

CF 7lr1227

By: Delegates Conroy, Workman, Kagan, Gordon, Morgan, Snodgrass, Barve, Healey, Hubbard, Conway, Hecht, Howard, Menes, B. Hughes, Pitkin, Guns, Hixson, Bonsack, and Rudolph

Introduced and read first time: January 29, 1997

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Municipal Corporations - Incorporation Process**

3 FOR the purpose of designating a certain process by which a certain organizing
4 community can become a municipal corporation; altering certain requirements for
5 initiating the municipal incorporation process; requiring the Office of the Attorney
6 General to develop a certain standard petition form; requiring the Attorney
7 General to provide a certain standard petition form to the boards of supervisors of
8 elections of each county under certain circumstances; changing the requirements for
9 a valid petition for incorporation; repealing a county governing body's power to veto
10 an organizing community's incorporation under certain circumstances; requiring a
11 county governing body to appoint representatives to negotiate with the organizing
12 community on the development of a proposed municipal charter under certain
13 circumstances; requiring an organizing community to hold a public hearing under
14 certain circumstances; requiring a county governing body and an organizing
15 community to exchange certain information; requiring the county governing body
16 and the organizing community to negotiate an agreement on certain issues;
17 requiring a newly incorporated municipality to reimburse the county governing body
18 for certain costs under certain circumstances; defining certain terms; making
19 stylistic changes; and generally relating to the incorporation process for an
20 organizing community to become a municipal corporation.

21 BY repealing and reenacting, with amendments,
22 Article 23A - Corporations - Municipal
23 Section 20, 21, and 24 through 29
24 Annotated Code of Maryland
25 (1996 Replacement Volume)

26 BY repealing
27 Article 23A - Corporations - Municipal
28 Section 22, 23, and 30
29 Annotated Code of Maryland
30 (1996 Replacement Volume)

31 BY adding to

2

1 Article 23A - Corporation - Municipal
2 Section 22, 23, and 24
3 Annotated Code of Maryland
4 (1996 Replacement Volume)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article 23A - Corporations - Municipal**

8 20.

9 (A) (1) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
10 INDICATED.

11 (2) "COUNTY GOVERNING BODY" MEANS THE BOARD OF COUNTY
12 COMMISSIONERS OR COUNTY COUNCIL OF A COUNTY.

13 (3) "ORGANIZING COMMUNITY" MEANS PERSONS RESIDING WITHIN A
14 PARTICULAR UNINCORPORATED AREA WHO ARE INTERESTED IN FORMING A
15 MUNICIPAL CORPORATION.

16 (B) [The] THIS SUBTITLE GOVERNS THE incorporation of any area and group of
17 persons, not then existing as a municipal corporation[, shall be accomplished as in this
18 subheading provided. At least three hundred persons must be maintaining a bona fide
19 residence within the limits of any]. AN area proposed for incorporation[,] SHALL
20 CONTAIN AT LEAST 300 BONA FIDE RESIDENTS before it may proceed under the
21 provisions of this [subheading] SUBTITLE.

22 21.

23 (a) (1) [Twenty percent or more] AT LEAST 5% of the persons WHO RESIDE
24 within any particular area in a county AND who are registered to vote in county elections,
25 together with the owners of [not less than 25 percent] AT LEAST 10% of the assessed
26 valuation of the real property of the area to be incorporated, may initiate a proposal to
27 incorporate that area as a municipal corporation, by PRESENTING a VALID petition
28 [presented] to the [board of county commissioners or to the county council of the
29 county] COUNTY GOVERNING BODY.

30 (2) AT LEAST 10% OF THE PERSONS WHO RESIDE WITHIN ANY
31 PARTICULAR AREA IN A COUNTY AND WHO ARE REGISTERED TO VOTE IN COUNTY
32 ELECTIONS MAY INITIATE A PROPOSAL TO INCORPORATE THAT AREA AS A
33 MUNICIPAL CORPORATION, BY PRESENTING A VALID PETITION TO THE COUNTY
34 GOVERNING BODY.

35 (B) (1) THE OFFICE OF THE ATTORNEY GENERAL SHALL CREATE A
36 STANDARD PETITION FORM FOR USE BY ANY ORGANIZING COMMUNITY WITHIN
37 THE STATE.

