

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 964
Committee Substitute Favorable 6/7/99

Short Title: Municipal Incorporation Process.

(Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE MUNICIPAL INCORPORATION PROCESS SO AS TO PROVIDE MORE SCRUTINY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-163(c) reads as rewritten:

"(c) The petition must include a proposed name for the city, a map of the city, a list of proposed services to be provided by the proposed municipality, the names of three persons to serve as interim governing board, a proposed charter, a statement of the estimated population, assessed valuation, degree of development, population density, and recommendations as to the form of government and manner of election. The petition must contain a statement that the proposed municipality will have a budget ordinance estimating revenues from sources adopted in the ordinance under Article 9 of Chapter 160A of the General Statutes of not less than one third (1/3) of its total estimated revenues (excluding revenues from public enterprises as defined by G.S. 160A-111 and excluding gifts, grants, and loans) no later than the first full fiscal year following the effective date of the incorporation. The petition must contain a statement that the proposed municipality will offer four of the following services no later than the first day of the third fiscal year following the effective date of the incorporation: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water

1 distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition;
2 (vii) street lighting; and (viii) zoning. In order to qualify for providing police protection,
3 the proposed municipality must propose either to provide police service or to have
4 services provided by contract with a county or another municipality that proposes that the
5 other government be compensated for providing supplemental protection. The proposed
6 municipality may not contain any noncontiguous areas."

7 Section 2. G.S. 120-167 reads as rewritten:

8 **"§ 120-167. Additional criteria; population.**

9 The Commission may not make a positive recommendation unless the proposed
10 municipality has a permanent population of at least ~~400~~ 100 and a population density
11 (either permanent or seasonal) of at least 250 persons per square mile."

12 Section 3. G.S. 120-168 reads as rewritten:

13 **"§ 120-168. Additional criteria; development.**

14 ~~Except when the entire proposed municipality is within two miles of the Atlantic Ocean,~~
15 ~~Albemarle Sound, or Pamlico Sound, the~~ The Commission may not make a positive
16 recommendation unless forty percent (40%) of the area is developed for residential,
17 commercial, industrial, institutional, or governmental uses, or is dedicated as open space
18 under the provisions of a zoning ordinance, subdivision ordinance, conditional or special
19 use permit, or recorded restrictive covenants."

20 Section 4. G.S. 120-169.1 reads as rewritten:

21 **"§ 120-169.1. Additional criteria; level of development, ~~services~~ services; financial**
22 **impact on other local governments.**

23 (a) ~~Level of Development.~~ ~~The Commission may not make a positive~~
24 ~~recommendation unless the entire area proposed for incorporation meets the applicable~~
25 ~~criteria for development under G.S. 160A-36(e) or G.S. 160A-48(e).~~

26 (b) ~~Services.~~ – The Commission may not make a positive recommendation unless
27 the area to be incorporated submits a plan for providing a reasonable level of municipal
28 services. This plan shall be based on the proposed services stated in the petition under
29 G.S. 120-163(c). ~~To meet the requirements of this subsection, the persons submitting the plan~~
30 ~~for incorporation must propose to provide at least two of the following services:~~

31 (1) ~~Police protection.~~

32 (2) ~~Fire protection.~~

33 (3) ~~Garbage and refuse collection or disposal.~~

34 (4) ~~Water distribution.~~

35 (5) ~~Sewer collection or disposal.~~

36 (6) ~~Street maintenance, construction, or right-of-way acquisition.~~

37 (7) ~~Street lighting.~~

38 (8) ~~Adoption of citywide planning and zoning.~~

39 (c) The Commission in its report shall indicate the impact on other municipalities
40 and counties of diversion of already levied local taxes or State-shared revenues from
41 existing local governments to support services in the proposed municipality."

42 Section 5. G.S. 136-41.2 reads as rewritten:

43 **"§ 136-41.2. Eligibility for funds; municipalities incorporated since January 1, 1945.**

1 (a) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it
2 has conducted the most recent election required by its charter or the general law,
3 whichever is applicable, for the purpose of electing municipal officials. The literal
4 requirement that the most recent required election shall have been held may be waived
5 only:

- 6 (1) Where the members of the present governing body were appointed by
7 the General Assembly in the act of incorporation and the date for the
8 first election of officials under the terms of that act has not arrived; or,
9 (2) Where validly appointed or elected officials have advertised notice of
10 election in accordance with law, but have not actually conducted an
11 election for the reason that no candidates offered themselves for office.

