

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 1003
HOUSE BILL 1458

AN ACT TO CREATE A JOINT LEGISLATIVE COMMISSION ON MUNICIPAL INCORPORATIONS, TO REVIEW PROPOSALS TO INCORPORATE NEW MUNICIPALITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 20.

"Joint Legislative Commission on Municipal Incorporations.

"Part 1. Organization.

"§ 120-158. **Creation of Commission.** – (a) There is created the Joint Legislative Commission on Municipal Incorporations, referred to in this Article as 'Commission'.

(b) The Commission shall consist of six members, appointed as follows:

(1) Two Senators appointed by the President of the Senate;

(2) Two House members appointed by the Speaker;

(3) One city manager or elected city official, appointed by the President of the Senate from a list of three eligible persons nominated by the North Carolina League of Municipalities; and

(4) One county commissioner or county manager, appointed by the Speaker from a list of three eligible persons nominated by the North Carolina Association of County Commissioners.

"§120-159. **Terms.** –Members shall be appointed for terms ending June 30, 1987, and subsequently for two-year terms beginning July 1, 1987, and biennially thereafter. A member eligible when appointed may continue for the remainder of the term regardless of the member's continued eligibility for the category. The Commission shall elect a chairman from its membership for a one- year term.

"§ 120-160. **Compensation.** –Members of the Commission who are members of the General Assembly shall receive subsistence and travel allowances as provided by G.S. 120-3.1. Members who are State officers or employees shall receive subsistence and travel allowances as provided by G.S. 138-6. All other members shall receive per diem, subsistence, and travel allowances as provided by G.S. 138-5.

"§ 120-161. **Facilities and staff.** –The Commission may meet in the Legislative Building or the Legislative Office Building. Staff for the Commission shall be provided by the Legislative Services Commission. The Commission may contract with the Institute of Government, the Local Government Commission, the Department of Natural

Resources and Community Development, or other agencies as may be necessary in completing any required studies, within the funds appropriated to the Commission.

"Part 2. Procedure for Incorporation Review.

"§ 120-163. **Petition.** –(a) The process of seeking the recommendation of the Commission is commenced by filing with the Commission a petition signed by fifteen percent (15%) of the registered voters of the area proposed to be incorporated, but by not less than 25 registered voters of that area, asking for incorporation.

(b) The petition must be verified by the county board of elections of the county where the voter is alleged to be registered. The board of elections shall cause to be examined the signature, shall place a check mark beside the name of each signer who is qualified and registered to vote in that county in the area proposed to be incorporated, and shall attach to the petition a certificate stating the number of voters registered in that county in the area proposed to be incorporated, and the total number of registered voters who have been verified. The county board of elections shall return the petition to the person who presented it within 15 working days of receipt.

(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 proposed municipality may not contain any noncontiguous areas.

(d) The petitioners must present to the Commission the verified petition from the county board of elections.

(e) A petition must be submitted to the Commission at least 60 days prior to convening of the next regular session of the General Assembly in order for the Commission to make a recommendation to that session.

"§ 120-164. **Notification.**–(a) Not later than five days before submitting the petition to the Commission, the petitioners shall notify:

(1) the board or boards of county commissioners of the county or counties where the proposed municipality is located;

(2) all cities within that county or counties; and

(3) All cities in any other county that are within five miles of the proposed municipality of the intent to present the petition to the Commission.

(b) The petitioners shall also publish, one per week for two consecutive weeks, with the second publication no later than seven days before submitting the petition to the Commission, notice in a newspaper of general circulation in the area proposed to be incorporated of the intent to present the petition to the Commission.

"§ 120-165. **Initial inquiry.** – (a) The Commission shall, upon receipt of the petition, determine if the requirements of G.S. 120-163 and G.S. 120-164 have been met. If it determines that those requirements have not been met, it shall return the petition to the petitioners. The Commission shall also publish in the North Carolina Register notice that it has received the petition.

(b) If it determines that those requirements have been met, it shall conduct further inquiry as provided by this Part.

