

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 442  
PROPOSED COMMITTEE SUBSTITUTE H442-PCS30490-ST-40

Short Title: Municipal Incorporation Changes.

(Public)

Sponsors:

Referred to:

March 28, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE AN ADDITIONAL PETITION BE SUBMITTED TO THE  
3 MUNICIPAL INCORPORATIONS SUBCOMMITTEE, TO SET A TIME LIMIT ON  
4 THE LIFE OF THE PETITIONS SUBMITTED TO THAT SUBCOMMITTEE, AND TO  
5 MAKE TECHNICAL CORRECTIONS.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 120-163 reads as rewritten:

8 "§ 120-163. ~~Petition.~~Petitions.

9 (a) The process of seeking the recommendation of the Municipal Incorporations  
10 Subcommittee is commenced by filing with the Municipal Incorporations Subcommittee the  
11 following:

12 (1) a~~A~~ petition signed by fifteen percent (15%) of the registered voters of the  
13 area proposed to be incorporated, but by not less than 25 registered voters of  
14 that area, asking for incorporation. The voter shall sign the petition and also  
15 clearly print that voter's name adjacent to the signature. The petition must  
16 also contain the voter's residence address and date of birth.

17 (2) A petition signed by each owner of fifteen percent (15%) of the parcels of  
18 real property in the area proposed to be incorporated, but by not less than 25  
19 persons, asking for incorporation. The owner shall sign the petition and also  
20 clearly print that owner's name adjacent to the signature. The petition must  
21 also contain the address of the real property owned by that owner.

22 (b) The petition in subdivision (a)(1) of this section must be verified by the county  
23 board of elections of the county where the voter is alleged to be registered. The board of  
24 elections shall cause to be examined the signature, shall place a check mark beside the name of  
25 each signer who is qualified and registered to vote in that county in the area proposed to be  
26 incorporated, and shall attach to the petition a certificate stating the number of voters registered  
27 in that county in the area proposed to be incorporated, and the total number of registered voters  
28 who have been verified. The county board of elections shall return the petition to the person  
29 who presented it within 15-30 working days of receipt. ~~That period of 15 working days shall be~~  
30 ~~tolled for any period of time that is also either two weeks before or one week after a primary or~~  
31 ~~election being conducted by the county board of elections.~~

32 (b1) The petition in subdivision (a)(2) of this section must be verified by the county tax  
33 assessor of the county where the parcel of real property is located. The county tax assessor shall  
34 cause to be examined the signature and shall place a check mark beside the name of each signer  
35 who owns a parcel of real property in the area proposed to be incorporated. The county tax  
36 assessor shall also prepare and shall attach to the petition a certificate stating the total number



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1 of parcels of real property in the area proposed to be incorporated and the total number of  
 2 parcels for which the signatures of all owners of that parcel have been verified. For purposes of  
 3 this subsection, if deed title to a parcel of real property is held by more than one person, all  
 4 persons holding title to that parcel must be checked off by the county tax assessor in order for  
 5 that parcel to be counted in the total number of parcels of real property in the area proposed to  
 6 be incorporated that have been verified. The county tax assessor shall return the petition to the  
 7 person who presented it within 30 working days of receipt.

8 (c) ~~The petition~~Both petitions under subsection (a) of this section must include the same  
 9 information regarding the following:

10 (1) ~~a~~A proposed name for the city, a map of the city, a list of proposed services  
 11 to be provided by the proposed municipality, the names of three persons to  
 12 serve as interim governing board, a proposed charter, a statement of the  
 13 estimated population, assessed valuation, degree of development, population  
 14 density, and recommendations as to the form of government and manner of  
 15 election. The proposed municipality may not contain any noncontiguous  
 16 areas.

17 (2) ~~The petition must contain a~~The same statement that the proposed  
 18 municipality will have a budget ordinance with an ad valorem tax levy of at  
 19 least five cents (5¢) on the one hundred dollar (\$100.00) valuation upon all  
 20 taxable property within its corporate limits.