12 (b) No municipality incorporated with an effective date prior to January 1, 2000,
13 shall be eligible to receive funds under G.S. 136-41.1 unless it has levied an ad valorem
14 tax for the current fiscal year of at least five cents (5¢) on the one hundred dollars
15 (\$100.00) valuation upon all taxable property within its corporate limits, and no
16 municipality incorporated with an effective date on or after January 1, 2000, shall be
17 eligible to receive funds under G.S. 136-41.1 if its adopted budget ordinance estimates
18 revenues from sources adopted in the ordinance under Article 9 of Chapter 160A of the
19 General Statutes of less than one third (1/3) of its total estimated revenues (excluding
20 revenues from public enterprises as defined by G.S. 160A-111 and excluding gifts,
21 grants, and loans), and unless it has actually collected at least fifty percent (50%) of the
22 total ad valorem tax levied for the preceding fiscal year; provided, however, that, for
23 failure to have collected the required percentage of its ad valorem tax levy for the
24 preceding fiscal year:

- 25 (1) No municipality making in any year application for its first annual
26 allocation shall be declared ineligible to receive such allocation; and
27 (2) No municipality shall be declared ineligible to receive its share of the
28 annual allocation to be made in the year 1964.

29 (c) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it
30 has formally adopted a budget ordinance in substantial compliance with G.S. 160-410.3,
31 showing revenue received from all sources, and showing that funds have been
32 appropriated for at least two of the following municipal ~~services~~—services if the
33 municipality was incorporated with an effective date prior to January 1, 2000, water
34 distribution; sewage collection or disposal; garbage and refuse collection or disposal; fire
35 protection; police protection; street maintenance, construction, or right-of-way
36 acquisition; or street ~~lighting~~—lighting, or at least four of the following municipal services
37 if the municipality was incorporated with an effective date of on or after January 1, 2000:
38 (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water
39 distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition;
40 (vii) street lighting; and (viii) zoning.

41 (d) The provisions of this section shall not apply to any municipality incorporated
42 prior to January 1, 1945."

43 Section 6. G.S. 105-472 is amended by adding a new subsection to read:

1 "(d) No municipality may receive any funds under this section if it was
2 incorporated with an effective date of on or after January 1, 2000, and is disqualified
3 from receiving funds under G.S. 136-41.2."

4 Section 7. G.S. 105-486 is amended by adding a new subsection to read:

5 "(d) No municipality may receive any funds under this section if it was
6 incorporated with an effective date of on or after January 1, 2000, and is disqualified
7 from receiving funds under G.S. 136-41.2."

8 Section 8. Chapter 1096 of the 1967 Session Laws is amended by adding a new
9 section to read:

10 "Section 10.2. No municipality may receive any funds under this act if it was
11 incorporated with an effective date of on or after January 1, 2000, and is disqualified
12 from receiving funds under G.S. 136-41.2."

13 Section 9. G.S. 105-501 reads as rewritten:

14 **"§ 105-501. Distribution of additional taxes.**

15 The Secretary shall, on a quarterly basis, allocate the net proceeds of the additional
16 one-half percent (1/2%) sales and use taxes levied under this Article to the taxing
17 counties on a per capita basis according to the most recent annual population estimates
18 certified to the Secretary by the State Budget Officer. The Secretary shall then adjust the
19 amount allocated to each county as provided in G.S. 105-486(b). The amount allocated to
20 each taxing county shall then be divided among the county and the municipalities located
21 in the county in accordance with the method by which the one percent (1%) sales and use
22 taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the
23 1967 Session Laws are distributed. No municipality may receive any funds under this
24 section if it was incorporated with an effective date of on or after January 1, 2000, and is
25 disqualified from receiving funds under G.S. 136-41.2.

26 If any taxes levied under this Article by a county have not been collected in that
27 county for a full quarter because of the levy or repeal of the taxes, the Secretary shall
28 distribute a pro rata share to that county for that quarter based on the number of months
29 the taxes were collected in that county during the quarter.

30 In determining the net proceeds of the tax to be distributed, the Secretary shall deduct
31 from the collections to be allocated an amount equal to one-fourth of the costs during the
32 preceding fiscal year of:

- 33 (1) The Department of Revenue in performing the duties imposed by G.S.
34 105-275.2 and by Article 15 of this Chapter.
- 35 (2) The Property Tax Commission.
- 36 (3) The Institute of Government in operating a training program in property
37 tax appraisal and assessment.
- 38 (4) The personnel and operations provided by the Department of State
39 Treasurer for the Local Government Commission."

40 Section 10. G.S. 105-113.82 is amended by adding a new subsection to read:

41 "(h) No municipality may receive any funds under this section if it was
42 incorporated with an effective date of on or after January 1, 2000, and is disqualified
43 from receiving funds under G.S. 136-41.2."

1 Section 11. G.S. 105-116.1 is amended by adding a new subsection to read:
2 "(e) No municipality may receive any funds under this section if it was
3 incorporated with an effective date of on or after January 1, 2000, and is disqualified
4 from receiving funds under G.S. 136-41.2."

5 Section 12. Section 1 of this act applies with respect to municipalities for
6 which the Joint Legislative Commission on Municipal Corporations makes
7 recommendations on or after the date this act becomes law. The remainder of this act is
8 effective when it becomes law.