"§ 120-166. Additional criteria; nearness to another municipality. – (a) The Commission may not make a positive recommendation if the proposed municipality is located within one mile of a municipality of 5,000 to 9,999, within three miles of a municipality of 10,000 to 24,999, within four miles of a municipality of 25,000 to 49,999, or within five miles of a municipality of 50,000 or over, according to the most recent decennial federal census, or according to the most recent annual estimate of the Office of State Budget and Management if the municipality was incorporated since the return of that census.

(b) Subsection (a) of this section does not apply in the case of proximity to a specific municipality if:

(1) the proposed municipality is entirely on an island that the nearby city is not on;

(2) the proposed municipality is separated by a major river or other natural barrier from the nearby city, such that provision of municipal services by the nearby city to the proposed municipality is infeasible or the cost is prohibitive, and the Commission shall adopt policies to implement this subdivision;

(3) the nearby municipality by resolution expresses its approval of the incorporation; or

(4) an area of at least fifty percent (50%) of the proposed municipality has petitioned for annexation to the nearby city under G.S. 160-31 within the previous 12 months before the incorporation petition is submitted to the Commission but the annexation petition was not approved.

"§ 120-167. Additional criteria; population. –The Commission may not make a positive recommendation unless the proposed municipality has a permanent population of at least 100.

"§ 120-168. Additional criteria; development. –Except when the entire proposed municipality is within two miles of the Atlantic Ocean, Albemarle Sound, or Pamlico Sound, the Commission may not make a positive recommendation unless 40 percent (40%) of the area is developed for residential, commercial, industrial, institutional, or governmental uses, or is dedicated as open space under the provisions of a zoning ordinance, subdivision ordinance, conditional or special use permit, or recorded restrictive covenants.

"§ 120-169. Additional criteria; area unincorporated. –The Commission may not make a positive recommendation if any of the proposed municipality is included within the boundary of another incorporated municipality, as defined by G.S. 153A-1(1).

"§ 120-170. Findings as to services. –The Commission may not make a positive recommendation unless it finds that the proposed municipality can provide at a reasonable tax rate the services requested by the petition, and finds that the proposed municipality can provide at a reasonable tax rate the types of services usually provided by similar municipalities. In making findings under this section, the Commission shall take into account municipal services already being provided.

"§ 120-171. Procedures if findings made. –(a) If the Commission finds that it may not make a positive recommendation because of the provisions of G.S. 120-166 through G.S. 120-170, it shall make a negative recommendation to the General Assembly. The

report to the General Assembly shall list the grounds on which a negative recommendation is made, along with specific findings. If a negative recommendation is made, the Commission shall notify the petitioners of the need for a legally sufficient description of the proposed municipality if the proposal is to be considered by the General Assembly. At the request of a majority of the members of the interim board named in the petition, the Commission may conduct a public hearing and forward any comments or findings made as a result of that hearing along with the negative recommendation.

(b) If the Commission determines that it will not be barred from making a positive recommendation by G.S. 120-166 through G.S. 120-170, it shall require that petitioners have a legally sufficient description of the proposed municipality prepared at their expense as a condition of a positive recommendation.

(c) If the Commission determines that it is not barred from making a positive recommendation, it shall make a positive recommendation to the General Assembly for incorporation.

(d) The report of the Commission on a petition shall be in a form determined by the Commission to be useful to the General Assembly.

"§ 120-172. Referendum. –Based on information received at the public hearing, the Commission may recommend that any incorporation act passed by the General Assembly shall be submitted to a referendum, except if the petition contained the signatures of 50 percent (50%) of registered voters the Commission shall not recommend a referendum.

"§ 120-173. Modification of petition. – With the agreement of the majority of the persons designated by the petition as an interim governing board, the Commission may submit to the General Assembly recommendations based on deletion of areas from the petition, as long as there are no noncontiguous areas.

"§ 120-174. Deadline for recommendations. – If the petition is timely received under G.S. 120-163(e), the Commission shall make its recommendation to the General Assembly no later than 60 days after convening of the next regular session after submission of the petition."

Sec. 2. G.S. 150B-63(d1) is amended by adding the following at the end:
"The North Carolina Register shall also contain notices under G.S. 120-165(a)."

Sec. 3. Funds to implement Article 20 of Chapter 120 of the General Statutes may be provided by the Legislative Services Commission out of funds appropriated to the General Assembly.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 14th day of July, 1986.