38 (2) THE ATTORNEY GENERAL SHALL PROVIDE THE BOARD OF
39 SUPERVISORS OF ELECTIONS OF EACH COUNTY WITH THE FORM CREATED UNDER

3

1 PARAGRAPH (1) OF THIS SUBSECTION FOR DISSEMINATION TO ANY ORGANIZING
2 COMMUNITY.

3 (C) A PETITION PRESENTED UNDER SUBSECTION (A) OF THIS SECTION SHALL:

4 (1) EXPRESS THE INTEREST OF THE SUBSCRIBING INDIVIDUALS IN THE
5 INCORPORATION OF THEIR AREA;

6 (2) CONTAIN A DETAILED DESCRIPTION OF THE BOUNDARIES OF THE
7 AREA PROPOSED TO BE INCORPORATED, INCLUDING A SURVEY OF COURSES AND
8 DISTANCES OR GENERAL LANDMARKS AND PLACE NAMES; AND

9 (3) STATE THE NAME CHOSEN FOR THE NEW MUNICIPAL
10 CORPORATION, WHICH MAY NOT BE THE SAME NAME AS THAT USED BY ANY
11 EXISTING MUNICIPAL CORPORATION OR COUNTY IN THE STATE.

12 (D) THE ORGANIZING COMMUNITY SHALL OBTAIN THE MINIMUM NUMBER
13 OF REQUIRED VALID SIGNATURES WITHIN 2 YEARS FROM THE DATE THAT THE
14 ORGANIZING COMMUNITY RECEIVED THE STANDARD PETITION FORM FROM THE
15 COUNTY BOARD OF SUPERVISORS OF ELECTIONS.

16 (E) (1) Each person signing the petition shall indicate on the petition the
17 person's name and [residence] RESIDENTIAL address; AND

18 (2) [and, if the person is the owner of real property in the area to be
19 incorporated, the] THE location and assessed valuation of the person's property, IF THE
20 PERSON OWNS REAL PROPERTY IN THE AREA TO BE INCORPORATED AND IF THE
21 ORGANIZING COMMUNITY PURSUES THE INCORPORATION PETITION UNDER
22 PARAGRAPH (A)(1) OF THIS SECTION.

23 (F) [Upon receiving the petition, the board of county commissioners or county
24 council is directed to] WITHIN 30 DAYS OF RECEIVING A PETITION, THE COUNTY
25 GOVERNING BODY SHALL:

26 (1) [verify] VERIFY that [any] EACH person who signed [it is a resident
27 of] THE PETITION RESIDES IN the particular area TO BE INCORPORATED, [and] is
28 registered to vote in county elections, [and/or is an owner of] AND, IF APPLICABLE,
29 OWNS real property within the area to be incorporated;

30 (2) [, and shall consider] VERIFY THAT the petition [of no effect if]
31 MEETS THE REQUIREMENTS OF THIS SECTION [it is signed by fewer than 20 percent of
32 the persons from that area who are registered to vote in county elections, or by persons
33 owning less than 25 percent of said real property.]; AND

34 (3) IF THE PETITION MEETS THE REQUIREMENTS OF THIS SECTION,
35 APPOINT AT LEAST 2 COUNTY OFFICIALS, 1 OF WHICH SHALL BE AN ELECTED
36 MEMBER OF THE COUNTY GOVERNING BODY, TO REPRESENT THE COUNTY
37 GOVERNING BODY IN NEGOTIATIONS WITH THE ORGANIZING COMMUNITY.

38 [(b) Twenty-five percent or more of the persons who reside within any particular
39 area in a county and who are registered to vote in county elections may initiate a proposal
40 to incorporate that area as a municipal corporation, by a petition presented to the board
41 of county commissioners or to the county council of the county. Each person signing the

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1 petition shall indicate on the petition the person's name and residence address. Upon
2 receiving the petition, the board of county commissioners or county council is directed to
3 verify that any person who signed it is a resident of the particular area and is registered
4 to vote in county elections and shall consider the petition of no effect if it is signed by
5 fewer than 25 percent of the persons from that area who are registered to vote in county
6 elections.

7 (c) If a petition complies with the requirements of either subsection (a) or (b) of
8 this section, the board or the council shall by resolution, passed as in its normal legislative
9 procedure, specify the day and the hours for the election at which the question of
10 incorporation shall be submitted to the voters of the particular area, or reject the
11 referendum request within 60 days of the petition requirements having been met.

12 (d) (1) If the board or council rejects the referendum request, the board or
13 council shall provide in writing and make available to the general public the reasons for
14 rejecting the referendum request.

