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Indicates New Matter

COMMITTEE REPORT

April 13, 2016

**S. 163**

Introduced by Senator Hembree

S. Printed 4/13/16--S.

Read the first time January 13, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 163) to amend Section 5‑1‑26(a) of the 1976 Code, relating to the duties of the Joint Legislative Committee on Municipal Incorporation, to provide the committee, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting therein the following:

/ SECTION 1. Section 5‑1‑26(A) of the 1976 Code is amended to read:

“Section 5‑1‑26. (A) The Joint Legislative Committee on Municipal Incorporation is created to review the:

(1) petition and documentation submitted by an area seeking municipal incorporation and to make a recommendation to the Secretary of State whether the area meets the minimum service standard incorporation requirements as provided in Section 5‑1‑30~~.~~; and

(2) documentation submitted concerning the continuation of a municipality’s certificate of incorporation and to make a recommendation to the Secretary of State as to whether the municipality is providing municipal services warranting the continuation of its certificate of incorporation.”

SECTION 2. Title 5, Chapter 1 of the 1976 Code is amended by adding:

“Section 5-1-105. (A) If the certificate of a municipal incorporation is cancelled or forfeited pursuant to Section 5-1-100 or Section 5-1-330, the municipal incorporation shall agree to an orderly winding up of the affairs of the municipality and transfer to successor service providers through the procedure in this section. Dissolution is not effective before the time as all general obligation debt, revenue debt, lease‑purchase obligations, and other obligations, except those obligations which a successor provider may lawfully assume with the consent of the holder thereof, have been paid in full or legally defeased.

(B) A successor provider shall be determined in the following manner:

(1) if the municipality is within a single county, the successor provider shall be the governing body of the county if the governing body of the county and the legislative delegation for the county each pass, by a supermajority of a two-thirds vote of members present and voting, resolutions that transfer the municipality’s assets and liabilities to the governing body of the county.

(2) if the municipality is in more than one county, the successor providers shall be proportionate to the territory of the municipality in each county if the governing body of each county and the legislative delegation for each county pass, by a supermajority of a two-thirds vote of members present and voting, resolutions that transfer the municipality’s assets and liabilities proportionally to the governing bodies of the counties.”

SECTION 3. Chapter 1, Title 5 of the 1976 Code is amended by adding:

“Article 3

Municipal Certificate of Incorporation Review

Section 5‑1‑300. (A) When following its incorporation, a municipality’s population has decreased to less than one hundred and fifty inhabitants according to the latest official United States Census, a municipality must file with the Secretary of State an application for the continuance of the municipality’s certificate of incorporation. The application with the Secretary of State must be filed no later than ninety days after the official release date of the latest official United States Census and must contain:

(1) the municipality’s population according to the latest official United States Census;

(2) documentation concerning the municipality’s fulfillment of the law enforcement requirement contained in item Section 5‑1‑30(5), for the previous three years;

(3) a complete list of the municipal services provided by the municipality, including, but not limited to, those identified in Section 5‑1‑30(6) and documentation relating to delivery of those services; and

(4) the results of the independent annual audit required pursuant to Section 5‑7‑240 for the previous three years or in lieu of such audit, the annual financial report as allowed by the State Treasurer’s office for the previous three years.

(B) Upon receipt of an application filed pursuant to this section, the Secretary of State shall transfer a copy of the application to the Joint Legislative Committee on Municipal Incorporation for review.

(C) A municipality that fails to timely file an application for continuance of its certificate of incorporation shall receive notice of a meeting when its status shall be reviewed by the Joint Legislative Committee on Municipal Incorporation.

Section 5‑1‑310. (A) Regardless of a municipality’s population, the county legislative delegation of the county in which a municipality is located may also initiate a review of the municipality’s certificate of incorporation upon a two-thirds majority vote following receipt of a written statement alleging the municipality has failed to provide services required by Section 5-1-30(6). Upon voting to initiate a review, the delegation shall provide the Secretary of State, the municipality’s governing body, and the Joint Legislative Committee on Municipal Incorporation with written notice of its action.

