

WHAT IS A POPULATION ACT?

A population Act is a specific class of general law of the state. However, instead of applying uniformly statewide like other general laws, a population Act applies only to particular counties, or cities, or both. The limited application is accomplished by making law apply to jurisdictions with a population of greater than or less than a specific number of persons or apply only to a jurisdiction with a specific population range, that is, more than a certain but also less than a certain number. For example, a law could apply to all counties with a population of not less than 10,000 or more than 15,000.

The state constitution specifically prohibits the enactment of local or special laws in cases for which provision has been made by general law. A population Act, also known as a “general law of local application”, purports to be a ‘valid’ method by which this constitutional prohibition can be circumvented. In other words, a population Act a law that functions as local Act, but in fact is a type of general law, even though it does not apply uniformly on a statewide basis.

HOW IS POPULATION DETERMINED?

The population figures that determine applicability are determined according to population of a local jurisdiction according to the most recent United States decennial census. That means that once the population figures for the 2020 census become effective, the population figures of EVERY population Act which determine applicability to local jurisdiction will change.

WHY DO POPULATION ACTS MATTER TO COUNTIES?

A population Act is a matter of serious concern. They are exceptions to general law and were enacted to address **only** the specific concerns of the initial local jurisdiction(s) for which it was enacted. Once the new 2020 census figures become

effective, a population Act could cease to apply to a county for which it was originally intended and could begin to apply to a county or counties that want nothing to do with its unique variations of general law. In addition, because a population Act is a type of general law, it will SUPERSEDE and control over any contrary provisions of a local Act of a local jurisdiction.

ARE POPULATION ACTS LEGAL?

The courts of this state have remained, for the most part, un-persuaded by the legal fiction put forth by population Acts. Under cases such as *Dougherty County v. Bush*, 227 Ga. 137 (1971); *Strickland v. Richmond County*, 243 Ga. 462 (1979); & *Board of Commissioners v. Clayton County School District*, 250 Ga. 244 (1982); and many others, a test is used to analyze the dubious validity of these measures. The test consists of three questions regarding legislation which classified political subdivisions by population. First, is the classification open ended so as to allow subdivisions to come into and fall out of the classification? Second, does it apply only to a single entity? Third, is the classifying device reasonably related to the purpose of the legislation?

It is likely that very few population Acts comply with this test. However, one cannot say without individual analysis, that a particular population Act is manifestly unconstitutional. Finally, and most importantly, only a court is competent to make such a determination.

Now, while the ‘technical, legal answer’ is that there is indeed a constitutional issue hanging over population Acts, the **reality** is that regardless of their likely unconstitutionality in the eyes of the courts, the use of this legislative ‘tool’ continued for many, many decades. *The result is that there are hundreds upon hundreds of these laws in existence today.*

Of these, and untold number have been, and continue to be, in use in jurisdictions across the state!

WHAT SHOULD COUNTIES DO?

Population Acts are a minefield of complexity and do not lend themselves to either casual or cursory treatment, but in fact require thoughtful deliberation and study at the local level as a bare minimum preface to any legislative action. Just like local Acts, Population Acts, can be a volatile subject to the affected jurisdictions.

Review and consideration should commence with officials of the local affected jurisdiction. These local officials are the persons who are best situated to know whether the provisions of a particular Population Act are currently in use, whether retention is desirable or necessary, and what adverse impact might result in the community if the applicability of the provisions were simply removed without the benefit of prior local input and study.

A prudent methodology for handling Population Acts would be to utilize similar standards as for handling local legislation. Many local legislative delegations require a unanimous resolution of the affected governing body in order to proceed with the drafting, introduction, and passage of a local bill. While this would not of course be required for a Population Act, this would nonetheless ensure that all affected localities are in agreement as to the course of action that should be taken. (In the past, a former Speaker of the House went so far as to require that **all** members of **all** affected local legislative delegations had to sign a population bill in order for it to be introduced and considered.)

As a condition precedent to any legislative action, it is recommended that a comprehensive local review of a population Act be conducted.

This review should start with getting the books. In addition to providing the materials to county attorneys, ACCG will make on our website two lengthy publications on the subject of population Acts. [Volume 1](#) covers each census from 1980 to 2010 and [Volume II](#) covers the 2010 census and the 2020 census. The review should concentrate on [Volume II](#) material with [Volume I](#) being used for historical reference. ACCG is also providing the book to the Georgia Municipal Association for review by cities and further to the Office of Legislative Counsel so that they may assist the legislature in the review process.

HOW DO I TO REVIEW POPULATION ACTS?

The book contains a User's Guide which outlines the suggested steps a county should take to review of Population Acts. It is imperative that the county attorney be a part of the review process! The relevant portions of the user's guide are restated here for your convenience.

The consideration of Population Acts should be a process that:

- 1) Is addressed first by comprehensive review at the local level; and
- 2) Legislative action should occur **only** upon the request of the affected local jurisdiction and **only** after comprehensive local review has concluded that legislative action may proceed safely and without unforeseen consequences.

