



## SENATE RESEARCH OFFICE

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### **Senate Study Committee on Annexation, Deannexation, and Incorporation October 21, 2015**

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# OVERVIEW OF PRESENTATION

- **PART I: 50-STATE COMPARISON OF MUNICIPAL INCORPORATION METHODS**
- **PART II: KEY CONDITIONS REVIEWED IN OTHER STATES FOR PROPOSED MUNICIPAL INCORPORATIONS**
- **PART III: SELECTED PETITION REQUIREMENTS IN OTHER STATES**
- **PART IV: THE GENERAL ASSEMBLY'S ROLE IN OTHER STATES**
- **PART V: A QUICK LOOK AT BOUNDARY REVIEW BOARDS**

# PART I: 50-STATE COMPARISON OF MUNICIPAL INCORPORATION METHODS

## QUICK OBSERVATIONS

- ▶ **43 states** allow for the proposal to create new municipalities.
- ▶ **7 states** have no codified procedures for municipal incorporation due to the limited amount or lack of unincorporated territory.
- ▶ **22 states** authorize the County Commission to review and rule on all incorporation proposals.
- ▶ **11 states** authorize a statewide or local Judiciary to review and rule on all incorporation proposals.
- ▶ **7 states** authorize a statewide or local Boundary Review Board to review and rule on all incorporation proposals.
- ▶ **7 states**, including Georgia, authorize the General Assembly to review and rule on incorporation proposals.
- ▶ **3 states** authorize an Executive Officer such as the Governor to review and rule on all incorporation proposals.
- ▶ **Of the 43 states** that allow proposed incorporations, Georgia is the only state that does not provide for any method to petition for incorporation. Alaska (not codified), Florida (except for Miami-Dade), Nevada, New York (not codified) and Maine do not require directly petitioning their Legislature, but they do have alternative methods for incorporation that do require petitioning. North Carolina requires its Legislature to be petitioned directly.

# PART I: 50-STATE COMPARISON OF MUNICIPAL INCORPORATION METHODS

## COUNTY COMMISSION REVIEW AND APPROVAL 22 States

### **County Commission Review and Approval (Referendum Required)**

1. Colorado (Proposed municipalities with a population less than 500 registered voters)
2. Florida (Miami-Dade County Only)
3. Maryland
4. Missouri (Except for St. Louis County)
5. Montana
6. Nevada (Incorporation proposals may also be submitted to the General Assembly)
7. New Mexico (Local Review Board approval is also required)
8. New York (Incorporation proposals may also be submitted to the General Assembly)
9. North Dakota
10. Ohio (Cities Only)
11. Oklahoma
12. Oregon
13. South Dakota
14. Tennessee
15. Washington State (In counties without an established Boundary Review Board)
16. Wyoming

### **County Commission Review and Approval (No Referendum Required)**

1. Arizona (Referendum Optional)
2. Idaho
3. Indiana (Referendum Optional)
4. Kansas
5. Maine (Incorporation proposals may also be addressed by the General Assembly)
6. Nebraska
7. Ohio (Villages Only)

# PART I: 50-STATE COMPARISON OF MUNICIPAL INCORPORATION METHODS

## JUDICIAL REVIEW AND APPROVAL

11 States

### **Third Party Review and Approval – Local Judicial Approval (Referendum Required)**

1. Alabama
2. Arkansas (Alternative Method proposed municipalities with a population of at least 4,000)
3. Colorado (Proposed municipalities with a population of 500 or more registered voters)
4. Illinois (The County Commission can object in counties with a population between 150,000 and 1,000,000)
5. Texas
6. West Virginia
7. Wisconsin