21 (3) ~~The petition must contain a~~The same statement that the proposed  
 22 municipality will offer four of the following services no later than the first  
 23 day of the third fiscal year following the effective date of the incorporation:  
 24 (i) police protection; (ii) fire protection; (iii) solid waste collection or  
 25 disposal; (iv) water distribution; (v) street maintenance; (vi) street  
 26 construction or right-of-way acquisition; (vii) street lighting; and (viii)  
 27 zoning. In order to qualify for providing police protection, the proposed  
 28 municipality must propose either to provide police service or to have  
 29 services provided by contract with a county or another municipality that  
 30 proposes that the other government be compensated for providing  
 31 supplemental protection. ~~The proposed municipality may not contain any~~  
 32 ~~noneontiguous areas.~~

33 (d) The petitioners must present to the Municipal Incorporations Subcommittee ~~the both~~  
 34 ~~verified petition~~petitions from the county board of ~~elections~~elections and the county tax  
 35 assessor.

36 (e) ~~A petition~~Both petitions under subsection (a) of this section must be submitted  
 37 together to the Municipal Incorporations Subcommittee at least 60 days prior to convening of  
 38 the next regular session of the General Assembly in order for the Municipal Incorporations  
 39 Subcommittee to make a recommendation to that session."

40 **SECTION 2.** G.S. 120-164 reads as rewritten:

41 "**§ 120-164. Notification.**

42 (a) Not later than five days before submitting the ~~petition~~petitions to the Municipal  
 43 Incorporations Subcommittee, the petitioners shall ~~notify~~notify all of the following:

44 (1) The board or boards of county commissioners of the county or counties  
 45 where the proposed municipality is ~~located~~located.

46 (2) All cities within that county or ~~counties~~and counties.

47 (3) All cities in any other county that are within five miles of the proposed  
 48 municipality of the intent to present the petition to the Municipal  
 49 Incorporations Subcommittee.

50 (b) The petitioners shall also publish, one per week for two consecutive weeks, with the  
 51 second publication no later than seven days before submitting the ~~petition~~petitions to the

1 Municipal Incorporations Subcommittee notice in a newspaper of general circulation in the area  
2 proposed to be incorporated of the intent to present the ~~petition~~petitions to the Municipal  
3 Incorporations Subcommittee."

4 **SECTION 3.** G.S. 120-165 reads as rewritten:

5 "**§ 120-165. Initial inquiry.**

6 (a) The Municipal Incorporations Subcommittee shall, upon receipt of the  
7 ~~petition~~petitions, determine if the requirements of G.S. 120-163 and G.S. 120-164 have been  
8 met. If it determines that those requirements have not been met, it shall return the ~~petition~~  
9 petitions to the petitioners. The Municipal Incorporations Subcommittee shall also publish in  
10 the North Carolina Register notice that it has received the ~~petition~~petitions.

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

13 **SECTION 4.** G.S. 120-166(b) reads as rewritten:

14 "(b) Subsection (a) of this section does not apply in the case of proximity to a specific  
15 municipality ~~if~~if any of the following apply:

16 (1) The proposed municipality is entirely on an island that the nearby city is not  
17 ~~on~~on.

18 (2) The proposed municipality is separated by a major river or other natural  
19 barrier from the nearby city, such that provision of municipal services by the  
20 nearby city to the proposed municipality is infeasible or the cost is  
21 prohibitive, and the Municipal Incorporations Subcommittee shall adopt  
22 policies to implement this ~~subdivision~~subdivision.

23 (3) The municipalities within the distances described in subsection (a) of this  
24 section by resolution express their approval of the ~~incorporation~~  
25 ~~or~~incorporation.

26 (4) An area of at least fifty percent (50%) of the proposed municipality has  
27 petitioned for annexation to the nearby city under G.S. 160A-31 within the  
28 previous 12 months before the incorporation ~~petition~~is~~petitions are  
29 submitted to the Municipal Incorporations Subcommittee but the annexation  
30 petition was not approved."~~

31 **SECTION 5.** G.S. 120-169.1(b) reads as rewritten:

32 "(b) Services. – The Municipal Incorporations Subcommittee may not make a positive  
33 recommendation unless the area to be incorporated submits a plan for providing a reasonable  
34 level of municipal services. This plan shall be based on the proposed services stated in the  
35 ~~petition~~petitions under G.S. 120-163(c)."

