out of the general fund. City A may insist that the county is, under HB 489, obliged to pay its share out of unincorporated revenues rather than the general fund. If the recreation services provided under the joint agreement are available to all residents of the county, then the county would not be obliged to shift to unincorporated revenue sources.
- *County-City Contracts / Renegotiation May be Appropriate:* Note that, depending on the nature of the services and the terms of the original agreement, it may appropriate for the county to shift its share to unincorporated revenues. But if the original agreement was based on the assumption that the county's 50% was coming out of the general fund, then logically the percentages would have to change to reflect the change in funding source. Under this example, the county's share might drop to 30% or some other number less than 50% if the revenue source is shifted to the unincorporated residents. (The alternative would be to accept the contract the way it currently exists with the county paying 50% of the cost out of the general fund if both the county and City A agree).
- *County Recreation Facilities / City Residents Benefit:* Note that simply because a park is located outside city limits does not make it one that is primarily provided to unincorporated residents. A passive use park or boat ramp is just as beneficial to



unincorporated residents as it is to city residents. In fact, it may be more beneficial to city residents to give them an opportunity to get away from the city for a day.

- *Effect of City Offering Recreation Services:* Furthermore, the fact that cities offer recreation services, does not in itself mean that the county is offering its recreation services primarily to unincorporated residents. Remember that cities are authorized to provide services at a higher level than the same service offered by the county to all residents of the county if the city residents want to pay for that higher level of service.
- *Bottom Line / No Need to Break Down Recreation Services by Sub-Category:* The nature of the recreation services provided by the county and who they are designed to benefit determines whether or not they should be paid for out of unincorporated revenues. Only if the services are established to primarily benefit the unincorporated area must they be paid for out of unincorporated revenues.

But remember, nothing in the law requires the county to break down a service like recreation into component parts and address each one as to whether or not it is provided primarily to unincorporated residents or countywide.

## **CHAPTER 4.**

### **County Road Department Expenditures**

- *Scope:* Some city officials argue that counties' road department expenditures primarily benefit unincorporated residents and therefore all or part of the road department budget should be paid for out of unincorporated revenues and not the general fund.
- *Guidebook Says County Road Services are "Countywide."* The Service Delivery Strategies guidebook co-authored by GMA, DCA, the Institute of Government and ACCG answers the question. Page 10 of the guidebook, specifies that "some county services are made available county-wide to all residents and, in many instances, nonresidents. Examples include services such as indigent legal defense, public health and welfare, county roads in the incorporated and unincorporated areas. These services should be paid for out of the county general fund."
- *County Road System Available to Everyone--Including City Residents.* The county road system, including any county roads that exist within municipalities, is available to any resident of any city when going about his or her business outside the city limits. For that matter, the county road system is similarly available to any resident of any other county, state or country who chooses to walk, bike or ride upon it.
- *County Road System is A Link in a National Chain.* The county road system is simply a small link in a national network of streets, roads and highways. After all, there are no toll booths at the city limits requiring city residents to pay for their use of the county road system
- *City Businesses Rely on County Roads.* Businesses that operate within city limits rely on the county road system to have goods and services delivered to them from points outside the city limits. Even if a city resident never leaves the city, he or she benefits from the goods, produce and services brought in to the city over the county road system.

Furthermore, those businesses dispatch vehicles and employees from their municipal locations to locations around the county and beyond via the county road system. Home delivery of local newspapers which are located in a city is made possible by the county road system. Likewise any home delivery service, mail order service, home maintenance, construction or remodeling service whose office is in a city is able to earn business in unincorporated areas or other cities by traveling over the county road system.

- *Commuting Patterns Place Demands on County Roads.* Home to work commuting patterns give rise to city residents' use of county roads. Residents from one city or adjoining counties or cities may travel over the county road system to get to their place of employment in another city or county.
- *County Maintenance of City Roads.* Many counties provide road maintenance services for one or more of their cities.

- *Impact of SPLOST.* Many counties have share a portion of the county’s SPLOST revenues with cities for road projects within municipal boundaries. If a city uses SPLOST funds for road purposes, it is using a countywide funding source paid for by all county residents to help maintain a city service.
- *Guidebook Says that City Residents Do Not Have to Benefit Equally with Unincorporated Residents.* To benefit from the county road system, a city resident does not have to drive over every segment of the system. The simple fact that a road exists for his or her use, or has been scraped to make it passable if he or she chooses to use it, is a benefit to the city resident. Regardless of whether or not the city resident uses it or uses it as much as the unincorporated resident, the city resident still benefits from the road system. As noted on Page 11 of the Guidebook: “Whether a person lives in a city or in the unincorporated area of the county, there is no requirement that all residents of the county receive the same or even similar benefits for a service to be paid out of the county general fund.”