First Things First

It is recommended that a user familiarize himself or herself with the book's overall structure and contents. The Foreword provides some useful history and background of population Acts. This reference guide should answer most questions.

Get the Numbers

The second step is to find your county's population. There are several readily available sources for this information. First, go the Reapportionment Office website, <https://www.legis.ga.gov/joint-office/reapportionment>, and scroll down to the file named "2020 Census Count by GA County Population". Second, look in Vol. 42A of the O.C.G.A., the local law index. Due to the late availability of census figures, the alphabetical listing of all Georgia counties with separate columns detailing the population of each county under the 2020 census as well as every census dating back to the 1930 census will not appear until the 2022 Supplement becomes available. Once available, you will find a numerical listing in descending order of each county and its population under the 2020 census. This exact same information may also be found in Volume III of Georgia Laws (the tan-colored hard bound compilation of the general and local Acts enacted by the General Assembly) for 2022 or subsequent years. NOTE, if you use Georgia Laws, be certain that in 2022, you are using the 2022 edition and subsequently, you are using the most recent year following the 2022 edition. The 2021 set will NOT have the 2020 census numbers in the charts and will only be current through the 2010 census. The most recent year following the 2022 edition will contain any official updates to the census figures.

Identifying the Population Acts that Affect Your County or City

The third step is to go to the Table of Contents immediately following the reference guide. You will find an alphabetical listing of each county (as well as cities). To the right of each county name is a listing of every page in the book on which that county appears. Please note that this listing covers only the 2010 and 2020 census columns. For census columns prior to 2010, see [Volume I](#). Further, if there is a population Act for a miscellaneous entry, as well as other categories with one exception noted below, and that entry applies to your county, there will be a page reference so noted

in the Table of Contents under your county's name.

Using the listing of pages from the Table of Contents, turn to each listed page and consult the census columns. By simply reviewing the listings of counties under the census columns you can ascertain whether:

1) A population Act that applied to your county under the 2010 census continues to apply under the 2020 census;

2) a population Act that applied to your county under the 2010 census no longer applies your county under the new 2020 census due to population gain or loss; or

3) A population Act that did not apply to your county under the 2010 census now does apply to your county under the 2020 census due to population gain or loss.

The 2 columns on the right side of the page will give a very brief description of what the population Act does and will include a citation to where the text of the provision can be found. If the population Act is uncodified (*i.e.*, it does not appear in the O.C.G.A.), there will ONLY be a citation to the most recent amendment thereto as found in Georgia Laws. If the population Act has been codified, there will be a Code section citation, as well as a Georgia Laws reference to the most recent amendment thereto.

Note that the listings do not include:

(1) Minimum salary provisions for county officers like sheriffs or tax commissioners;

(2) Local constitutional amendments (these are covered in detail in a different publication); or

(3) Fees or other types of comprehensive bracket schedules that specify bracketed ranges covering all cities or all counties (*e.g.*, Code Section 33-8-8(b)(1)).

If you do NOT see any entries for your county in the Index, DO NOT assume that there are no population Acts. You still need to consult the Broadly Focused Statutes – Counties listings beginning on Page 109. These are listed ONLY by population and NOT by county name since they apply to so many jurisdictions. It is very important that you do not omit this step since there are NUMEROUS population Acts referenced here. Also, be certain to consult the Miscellaneous listings as these contain numerous entries regarding population Acts that apply to all cities in a county of a specified population as well as other classifications. One might be tempted to simply turn to the part of the book that lists populations close to that of your county. There is a high degree of likelihood that something will get missed if you limit your review to just this method, so it is recommended highly that you follow the above steps for the sake of completeness.

Policy Decisions and Legislation

If you determine that your county is impacted either because it no longer is within the correct population range of a desired and previously existing population Act OR because it has found itself now within the population range specified by the population Act and consequently is subject to new and unwanted statutory requirements, then you should consult with your local officials and determine whether it is best to either repeal the population Act OR to seek an amendment to it that keeps the provision applicable only to the jurisdictions which were covered by it immediately prior to the date the new census figures became effective. With regard to the 2020 census, for the bulk of population Acts this date is July 1, 2022. However, there are several exceptions which are detailed at the beginning of this book on the page, Effective Date of Census. Also, be certain to review the limitation on the use of ‘remain applicable’ amendments. This caveat is covered in detail in the 5th unnumbered paragraph of the FOREWARD.

Once the policy decision has been made to seek either a repeal or an amendment, then you should consult with a member of the General Assembly who represents your

county and request their assistance. The legislator will then take the request to the Office of Legislative Counsel and that office will prepare the appropriate bill. As a final note, please remain mindful that population Acts are NOT local bills. They are general bills of local application and are subject to the constitutional, statutory, and procedural rules and timelines that apply to ALL general bills.