15 (2) The board or council shall establish reasonable procedures by which
16 reconsideration of a referendum request denial can be undertaken, including an
17 opportunity for a public hearing with sufficient advance public notice.

18 (3) Upon completion of this hearing and review process, the board or
19 council shall, by resolution, affirm its previous action or grant the referendum request.

20 (4) If the resolution to grant a referendum is approved, there shall be a
21 special election, within a period of not less than forty days nor more than sixty days after
22 the passage of the resolution.

23 (5) In that portion of the resolution which provides for submitting the
24 question of incorporation to the voters of the particular area, the exact wording shall be
25 specified which is to be placed on the ballots or voting machines at the time of the
26 referendum.]

27 [(e)] (G) A petition when filed[shall become] BECOMES the property of the
28 [board of county commissioners or the county council,] COUNTY GOVERNING BODY
29 and [shall] MAY not [thereafter] be used for the purposes of initiating further
30 referenda [thereon].

31 [(f) No municipal corporation shall be created under the provisions of this subtitle
32 without the specific approval of the board of county commissioners or of the county
33 council of the county in which the proposed municipal corporation is located.]

34 [22.

35 The petition presented to the board of county commissioners or county council shall
36 include a detailed description of the boundaries of the area proposed to be incorporated.
37 The description shall comprise a survey of courses and distances and may also be by
38 general landmarks and place names. The name chosen for the new municipal corporation
39 shall not be the same as that used by any existing municipal corporation or county in the
40 State of Maryland.]

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1 22.

2 (A) (1) WITHIN 90 DAYS FROM THE VERIFICATION OF A VALID PETITION
3 AND THE APPOINTMENT OF THE REPRESENTATIVES OF THE COUNTY GOVERNING
4 BODY, THE ORGANIZING COMMUNITY SHALL:

5 (I) ACTIVELY SEEK INFORMATION AND INPUT FROM THE COUNTY
6 GOVERNING BODY;

7 (II) HOLD A PUBLIC MEETING TO COLLECT PUBLIC TESTIMONY ON
8 THE PROPOSED INCORPORATION; AND

9 (III) PRESENT THE COUNTY GOVERNING BODY WITH A SUMMARY
10 OF ITS POSITIONS ON ISSUES RELATED TO THE PROPOSED INCORPORATION.

11 (2) DURING THE 90 DAY PERIOD REQUIRED UNDER PARAGRAPH (A) OF
12 THIS SUBSECTION, THE COUNTY GOVERNING BODY SHALL INSURE THAT THE
13 ORGANIZING COMMUNITY HAS ACCESS TO INFORMATION THAT WILL FACILITATE
14 THE INCORPORATION PROCESS, INCLUDING FISCAL STATEMENTS AND THE COSTS
15 OF PROVIDING SERVICES.

16 (B) WITHIN 45 DAYS OF THE RECEIPT OF THE SUMMARY REQUIRED UNDER
17 ITEM (A)(1)(III) OF THIS SECTION, THE COUNTY GOVERNING BODY SHALL DEVELOP
18 AND PROVIDE A SUMMARY OF ITS POSITIONS ON ISSUES RELATED TO THE
19 PROPOSED INCORPORATION.

20 (C) THROUGHOUT THE TIME PERIODS REFERENCED IN SUBSECTIONS (A)
21 AND (B) OF THIS SECTION, THE COUNTY GOVERNING BODY AND THE ORGANIZING
22 COMMUNITY SHALL AGREE REGARDING:

23 (1) THE PHASING IN, WHICH MAY NOT EXCEED 3 YEARS, OF THE
24 PAYMENTS OF LOCAL INCOMES TAXES TO THE NEWLY INCORPORATED
25 MUNICIPALITY; AND

26 (2) A COMPREHENSIVE LAND USE PLAN FOR THE MUNICIPALITY, IF THE
27 NEWLY INCORPORATED MUNICIPALITY WILL EXERCISE PLANNING AND ZONING
28 AUTHORITY.

29 [23.

30 The petition presented to the board of county commissioners or county council shall
31 make provision for the text of the charter proposed for the municipal corporation. The
32 petition shall include, as a supplementary paper, the exact text of the proposed charter.]

33 23.

34 WITHIN 30 DAYS OF THE RECEIPT OF THE COUNTY GOVERNING BODY'S
35 POSITION SUMMARY, THE ORGANIZING COMMUNITY SHALL PRESENT THE COUNTY
36 GOVERNING BODY WITH A PROPOSED CHARTER FOR USE IN THE REFERENDUM
37 ELECTION.