### **Third Party Review and Approval – Local Judicial Approval (No Referendum Required)**

1. Arkansas (Primary Method)
2. Kentucky
3. Mississippi
4. Virginia

### **Third Party Review and Approval – Statewide Judicial Approval (No Referendum Required)**

1. Minnesota (Chief Administrative Law Judge)

## PART I: 50-STATE COMPARISON OF MUNICIPAL INCORPORATION METHODS

### BOUNDARY REVIEW BOARDS – LOCAL AND STATEWIDE 7 States

#### **Third Party Review and Approval – Statewide Review Board (Referendum Required)**

1. Alaska
2. Iowa
3. Michigan (Referendum Optional)

#### **Third Party Review and Approval – Local/Regional Review Board (Referendum Required)**

1. California
2. Missouri (St. Louis County Only)
3. New Mexico (County Commission approval is also required)
4. Washington State (In counties with an established Boundary Review Board)

## PART I: 50-STATE COMPARISON OF MUNICIPAL INCORPORATION METHODS

### GENERAL ASSEMBLY REVIEW AND APPROVAL

#### 7 States

#### **General Assembly Review and Approval (Referendum Required)**

1. Alaska (Not Codified)
2. Florida (Except for Miami-Dade County)
3. Georgia
4. Maine (The referendum is advisory and must be authorized by the General Assembly. Maine also provides for a County Commission approval method.)
5. Nevada
6. New York (Not Codified)
7. North Carolina

# PART I: 50-STATE COMPARISON OF MUNICIPAL INCORPORATION METHODS

## EXECUTIVE OFFICER INVOLVEMENT

### 3 States

#### **Third Party Review and Approval – Governor or Other Executive Officer**

1. Louisiana (Governor)
2. South Carolina (Secretary of State)
3. Utah (Lieutenant Governor)



## PART I: 50-STATE COMPARISON OF MUNICIPAL INCORPORATION METHODS

### STATES WITH NO INCORPORATION PROVISIONS

#### 7 States

- ▶ **Connecticut** - All territory in Connecticut is incorporated.
- ▶ **Delaware** - Although Delaware contains unincorporated territory, and does allow municipalities to annex territory, there are no provisions for municipal incorporation in Delaware law.
- ▶ **Hawaii** - There are no incorporated cities in the entire state; Honolulu is both a city and county.
- ▶ **New Hampshire** - Although unincorporated territory exists in New Hampshire, there are no provisions for annexation or incorporation in its constitution or general law.
- ▶ **New Jersey** - There is no territory in the state of New Jersey that is not part of an incorporated municipality. The only annexations that take place are between municipalities.
- ▶ **Pennsylvania** - Unincorporated communities in the state of Pennsylvania are well-defined communities that are part of one or more incorporated municipalities but are not independent municipalities in their own right.
- ▶ **Rhode Island** - There is no unincorporated territory in the state. Municipal boundaries are locked in by statute.

## PART II: KEY CONDITIONS REVIEWED IN OTHER STATES FOR PROPOSED MUNICIPAL INCORPORATIONS

### Proximity to Existing Municipalities

- ▶ Several states apply special conditions when a proposed incorporation is in close proximity to an existing municipality. These distances range anywhere from 1.5 miles (Illinois) up to 6 miles (Arizona). Although some states apply an absolute prohibition, most states instead place special conditions, such as seeking the existing city's approval.

### Alternatives to Incorporations

- ▶ At least 10 states authorize the approving entity to reject a proposed incorporation if annexation into a nearby municipality or an amended interlocal agreement would be a better option: Alaska, Colorado, Florida, Indiana, Kansas, Kentucky, Minnesota, Nevada, Washington, and West Virginia.

### Impact on Existing County and Neighboring Municipalities

- ▶ 16 states require the approving entity to consider the impact the proposed incorporation will have on the unincorporated areas of the county and sometimes even neighboring cities: California, Florida, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nevada, North Carolina, North Dakota, Ohio, West Virginia, Washington, and Wisconsin.

### Contiguity and Compactness

- ▶ The vast majority of states require a proposed municipality to be contiguous and/or compact.

### Petitions

- ▶ Of the 43 states that allow for the incorporation of new cities, **Georgia** is the only state that does not require a petition to first be submitted to the approving entity. (Some states with multiple methods may not require a petition for one of their methods.)