36 **SECTION 6.** G.S. 120-170 reads as rewritten:

37 "**§ 120-170. Findings as to services.**

38 The ~~Commission~~Municipal Incorporations Subcommittee may not make a positive  
39 recommendation unless it finds that the proposed municipality can provide at a reasonable tax  
40 rate the services requested by the ~~petition~~petitions, and finds that the proposed municipality  
41 can provide at a reasonable tax rate the types of services usually provided by similar  
42 municipalities. In making findings under this section, the ~~Commission~~Municipal  
43 Incorporations Subcommittee shall take into account municipal services already being  
44 provided."

45 **SECTION 7.** G.S. 120-171 reads as rewritten:

46 "**§ 120-171. Procedures if findings made.**

47 (a) If the ~~Commission~~Municipal Incorporations Subcommittee finds that it may not  
48 make a positive recommendation because of the provisions of G.S. 120-166 through  
49 G.S. 120-170, it shall make a negative recommendation to the General Assembly. The report to  
50 the General Assembly shall list the grounds on which a negative recommendation is made,  
51 along with specific findings. If a negative recommendation is made, the ~~Commission~~Municipal

1 Incorporations Subcommittee shall notify the petitioners of the need for a legally sufficient  
2 description of the proposed municipality if the proposal is to be considered by the General  
3 Assembly. At the request of a majority of the members of the interim board named in the  
4 ~~petition,~~ petitions, the ~~Commission~~ Municipal Incorporations Subcommittee may conduct a  
5 public hearing and forward any comments or findings made as a result of that hearing along  
6 with the negative recommendation.

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

11 (c) If the ~~Commission~~ Municipal Incorporations Subcommittee determines that it is not  
12 barred from making a positive recommendation, it shall make a positive recommendation to the  
13 General Assembly for incorporation.

14 (d) The report of the ~~Commission~~ Municipal Incorporations Subcommittee on a petition  
15 shall be in a form determined by the Commission to be useful to the General  
16 ~~Assembly.~~ Assembly and shall be valid for two years from the date issued.

17 (e) The Municipal Incorporations Subcommittee shall notify the Commission of all  
18 reports issued under this Part."

19 **SECTION 8.** G.S. 120-172 reads as rewritten:

20 "**§ 120-172. Referendum.**

21 Based on information received at the public hearing, the ~~Commission~~ Municipal  
22 Incorporations Subcommittee may recommend that any incorporation act passed by the General  
23 Assembly shall be submitted to a referendum, except if the petition contained the signatures of  
24 fifty percent (50%) of registered voters the ~~Commission~~ Municipal Incorporations  
25 Subcommittee shall not recommend a referendum."

26 **SECTION 9.** G.S. 120-173 reads as rewritten:

27 "**§ 120-173. Modification and life of petition.**

28 (a) With the agreement of the majority of the persons designated by the ~~petition~~  
29 petitions as an interim governing board, the ~~Commission~~ Municipal Incorporations  
30 Subcommittee may submit to the General Assembly recommendations based on deletion of  
31 areas from the ~~petition,~~ petitions as long as there are no noncontiguous areas.

32 (b) The petitions submitted under G.S. 120-163 shall be valid and modifiable for three  
33 years from the date of submission. After three years from the date of submission, the petition  
34 may not be modified under this section or considered by the Municipal Incorporations  
35 Subcommittee."

36 **SECTION 10.** G.S. 120-174 reads as rewritten:

37 "**§ 120-174. Deadline for recommendations.**

38 If the petition is timely received under G.S. 120-163(e), the ~~Commission~~ Municipal  
39 Incorporations Subcommittee shall make its recommendation to the General Assembly no later  
40 than 60 days after convening of the next regular session after submission of the  
41 ~~petition.~~ petitions pursuant to G.S. 120-163."

42 **SECTION 11.** This act is effective when it becomes law and applies to petitions  
43 submitted to the Municipal Incorporations Subcommittee on or after September 1, 2013.