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1 24.

2 (A) BETWEEN 40 AND 60 DAYS AFTER THE COUNTY GOVERNING BODY
3 RECEIVES THE PROPOSED CHARTER FROM THE ORGANIZING COMMUNITY, THE
4 COUNTY GOVERNING BODY SHALL SPECIFY, BY RESOLUTION, THE DAY AND HOURS
5 FOR A SPECIAL REFERENDUM ELECTION ON THE PROPOSED INCORPORATION FOR
6 THE VOTERS OF THE AREA TO BE INCORPORATED.

7 (B) THE RESOLUTION REQUIRED IN SUBSECTION (A) OF THIS SECTION SHALL
8 CONTAIN THE EXACT WORDING OF THE PROPOSED CHARTER, AS SUBMITTED BY
9 THE ORGANIZING COMMUNITY, TO BE VOTED ON AT THE TIME OF THE
10 REFERENDUM.

11 [24.] 25.

12 The [board of county commissioners or county council] COUNTY GOVERNING
13 BODY shall give notice by posting and publication of the submission of the proposal of
14 incorporation, INCLUDING THE TEXT OF THE PROPOSED CHARTER, to the voters of the
15 area proposed to be incorporated. For not less than the four weeks immediately
16 preceding the election at which the question is to be submitted, a complete and exact copy
17 of the wording of the proposed charter shall be posted or available for public inspection
18 at the office of the [board or council] COUNTY GOVERNING BOARD. On the day of the
19 election a [similar] copy shall be posted or available for public inspection at the place or
20 places for voting on the question of incorporation. Notice of the election, together with a
21 fair summary of the proposed charter, shall be published in a newspaper or newspapers of
22 general circulation in the particular area proposed to be incorporated not less than once
23 in each of the four weeks immediately preceding the election.

24 [25.] 26.

25 (a) On the day and during the hours specified for the referendum, the question of
26 incorporation under the proposed charter shall be submitted to the registered voters of
27 the area proposed to be incorporated. The board of supervisors of elections of the county,
28 and its clerks, judges of election and subordinates, shall arrange for and conduct the
29 referendum. It is the intent of this section that the referendum election shall be
30 conducted generally according to the procedures and practices observed for regular
31 countywide elections, except as specifically or necessarily modified by the provisions of
32 this subtitle. The wording specified by the [board of county commissioners or county
33 council] COUNTY GOVERNING BODY, in the resolution providing for a referendum on
34 the question of the proposed incorporation, shall be placed on the ballots or voting
35 machines used at the referendum election.

36 (b) The board of supervisors of elections, and its clerks, judges of election and
37 subordinates, promptly following the closing of the polls shall tally the results thereof,
38 and shall forthwith certify the results of the referendum to the [board of county
39 commissioners or county council] COUNTY GOVERNING BODY.

40 (c) If a majority of those who vote on any question so submitted to the voters of
41 a particular area, proposing the incorporation thereof, shall cast their votes in favor of the
42 incorporation under the proposed charter, the [board of county commissioners or county
43 council] COUNTY GOVERNING BODY shall within ten days after receiving a certification
44 of the vote from the board of supervisors of elections so proclaim publicly, and on the

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1 thirtieth day following the public proclamation the area specified, and the residents
2 thereof, shall be deemed to be a municipal corporation operating under and in
3 accordance with the charter so proposed, in all respects to be effective and observed as
4 the charter of the municipal corporation. If less than a majority of those who vote on any
5 such question of proposed incorporation shall cast their votes in favor of the
6 incorporation under the proposed charter, the [board or council] COUNTY GOVERNING
7 BODY likewise shall so proclaim, adding to the proclamation the statement that the
8 proposed incorporation is of no effect and that as to the said proposed municipal
9 incorporation the proposed charter is null and void and of no effect whatsoever.

10 [26.] 27.

11 (A) [The] SUBJECT TO THE PROVISIONS OF SUBSECTION (B) OF THIS
12 SECTION, THE COUNTY GOVERNING BODY SHALL DEFRAY THE expenses of:

13 (1) [the] THE referendum election;

14 (2) THE ORIGINAL ELECTION OF OFFICERS; AND

15 (3) THE REASONABLE COSTS OF ANY THIRD PARTY CONSULTANTS
16 HIRED BY THE COUNTY GOVERNING BODY TO ANALYZE ISSUES RELATED TO THE
17 PROPOSED INCORPORATION [shall be defrayed by the board of county commissioners
18 or county council, but if].