## **PART II: KEY CONDITIONS REVIEWED IN OTHER STATES FOR PROPOSED MUNICIPAL INCORPORATIONS**

### **School Districts**

- ▶ Minnesota requires its approving entity to take into consideration the relationship and effect of the proposed incorporation on affected and adjacent school districts.
- ▶ Florida requires that all affected government entities, including school districts, whose current boundary falls within the boundary of the proposed incorporation be identified in the feasibility study.
- ▶ Wisconsin requires proposed incorporations to take into consideration boundaries of school districts.

### **Current and Projected Cost of Services**

- ▶ Florida, Iowa, Kansas, Michigan, Minnesota, Missouri, and Oregon take into consideration the level and cost of services being presently provided, compared to the potential level and cost of proposed services.

### **Minimum Number of Services**

- ▶ Georgia law currently requires a proposed city to provide a minimum of 3 services.
- ▶ Tennessee requires the petitioners to submit a plan of services that must include the following 7 services: police protection; fire protection; water service; sanitary sewage system; solid waste disposal; road and street construction and repair; and recreational facilities.
- ▶ North Carolina requires a proposed city to provide at least 4 of the following services: police protection; fire protection; solid waste collection or disposal; water distribution; street maintenance; street construction or right-of-way acquisition; street lighting; and zoning.
- ▶ Nevada requires the petition to state plans for providing the following 6 services: police protection; fire protection; street maintenance; water and sewer services; garbage collection; and providing administrative services, with an estimate of the costs and sources of revenue.

## PART II: KEY CONDITIONS REVIEWED IN OTHER STATES FOR PROPOSED MUNICIPAL INCORPORATIONS

### **Long Range Planning**

- ▶ Florida requires proposed cities to submit a five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets.
- ▶ Oregon requires the submitted feasibility study to contain the proposed first and third year budgets for the new city demonstrating its economic feasibility.
- ▶ Tennessee requires petitioners to submit a proposed five-year operational budget, including projected revenues and expenditures with the petition to incorporate.

### **Transportation Issues**

- ▶ Iowa, Minnesota, Mississippi, Nevada, and Wisconsin require the approving entity to take the present transportation network and potential transportation issues into consideration.
- ▶ Iowa requires petitioners to draft plans for a formal agreement between the proposed city and the county for the maintenance, improvement, and traffic control of any shared roads involved in an incorporation.

### **Utilizing Topography and Terrain to Determine Boundaries**

- ▶ 11 states take topography, terrain, and natural geography into consideration when planning the boundaries of newly incorporated municipalities: Alaska, Florida, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Nevada, Washington, and Wisconsin.

## PART III: SELECTED PETITION REQUIREMENTS IN OTHER STATES

### Iowa

A petition must be filed with the city development board, signed by 5% of the registered voters, and must include the following information as applicable:

1. Assessed valuation of platted and un-platted land;
2. Names of property owners;
3. Description of topography;
4. Plans for disposal of assets and assumption of liabilities;
5. Description of existing municipal services;
6. Plans for agreements with any existing special service districts; and
7. Draft plans for a formal agreement between the proposed city and the county for the maintenance of any shared roads involved in an incorporation.

### Nevada

The petition must be signed by at least 1/3 of the voters and include the following information:

1. A description of the area prepared by a professional land surveyor;
2. A statement of the plans for providing police and fire protection, maintaining the streets, providing water and sewer services, garbage collection, and providing administrative services, with an estimate of the costs and sources of revenue; and
3. A map that shows the existing dedicated streets, sewer interceptors and outfalls, and their proposed extensions.

## PART III: SELECTED PETITION REQUIREMENTS IN OTHER STATES

### North Carolina

The petition must be submitted to the General Assembly (Municipal Incorporations Subcommittee) at least 60 days prior to convening of the next regular legislative session, and must contain the following:

1. The signature of at least 15% of the voters in the proposed area, but by not less than 25 voters. The signatures are verified by the county board of elections;
2. A proposed charter; a statement of the estimated population and population density; assessed valuation; and degree of development;
3. A statement that the proposed city will have a budget ordinance with an ad valorem tax levy of at least 5 cents per \$100 of all taxable property; and
4. A statement that the proposed municipality will offer 4 services no later than the first day of the city's third fiscal year.

