

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 964  
Committee Substitute Favorable 6/7/99  
Committee Substitute #2 Favorable 6/14/99

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 with an ad valorem tax levy of at least five cents (5¢) on the one hundred dollar (\$100.00) valuation upon all taxable property within its corporate limits. 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 distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning. In order to qualify for

1 providing police protection, the proposed municipality must propose either to provide  
2 police service or to have services provided by contract with a county or another  
3 municipality that proposes that the other government be compensated for providing  
4 supplemental protection. The proposed municipality may not contain any noncontiguous  
5 areas."

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

7 **"§ 120-167. Additional criteria; population.**

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

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

12 **"§ 120-168. Additional criteria; development.**

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

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

20 **"§ 120-169.1. Additional criteria; level of development, ~~services.~~ services; financial**  
21 **impact on other local governments.**

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

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

30 (1) ~~Police protection.~~

31 (2) ~~Fire protection.~~

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

33 (4) ~~Water distribution.~~

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

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

36 (7) ~~Street lighting.~~

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

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

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

42 **"§ 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 shall be eligible to receive funds under G.S. 136-41.1 unless it  
13 has levied an ad valorem tax for the current fiscal year of at least five cents (5¢) on the  
14 one hundred dollars (\$100.00) valuation upon all taxable property within its corporate  
15 limits, and unless it has actually collected at least fifty percent (50%) of the total ad  
16 valorem tax levied for the preceding fiscal year; provided, however, that, for failure to  
17 have collected the required percentage of its ad valorem tax levy for the preceding fiscal  
18 year:

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

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

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

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

38 "(d) No municipality may receive any funds under this section if it was  
39 incorporated with an effective date of on or after January 1, 2000, and is disqualified  
40 from receiving funds under G.S. 136-41.2. No municipality may receive any funds under  
41 this section, regardless of the date of its incorporation, unless a majority of the mileage of  
42 its streets are open to the public. The previous sentence becomes effective with respect to  
43 distribution of funds on or after July 1, 1999."

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

2 "(d) 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. No municipality may receive any funds under  
5 this section, regardless of the date of its incorporation, unless a majority of the mileage of  
6 its streets are open to the public. The previous sentence becomes effective with respect to  
7 distribution of funds on or after July 1, 1999."

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. No municipality may receive any funds under  
13 this act, regardless of the date of its incorporation, unless a majority of the mileage of its  
14 streets are open to the public. The previous sentence becomes effective with respect to  
15 distribution of funds on or after July 1, 1999."

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

17 **"§ 105-501. Distribution of additional taxes.**

18 The Secretary shall, on a quarterly basis, allocate the net proceeds of the additional  
19 one-half percent (1/2%) sales and use taxes levied under this Article to the taxing  
20 counties on a per capita basis according to the most recent annual population estimates  
21 certified to the Secretary by the State Budget Officer. The Secretary shall then adjust the  
22 amount allocated to each county as provided in G.S. 105-486(b). The amount allocated to  
23 each taxing county shall then be divided among the county and the municipalities located  
24 in the county in accordance with the method by which the one percent (1%) sales and use  
25 taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the  
26 1967 Session Laws are distributed. No municipality may receive any funds under this  
27 section if it was incorporated with an effective date of on or after January 1, 2000, and is  
28 disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any  
29 funds under this section, regardless of the date of its incorporation, unless a majority of  
30 the mileage of its streets are open to the public. The previous sentence becomes effective  
31 with respect to distribution of funds on or after July 1, 1999.

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

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

- 39 (1) The Department of Revenue in performing the duties imposed by G.S.  
40 105-275.2 and by Article 15 of this Chapter.
- 41 (2) The Property Tax Commission.
- 42 (3) The Institute of Government in operating a training program in property  
43 tax appraisal and assessment.

1           (4) The personnel and operations provided by the Department of State  
2           Treasurer for the Local Government Commission."

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

4           "(h) No municipality may receive any funds under this section if it was  
5 incorporated with an effective date of on or after January 1, 2000, and is disqualified  
6 from receiving funds under G.S. 136-41.2. No municipality may receive any funds under  
7 this section, regardless of the date of its incorporation, unless a majority of the mileage of  
8 its streets are open to the public. The previous sentence becomes effective with respect to  
9 distribution of funds on or after July 1, 1999."

10          Section 11. G.S. 105-116.1 is amended by adding a new subsection to read:

11          "(e) No municipality may receive any funds under this section if it was  
12 incorporated with an effective date of on or after January 1, 2000, and is disqualified  
13 from receiving funds under G.S. 136-41.2. No municipality may receive any funds under  
14 this section, regardless of the date of its incorporation, unless a majority of the mileage of  
15 its streets are open to the public. The previous sentence becomes effective with respect to  
16 distribution of funds on or after July 1, 1999."

17          Section 12. Section 1 of this act applies with respect to municipalities for  
18 which the Joint Legislative Commission on Municipal Incorporations makes  
19 recommendations on or after the date this act becomes law. The remainder of this act is  
20 effective when it becomes law.