By way of further explanation, the foregoing argument applies equally to unincorporated residents who live in different parts of the unincorporated area. One person may live on a dirt road and rarely gets out to drive while another person lives on a paved road and spending large parts of each day traversing the road system. Even though the use of the road system by the two residents varies greatly, they are not taxed differently by the county.

- *County Residents Use City Streets / Impact:* Some city officials counter the above arguments by reminding county officials that unincorporated residents use city streets but do not pay for the use of those streets. That argument is without merit because:
  - A. The law recognizes that one reason cities exist is to provide a higher level of service than what is available from the county. Cities construct city streets because the city residents want more paved streets (i.e., a higher level of service) than what the county is willing to provide;
  - B. Nothing in the law requires cities to be compensated for providing services at a higher level than the county; and,
  - C. Unincorporated residents contribute to the LOST, SPLOST and utility franchise revenues received by the city. In addition, the county may have contributed county SPLOST funds to pay for city road projects.
- *County Roads Belong to All Citizens.* The county road system, whether located in the unincorporated or municipal areas of the county, is the property of and titled in the name of all the citizens of the county....not just the unincorporated citizens. As such, all citizens of the county have a duty to pay for the construction and maintenance of the county road system.
- *Duty to Maintain Public Infrastructure/Property.* County roads are simply infrastructure...no different than the courthouse or county jail. The citizens of the county have the duty to maintain and protect the infrastructure of the county wherever

its located. Compare to the courthouse: Even though its located within the boundaries of a city, that does not mean that city residents have a greater responsibility for the maintenance of the courthouse. Even if a taxpayer who lives in the unincorporated area of the county never sets foot in the courthouse, he is still responsible for his proportionate share of the cost of maintaining the facility.

- *Comparison to State and Federal Highway System.* Claiming that city residents should not be responsible for or contribute their fair share to the cost of building or maintaining the county road system, is like saying that a resident of Thomas County should not be responsible for paying state taxes to maintain a state highway in Rabun County because he doesn't live in Rabun County, or he should not pay federal taxes for the interstate system in Oregon because he does not live there.
- *Effect of Annexation.* If only unincorporated county residents should pay for roads and road maintenance as cities and GMA claim should be the case, the logical extension of that would be that any time a city annexes property that includes a road financed by the unincorporated residents, then the city should be obliged to pay the county the fair market value of the annexed road.

## CHAPTER 5.

### **Water & Sewer Differentials**

- *Scope:* If a city provides water or sewer services outside its boundaries, rates charged to unincorporated customers cannot be arbitrary or unreasonable.
- *Rates Do Not Have to be Equalized.* There can be a differential, but the differential must be reasonable and must be based on an objective analysis relative to the cost of providing the service.
- *County Has Standing to Challenge Rates / Rate Study Required.* Counties can challenge rates charged by a city after holding a public hearing by hiring a registered engineer to conduct a rate analysis. A county and the city can agree to jointly hire an engineer to analyze the rates.
- *City Rate Studies Can Be Biased.* Be aware, however, that the factors and assumptions that go into a rate analysis can affect the outcome. In other words, engineers can be hired to produce a study with a pre-ordained result! So if you agree to a jointly-funded study or a presented with a city-financed study by an engineer, be aware that the factors and assumption built into the city study may be designed to favor the city's existing rate structure rather than be neutral or objective. A county participating in a jointly-funded study should also jointly prepare the RFP seeking the engineering firm to do the study.
- *"Rate of Return" Means "Profit".* A key issue: should a "reasonable rate of return" be built in or allowed? Note that this is another term for "profits" that would likely be transferred to the city's general fund to lower city property taxes.

Profits generated by a public water or sewer system are highly suspect if it can be justified at all. Remember that virtually all, if not all, public systems are subsidized by the public as a whole through federal or state grants or loans or low-interest financing subsidized by federal or state income taxpayers. As such, those systems should not create profits to be used to finance other city operations if they are collecting those profits from unincorporated residents.

All public water and sewer systems should be operated as an enterprise fund where costs and income remain within the system and profits are not transferred to other city operations.

- *Cities' Argument in Favor of Differentials and Profits:* City officials will point to the fact that pre-existing customers have supported capital outlays for the system in prior years, so it is only fair that new customers pay a higher amount to reflect the current cost of expanding services or the lower density of customers. Those may be factors to consider in a rate study. However, any rate study must also consider the cost of

replacing, repairing, renovating and financing the older and perhaps failing parts of the system within the city.

Also, be aware that simply because a component of the system is in the unincorporated area of the county, that it somehow only benefits the unincorporated customers. For example, given that water systems work on a loop principle, a water tank located outside the city limits would have been designed to improve water pressure throughout the system--not just in the unincorporated area where it is located.

Remember: it is unlikely that any city would extend water or sewer systems into the unincorporated areas of the county if doing so loses money.