(B) Upon receiving notice of the action of the legislative delegation to initiate a review of the municipality’s certificate of incorporation, within ninety days the municipality must transmit to the Secretary of State and the joint legislative committee the information required in Section 5‑1‑300(A)(1), (2), and (3).

Section 5‑1‑320. (A) Upon receiving notice that a review is being initiated, the joint legislative committee shall meet to consider the information provided by the municipality. The joint legislative committee may also receive and consider testimony and other evidence or information related to the municipality’s provision of law enforcement and municipal services, including, but not limited to, those required by Section 5-1-30(6).

(B) The joint legislative committee shall make a written recommendation to the Secretary of State that may include, but is not limited to, the following actions concerning the continuation of the municipality’s certificate of incorporation, that:

(1) the municipality continue to operate under its certificate; or

(2) the municipality is encouraged to make changes in its operations; or

(3) the municipality must make changes in its operations in order to continue to operate under its certificate and must report to the joint legislative committee on the status of those changes at a time specified by the joint legislative committee; or

(4) if the municipality does not comply in making the joint legislative committee’s recommended changes or in reporting the status of those changes as required by the joint legislative committee, then the joint legislative committee may direct the Secretary of State to cancel the municipality’s certificate.

(C) The Secretary of State shall provide the governing body of the municipality with a copy of the committee’s written decision.

Section 5‑1‑330. If the joint legislative committee recommends cancellation of a certificate, the certificate of the municipality must be automatically forfeited and void and the Secretary of State must cancel the certificate of the municipality.”

SECTION 4. The Code Commissioner is directed to redesignate Sections 5‑1‑10 through 5‑1‑110 as “Article 1. The Municipal Incorporation Process”.

SECTION 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

GREG HEMBREE KEVIN L. JOHNSON

For Majority. For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill would have no expenditure impact on the general fund, federal funds, or other funds. The expenditure impact on municipal governments is undetermined.

**Explanation of Fiscal Impact**

**State Expenditure**

This bill amends Section 5-1-26, which relates to the duties of the Joint Legislative Committee on Municipal Incorporation and provides the committee with additional duties related to the review of municipal certificates of incorporation. This bill also adds Article 3 to Chapter 1, Title 5, which provides that a municipality whose population drops below three hundred must show that it is maintaining municipal services at an adequate level to maintain its certificate of incorporation. Additionally, the review of a municipality’s certificate of incorporation may be initiated by the county legislative delegation. Sections 5-1-10 through 5-1-110 are designated as the Municipal Incorporation Process. Based on data from the U.S. Census Bureau, fifty-four municipalities report population of three hundred or less and are subject to this legislation.

**Secretary of State.** The department indicates that this bill would have a minimal expenditure impact, which could be absorbed by current appropriations.

**Local Expenditure**

The Revenue and Fiscal Affairs Office contacted the Municipal Association of South Carolina regarding the expenditure impact of this bill. The Municipal Association indicates that this bill could have a significant expenditure impact on municipal governments, specifically, this bill would allow a legislative delegation to question a municipality’s existence regardless of the three hundred population threshold. Therefore, the expenditure impact of this bill as written on municipal governments is undetermined.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 5‑1‑26(A) OF THE 1976 CODE, RELATING TO THE DUTIES OF THE JOINT LEGISLATIVE COMMITTEE ON MUNICIPAL INCORPORATION, TO PROVIDE THE COMMITTEE WITH ADDITIONAL DUTIES; TO AMEND CHAPTER 1, TITLE 5, RELATING TO THE INCORPORATION OF MUNICIPALITIES, TO PROVIDE THAT A MUNICIPALITY WHOSE POPULATION DROPS BELOW THREE HUNDRED MUST SHOW THAT IT IS MAINTAINING MUNICIPAL SERVICES AT AN ADEQUATE LEVEL TO MAINTAIN ITS CERTIFICATE OF INCORPORATION; TO PROVIDE THAT A REVIEW OF A MUNICIPALITY’S CERTIFICATE OF INCORPORATION MAY BE INITIATED BY THE COUNTY LEGISLATIVE DELEGATION; TO PROVIDE FOR THE REVIEW AND DETERMINATION PROCESS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 5‑1‑26(A) of the 1976 Code is amended to read:

“Section 5‑1‑26. (A) The Joint Legislative Committee on Municipal Incorporation is created to review the:

(1) petition and documentation submitted by an area seeking municipal incorporation and to make a recommendation to the Secretary of State whether the area meets the minimum service standard incorporation requirements as provided in Section 5‑1‑30~~.~~; and

(2) documentation submitted concerning the continuation of a municipality’s certificate of incorporation and to make a recommendation to the Secretary of State whether the municipality is providing an adequate level of municipal services to warrant the continuation of its certificate of incorporation.”

SECTION 2. Chapter 1, Title 5 of the 1976 Code is amended by adding:

“Article 3

Municipal Certificate of Incorporation Review

Section 5‑1‑300. (A) When following its incorporation, a municipality’s population has decreased to less than three hundred inhabitants according to the latest official United States Census, a municipality must file with the Secretary of State an application for the continuance of the municipality’s certificate of incorporation. The application with the Secretary of State must be filed no later than ninety days after the official release date of the latest official United States Census and must contain:

(1) the municipality’s population density per square mile according to the latest official United States Census;

(2) documentation concerning the municipality’s fulfillment of the law enforcement requirement contained in item Section 5‑1‑30(5);

(3) a complete list of the municipal services provided by the municipality, including, but not limited to, those identified in Section 5‑1‑30(6) and documentation relating to delivery of those services; and

(4) the results of the independent annual audit required pursuant to Section 5‑7‑240 for the previous ten years.

(B) Upon receipt of an application filed pursuant to this section, the Secretary of State shall transfer a copy of the application to the Joint Legislative Committee on Municipal Incorporation for review.

(C) A municipality that fails to timely file an application for continuance of its certificate of incorporation shall have its certificate of incorporation automatically suspended. A certificate suspended under this subsection shall remain suspended until the municipality undergoes a review as provided in this article.

Section 5‑1‑310. (A) Regardless of a municipality’s population, the county legislative delegation of the county in which a municipality is located may also initiate a review of the municipality’s certificate of incorporation upon the weighted majority vote of the delegation. Upon voting to initiate a review, the delegation shall provide the Secretary of State, the municipality’s governing body, and the Joint Legislative Committee on Municipal Incorporation with written notice of its action.

(B) Upon receiving notice of the action of the legislative delegation to initiate a review of the municipality’s certificate of incorporation, within ninety days the municipality must transmit to the Secretary of State and the joint legislative committee the information required in Section 5‑1‑300(A)(1), (2), and (3).

Section 5‑1‑320. (A) Upon receiving notice that a review is being initiated, the joint legislative committee shall meet to consider the information provided by the municipality. The joint legislative committee may also receive and consider testimony and other evidence or information related to the municipality’s provision of law enforcement and municipal services.

(B) The joint legislative committee shall make a written recommendation to the Secretary of State concerning the continuation of the municipality’s certificate of incorporation.

(C) The Secretary of State shall provide the governing body of the municipality with a copy of the committee’s written decision.

Section 5‑1‑330. (A) After receipt of a recommendation from the joint legislative committee, the Secretary of State shall determine whether the municipality is adequately providing the services identified in by the municipality as being met in Section 5‑1‑300(A)(1), (2), and (3).

(B)(1) Upon a determination that the level of services provided are not adequate, then the certificate of incorporation is forfeited and void.

(2) Upon a determination that the level of services provided are adequate, the certificate of incorporation shall be continued with the same rights, privileges, duties, and responsibilities of all other certificates of incorporation.”

SECTION 3. The Code Commissioner is directed to redesignate Sections 5‑1‑10 through 5‑1‑110 as “Article 1. The Municipal Incorporation Process”.

SECTION 4. This act takes effect upon approval by the Governor.

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