



House Bill 42

*Municipal Incorporation – County Commissioners or County Council –
Required Consideration of Referendum Request*

MACo Position: **OPPOSE**

To: Environment and Transportation Committee

Date: January 18, 2021

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The Maryland Association of Counties (MACo) **OPPOSES** HB 42. This bill would upend the longstanding, carefully crafted framework that governs municipal incorporation by adding a peculiar and arbitrary standard to the required actions by a county governing body.

Under current and longstanding Maryland law, in order to incorporate, residents of an area must first petition the county governing body with their interest. The county then evaluates the potential effects of the possible incorporation on the surrounding area and the county at large, and determines through its own public process whether to submit the matter to a referendum of the affected area's residents. HB 42 incorporates a peculiar and vague new standard that the county must "consider" this submission, creating a new statutory standard that, at the very least, establishes new grounds to litigate that the county's action was unsatisfactory.

The one sure outcome of this new law would be to promote extended litigation over any future potential incorporation effort matching the terms described.

Any rejected municipal incorporation could be challenged by its supporters as not having met whatever the eventual meaning of "considered" may be. Through time and costly litigation, perhaps the Maryland courts would establish a clear meaning of this standard – presumably increasing the burden upon the county governing body to meet this new statutory test to play its role.

If the creation of this new standard is intended, as appears likely, to make the process of municipal incorporation more readily accessible, HB 42 is then tantamount to a promotion of more incorporated areas, and the outcomes of this policy change could be multifold and troubling:

Land use "end runs" - This bill could jeopardize local zoning policies by creating an appealing avenue for development inconsistent with the overall county land use plans. During a vigorous development climate, builders frustrated by limitations of county-imposed laws such as Adequate Public Facilities Ordinances may see a new incorporation path as an avenue to skirt those limitations, and HB 42 could advance that. *The result could be overcrowding in school facilities and unmanageable burdens on public safety, infrastructure, and other county services.*

Unwise fiscal realignment – More wide-open incorporation could pose comparable concerns for tax collection. Under Maryland law, county income tax receipts from municipal residents are shared with the city or town. Residents in select enclaves in virtually any county could incorporate merely to receive this allocation of county resources – regardless of their desire for any municipal services. *This curiosity already exists in certain current municipalities, but could become rampant if legislation like HB 42 were to pass and effectively diminish the current checks by the surrounding county.*

Skewed transportation funding - State law governing Highway User Revenues would be another artificial inducement to incorporate. State law currently rewards municipal road miles more generously than county road miles, under a heavily distorted allocation, patchworked since the “great recession” cuts over a decade ago. *While this financial incentive is not dramatic, it illustrates yet another distortion arising from a wide-open incorporation law. The new allocation of funds to this municipality would come at the expense of other incorporated areas, rather than the county.*

In Maryland, county and municipal government shoulder a different range of responsibilities. Allowing residents to, at their leisure, designate themselves for municipal treatment when it suits their whim, and without concern for the effects on the abutting areas or the county at large, merely allows the distortions in these laws to become a major policy weakness. These are the reasons why Maryland law has, for decades, included the county area most affected by the potential incorporation as part of the approval process.

HB 42 unnecessarily complicates and potentially reverses a set of laws designed to ensure broad, public consideration of proposed municipal incorporations. Accordingly, MACo requests an **UNFAVORABLE** report on HB 42.