### Oregon

The petition must be signed by 20% of the voters or by 10% if in a county with a population over 300,000. The petition must also include a proposed permanent tax rate sufficient to support an adequate level of municipal services.

An economic feasibility statement, that forms the basis for the proposed permanent tax rate, must be prepared by the petitioners and filed with the petition. The economic feasibility statement must contain:

1. A description of the services and functions to be performed or provided by the proposed city;
2. An analysis of the relationship between those services and functions and other existing or needed government services; and
3. Proposed first and third year budgets for the new city demonstrating its economic feasibility.

## PART III: SELECTED PETITION REQUIREMENTS IN OTHER STATES

### Tennessee

The petition must be signed by at least 33⅓% of the registered voters and include a plan of services setting forth the identification and projected timing of municipal services to be provided and the revenue from purely local sources to be payable annually. The plan of services must include:

1. Police protection, fire protection, water service, sanitary sewage system, solid waste disposal, road and street construction and repair, and recreational facilities;
2. A proposed five-year operational budget, including projected revenues and expenditures; and
3. A property tax rate to be annually levied upon all taxable property in the area to be incorporated.

### West Virginia

The petition must be signed by at least 30% of the voters and filed with the county court. The petitioners must provide a statement setting forth the plans for providing each major municipal service and whether the service will be provided by the municipality or by contract with a public or private entity. The plan must:

1. Provide the following 5 services: police protection; fire protection; solid waste collection; public water and sewer services; and street maintenance services;
2. A statement of the impact of the incorporation on any rural fire department providing service in the area to be incorporated and a statement of the impact of the incorporation on fire protection and fire insurance rates in the area to be incorporated; and
3. A statement showing how the proposed incorporation will affect the proposed city's finances and services.

## PART IV: THE GENERAL ASSEMBLY'S ROLE IN OTHER STATES

### **Florida (General Assembly Method)**

Although Florida does not require a petition to be submitted when a municipal incorporation is proposed by the General Assembly (it does require a petition for proposals in Miami-Dade County), it does require proponents to submit a feasibility study to the Legislature by the first Monday after September 1 before the next legislative session. The feasibility study must contain the following:

1. The major reasons for incorporation;
2. The following characteristics of the area:
  - a. A list of the current land use designations applied to the subject area in the county comprehensive plan;
  - b. A list of the current county zoning designations applied to the subject area;
  - c. A general statement of present land use characteristics of the area; and
  - d. A description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.
3. A list of all public agencies, such as local governments, school districts, and special districts, whose current boundary falls within the boundary of the territory proposed for the change or reorganization;
4. A list of current services being provided within the proposed incorporation area and the estimated costs for each current service;
5. A list of proposed services to be provided within the proposed incorporation area and their estimated cost;
6. Evidence of fiscal capacity and an organizational plan that, at a minimum, includes:
  - a. Existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate; and
  - b. A 5-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets.
7. Data and analysis to support the conclusions that incorporation is necessary and financially feasible, including population projections and population density calculations, and an explanation concerning methodologies used for the analysis; and
8. Evaluation of the alternatives available to the area to address its policy concerns.



## PART IV: THE GENERAL ASSEMBLY'S ROLE IN OTHER STATES

### North Carolina

Like Georgia, all legislation proposing a municipal incorporation in North Carolina must be adopted by the General Assembly. Unlike Georgia, North Carolina has established a Joint Subcommittee and Committee to review all petitions for incorporation.

The Joint Legislative Committee on Local Government consists of 14 members, appointed as follows:

- 7 members of the Senate appointed by the Pro Tempore, at least 2 of whom must be members of the minority party. At least 1 member must be a former city or county commissioner, city or county manager, or other city or county elected official.
- 7 members of the House appointed by the Speaker, at least 2 of whom must be members of the minority party. At least 1 member must be a former city or county commissioner, city or county manager, or other city or county elected official.

