GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-458
HOUSE BILL 964

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

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

"**§ 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.~~ 100 and a population density (either permanent or seasonal) of at least 250 persons per square mile."

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

"**§ 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~~ The Commission may not make a positive recommendation unless forty 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."

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

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

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

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

~~(1) Police protection.~~

~~(2) Fire protection.~~

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

~~(4) Water distribution.~~

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

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

~~(7) Street lighting.~~

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

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

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

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

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

(1) Where the members of the present governing body were appointed by the General Assembly in the act of incorporation and the date for the first election of officials under the terms of that act has not arrived; or,

(2) Where validly appointed or elected officials have advertised notice of election in accordance with law, but have not actually conducted an election for the reason that no candidates offered themselves for office.

(b) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has levied an ad valorem tax for the current fiscal year of at least five cents (5¢) on the one hundred dollars ($100.00) valuation upon all taxable property within its corporate limits, and unless it has actually collected at least fifty percent (50%) of the total ad valorem tax levied for the preceding fiscal year; provided, however, that, for

failure to have collected the required percentage of its ad valorem tax levy for the preceding fiscal year:

(1) No municipality making in any year application for its first annual allocation shall be declared ineligible to receive such allocation; and

(2) No municipality shall be declared ineligible to receive its share of the annual allocation to be made in the year 1964.

(c) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has formally adopted a budget ordinance in substantial compliance with G.S. 160-410.3, showing revenue received from all sources, and showing that funds have been appropriated for at least two of the following municipal ~~services:~~ services if the municipality was incorporated with an effective date prior to January 1, 2000, water distribution; sewage collection or disposal; garbage and refuse collection or disposal; fire protection; police protection; street maintenance, construction, or right-of-way acquisition; or street ~~lighting.~~ lighting, or at least four of the following municipal services if the municipality was incorporated with an effective date of on or after January 1, 2000: (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.

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

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

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

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

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

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

"Section 10.2. No municipality may receive any funds under this act if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this act, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

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

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

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

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

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

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

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

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

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

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

unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 12. Section 1 of this act applies with respect to municipalities for which the Joint Legislative Commission on Municipal Incorporations makes recommendations on or after the date this act becomes law. Sections 1 through 11 of this act, other than the repeal of G.S. 120-169.1(a), do not apply to any community which first filed a petition with the Joint Legislative Commission on Municipal Incorporations prior to July 20, 1999. The remainder of this act is effective when it becomes law.

Section 13. Sections 1 through 11 of this act, other than the repeal of G.S. 120-169.1(a), shall not apply to the community of Gray's Creek in Cumberland County nor to the Community of Union Cross in Forsyth County if either of those communities file a petition with the Joint Legislative Commission on Municipal Incorporations before July 1, 2002.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 4:11 p.m. this 13th day of August, 1999