19 (B) IF the referendum vote results in incorporation, the municipal corporation
20 shall repay the total amount of [such] THE expenses SPECIFIED IN SUBSECTION (A) OF
21 THIS SECTION to the [board or council] COUNTY GOVERNING BODY, within [one] 1
22 year following the effective date of the incorporation.

23 [27.] 28.

24 (a) At the time of making public proclamation as to the vote on the question of
25 incorporation under the proposed charter, the [board of county commissioners or county
26 council] COUNTY GOVERNING BODY shall send the information concerning the charter
27 adopted by the municipal corporation to the Department of Legislative Reference, as
28 provided in § 9A of this article for municipal officials.

29 (b) A proposal to incorporate a municipal corporation and to adopt a charter may
30 not be rescinded after its formal submission, in any manner other than that of a formal
31 charter repeal as provided in the subheading "Repeal of Charter" in this subtitle.

32 (c) The charter is not effective and shall not be applied or considered as if
33 effective unless and until it has been registered as required in this section.

34 (d) The charter is included in the requirements of § 17A of this subtitle, including
35 its printing and indexing in the laws enacted by the General Assembly.

36 [28.] 29.

37 The exact text of the charter of the municipal corporation, adopted under the
38 provisions of this subtitle and as amended from time to time, shall thereafter be included
39 in any edition or codification of the charter of the municipal corporation.

1 [29.] 30.

2 (a) Town officers shall be nominated by a certificate of nomination filed by each
3 candidate, with the [board of county commissioners or county council] COUNTY
4 GOVERNING BODY, giving in each instance the name and residence address of the
5 candidate, together with a statement of the particular office to which he aspires.
6 Thereupon, the [board or council] COUNTY GOVERNING BODY, together with the
7 board of supervisors of elections for the county, shall prepare ballots or the voting
8 machines so as to permit the registered voters of the particular area to vote upon the
9 several candidates who are so nominated. The election of officers for the municipal
10 corporation shall be arranged for and conducted at the same time and at the same place
11 or places as the referendum election on the question of incorporation, and subject
12 generally to the same procedures and practices. A vote cast against the proposed
13 incorporation of the municipal corporation shall not be held to bar the voter from
14 expressing his choices among the nominees for the several offices, and if less than a
15 majority of those who vote on the question of incorporation cast their votes in favor
16 thereof, the votes cast for election to the several offices shall be null and void and of no
17 effect whatsoever.

18 (b) The board of supervisors of elections, and its clerks, judges of election and
19 subordinates, shall tally the results of the votes cast for candidates for office, and shall
20 certify them along with the tally on the question of incorporation, to the [board of county
21 commissioners or county council] COUNTY GOVERNING BODY.

22 (c) Any person who receives a plurality of the votes cast for any particular office,
23 whether or not he receives a majority of all the votes cast for that office, shall be publicly
24 proclaimed by the [board or council] COUNTY GOVERNING BODY to have been elected
25 thereto. The persons so named by proclamation shall at the effective time for the charter
26 become the several respective officers of the municipal corporation. Each officer shall
27 continue to hold such position until regularly superseded by a new elective officer, elected
28 as may be provided in the charter of the municipal corporation; and during such period
29 he shall be taken and accepted in all respects as the elected officer of the municipal
30 corporation in his respective position, with the powers, authority and duties as set forth
31 and prescribed in the charter.

32 (d) If no person is nominated for an office in the government of the municipal
33 corporation, or if a person elected thereto is unable to assume his office, or if for any
34 other reason no person is elected to fill an office, the [board of county commissioners or
35 county council] COUNTY GOVERNING BODY shall name a resident of the particular area
36 to the office, and upon assuming it he shall hold it in all respects as if regularly elected
37 thereto as in this section provided.

38 (e) No person shall be either nominated or elected to any office in the
39 government of the municipal corporation unless he qualifies under whatever
40 requirements may be specified for that office according to the charter proposed for the
41 municipal corporation.

42 [30.

43 The expenses of the original election for candidates for office shall be defrayed by
44 the board of county commissioners or the county council, but if the referendum vote

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1 results in incorporation, the municipal corporation shall repay the total amount of such
2 expenses to the board or council, within one year following the effective date of the
3 incorporation.]

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 1997.