A Municipal Incorporation Subcommittee usually carries out the initial review of the petition, while the full Committee reviews the Subcommittee's findings and makes a final determination on the petition to incorporate. The petition must be submitted to the Subcommittee at least 60 days before the convening of the next regular session of the General Assembly, and must be signed by at least 15% of the registered voters, but by not less than 25 registered voters. A referendum for incorporation is not required if more than 50 percent of the registered voters have already signed the petition to incorporate.

If the petition receives an affirmative vote by the committee, then incorporation legislation may be introduced in the General Assembly. However, state law does not require the committee to consider the petition before a bill to incorporate can be introduced. This is only addressed in the rules of the Senate and House.

## PART IV: THE GENERAL ASSEMBLY'S ROLE IN OTHER STATES

### South Carolina

Proposing to incorporate a city in South Carolina requires filing a petition signed by 15% of qualified voters who reside in the proposed municipality with the Secretary of State. The petition must set out the proposed corporate limits and the number of inhabitants within the area.

Before the Secretary of State may act on the petition, the seven-member Joint Legislative Committee on Municipal Incorporation must review the petition and documentation and make a recommendation to the Secretary of State as to whether the area meets the minimum incorporation requirements. The Committee consists of 2 Senators appointed by the President Pro Tem; 2 House members appointed by the Speaker; 1 person appointed by the Governor; 1 city manager or elected city official appointed by the Senate President Pro Tem; and 1 county council member or county manager appointed by the Speaker.

The Joint Legislative Committee reviews whether the proposed municipality meets the following requirements:

- ▶ The area seeking to be incorporated has a population density of at least 300 per square mile;
- ▶ In general, no part of the area is within 5 miles of the boundary of a municipality;
- ▶ The area has filed a service feasibility study that has been reviewed by the Joint Legislative Committee and approved by the Secretary of State;
- ▶ The area is contiguous;
- ▶ The area has filed a proposal for providing, either directly or indirectly, a substantially similar level of law enforcement services to the area's existing law enforcement coverage; and
- ▶ The area has filed a proposal demonstrating that at least 3 services, either directly or by contract, will be provided to the incorporated area.

After receipt of a recommendation from the Joint Legislative Committee, the Secretary of State must determine whether all requirements have been met.

## PART V: A QUICK LOOK AT BOUNDARY REVIEW BOARDS

- ▶ Boundary Review Boards (BRBs) are entities assigned responsibility of reviewing and studying proposed municipal incorporations in addition to other local government boundary adjustment issues such as annexations and deannexations.
- ▶ 7 states require that a municipal incorporation proposal be reviewed AND approved by a BRB.
- ▶ There are 2 types of BRBs: statewide and regional/local. Statewide BRBs are usually responsible for reviewing all local government formation proposals for the state. In contrast, regional/local BRBs are responsible for considering incorporations only for a designated county or region of the state.
- ▶ Membership and appointments vary from state to state.

### **Iowa's City Development Board (Statewide)**

- ▶ For example, Iowa's City Development Board, which is a Statewide BRB, consists of 5 members appointed by the Governor in the following manner:
  1. One member from a city with a population of more than 50,000;
  2. One member from a city with a population of 45,000 or less;
  3. One member from a county with a population of more than 50,000;
  4. One member from a county with a population of 50,000 or less; and
  5. One member appointed to represent the general public.

## PART V: A QUICK LOOK AT BOUNDARY REVIEW BOARDS

### King County Boundary Review Board (Local)

- ▶ The composition of Boundary Reviews Boards (BRBs) in Washington State varies from county to county and not every county contains a BRB.
  
- ▶ General law authorizes the county commission in each county to create a BRB.
  
- ▶ The King County BRB for example is composed of 11 members in the following manner:
  - 4 members appointed by the King County Chief Executive (with Council confirmation);
  - 4 members appointed by the mayors in the cities of King County; and
  - 3 members appointed from nominations by special purpose districts (fire, water, and sewer districts).
  
- ▶ Members may not be associated with other King County jurisdictions at the time they are serving on the Board, but they are frequently former government officials.
  
- ▶ \*\*\*Although Washington requires the signature of 30% of the registered voters (to Iowa's 5%), its petition requirements are extremely minimal leaving all of the studying to the BRB.