## CHAPTER 6.

### **Tax Equity: Sheriffs and Other County Officers**

*Scope:* Some city officials are continuing to insist that all or part of the cost of operating county sheriffs' departments must be paid for out of unincorporated revenues. This is based on their misplaced argument that sheriffs primarily serve the unincorporated parts of the county since most cities have their own police departments to provide law enforcement services within municipal boundaries.

***IMPORTANT NOTE:*** *Cities continue to argue that the cost of the services of the sheriff, especially the non-court duties, should be paid for by unincorporated taxpayers rather than by all the taxpayers in the county. While the arguments for doing so have always been weak when thought through (see below), the General Assembly specifically resolved this issue in 2004 by amending the service delivery strategies law to expressly provide that sheriffs and the other county constitutional offices and the services they provide are not to be included or addressed in service delivery strategy agreements. In other words, sheriffs and other services provided by constitutional officers are off the table when it comes to SDS negotiations. If there was any doubt about the intent of the amendments to the SDS law, the Attorney General issued an opinion in January of 2005 (See: Op. Atty Gen., U2005-2) that says that the sheriffs, tax commissioners, probate judges and clerks of court and "the costs of their offices are not to be included in the deliberations of local government officials when formulating agreements between counties and cities regarding the delivery of local government services."*

For historical purposes, the general arguments against treating sheriffs as if they were the responsibility of the unincorporated taxpayers first formulated in 1997 are continued below:

- There is no basis for that argument.
- *Sheriffs Have Countywide Jurisdiction:* The operation of the county sheriff's department arises out of the state constitution. Every sheriff in the state has countywide jurisdiction including arrest powers within and outside of each municipality in the county.

Other duties of the sheriff involve countywide responsibilities: managing the county jail, serving papers for the court, protecting county property, patrolling and law enforcement generally.

- *Sheriffs Serve All the Residents of the County:* The services of each sheriff's department are available to every resident of the county as well as to visitors. Sheriffs are elected by all the voters of the county and, as such, they are charged with serving the entire county. Consequently, counties are not obliged to pay for any part of the operation of the sheriffs department out of unincorporated revenues.

- *Sheriff's Patrol Not an Unincorporated Service:* Despite claims by some city officials to the contrary, counties do not need to pay for the cost of operating the sheriff's patrol function out of unincorporated revenues. Remember, there is no requirement in H.B. 489 or any other law that all residents of a county are to receive equal benefits from a service offered by the county. This applies to the sheriff's duties including the patrol function. That is, even if unincorporated residents receive a greater degree of the sheriff's patrol activities than do city residents, that, in and of itself, does not create a tax inequity that must be resolved under the tax equity provisions of H.B. 489. Also keep in mind that the mere presence of the sheriff or his deputies within a city while serving papers, attending court, and maintaining the sheriff's office within a city has the effect of providing law enforcement/patrol services to city residents.
- *Bottom Line / No Need to Break Down the Sheriff's Department by Sub-Category:* Remember, nothing in the law requires the county to break down the sheriff's department into component parts and address each one as to whether or not it is provided primarily to unincorporated residents or countywide. Taken as a whole, the county sheriff's department is a countywide function even if the sheriff spends a greater portion of his patrol time in unincorporated areas of the county.
- *County Police/Sheriffs Often Provide Direct Specialized Services to Cities:* Investigative services, SWAT, mutual aid, K-9, dive teams, etc. are oftentimes provided through either a county police department or sheriff's department. Providing these services to cities bolsters the idea that the sheriff's department or the county police department are countywide services. If these services are not paid for out of the general fund, counties should charge cities at least the full cost for rendering these services to cities.
- *Commissioners Do Not Control Sheriff's Activities.* Even within the unincorporated areas of the county there are likely to be differences in the degree of patrol, investigatory and other activities. Given that the sheriff is a constitutional officer, whose jurisdiction and responsibilities are countywide by law, and who is subject to all the voting citizens of the county wherever they live, where and to what degree his services are rendered within the county, is essentially between the sheriff and his or her constituents. Remember, the county commissioners have virtually no control over the sheriff's activities. For example, the commissioners cannot order the sheriff to increase patrols in the city as the city council can do with the chief of police. As such, there is nothing for the commissioners to negotiate relative to HB 489 regarding the sheriff--just as there is nothing to negotiate regarding the tax commissioner, probate judge, etc. In other words, sheriffs are outside the scope of HB 489.
- *Sheriff Not Bound by Any Service Agreement.* As a matter of practical application, it is not feasible to agree to any kind of division of the cost of the sheriff's patrol. If the county and the city agree that 25% of the patrol function is primarily for incorporated residents, and funding is shifted to accommodate that agreement, the sheriff is not, and cannot be, bound to that agreement.