



Municipal Association of SC

**2006
Incorporation
Handbook**

Incorporation Procedures

FOREWORD

This manual is a guide for interpretation and implementation of the statutes authorizing incorporation of new municipalities.

In 2005, the South Carolina General Assembly amended S.C. Code Title 5, Chapter 1 to clarify and further define the procedures and requirements for an area to incorporate as a municipality. The law now authorizes an area to utilize an incorporation election to be initiated by a petition of 15 percent of qualified electors in the area seeking incorporation. Prior to holding the election the Joint Legislative Committee on Municipal Incorporation and the Secretary of State must determine and certify that specific requirements set forth in Section 5-15-30 have been met.

This manual provides the statutory requirements for incorporation, as well as the resources available to assist a group seeking incorporation.

This manual was compiled and edited by David Powers for the Municipal Association of South Carolina and replaces the manual edited by Roy Bates, Esq., published in 2000.

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Table of Contents

Certification of Incorporation Prerequisites	1
Secretary of State Regulation	3
Steps for Required for Incorporation	4
Petition for Incorporation.....	4
Evaluation.....	4
Election.....	5
Election Returns	6
Issuance of Certification of Incorporation	6
Election of Municipal Officers.....	6
Cancellation of Certificate of Incorporation	6
Suit Challenging Incorporation	7
Checklist for Incorporation	8
Appendix A: Resource List for Incorporation	9
Appendix B: Public Notice	15
Appendix C: Sample Petition	16
Appendix D: Act 77	18
Appendix E: Voting Rights Act, Section 5	25

Incorporation Handbook

Incorporation of a new municipality is accomplished by special election initiated by petition of 15 percent of electors and conducted by commissioners appointed by the Secretary of State pursuant to S.C. Code Title 5, Chapter 1, § 5-1-10 through 5-1-110, and as amended in Act 77 effective July 1, 2005. If the election favors incorporation, the Secretary of State issues a certificate of incorporation. The statutes establish prerequisites that must be met before a certificate of incorporation is issued. Incorporators should demonstrate compliance with the prerequisites when they file the petition for incorporation with the Secretary of State.

Certificate of Incorporation Prerequisites

The Secretary of State must determine all of the following requirements set forth in S.C. Code § 5-1-30, are met before he issues a certificate of incorporation:

1. **The area to be incorporated has a population density of at least 300 people per square mile according to the latest United States Census.** This population requirement does not apply to areas bordering on or within two miles of the Atlantic Ocean and to sea islands bounded on at least one side by the Atlantic Ocean. These areas must have a minimum of 150 dwelling units with an average of at least one dwelling per three acres of land, for which at least 15 percent of qualified electors in the area petition for incorporation.
2. **No part of the area is within five miles of the boundary of an active incorporated municipality.** This condition does not apply if one or more of the following conditions are exist:
 - a. if the area has been refused annexation by the nearest municipality for six months;
 - b. if the area has a population of more than 7,000;
 - c. if the boundaries of the area are within five miles of the boundaries of two different incorporated municipalities in two separate counties other than the county within which the area lies, and when the boundaries of the area are more than five miles from the boundaries of the nearest incorporated municipality that lies within the same county of the area, and when the area seeking incorporation exceeds one-fourth of the land area of the nearest municipality;

- d. the area seeking incorporation lies within a county with a population of less than 51,000 people.
3. **An approved service feasibility study for the proposed municipality has been filed with the Secretary of State, evaluated by the Joint Legislative Committee on Municipal Incorporation, and approved by the Secretary of State.**
4. **The area to be incorporated is contiguous.** If publicly-owned property intervenes between two areas proposed to be incorporated together, which but for the intervening publicly-owned property would be adjacent and share a continuous boundary, the intervening publicly-owned property does not destroy contiguity. Publicly-owned property is defined as any federally-owned, state-owned, or county-owned land or water area.
5. **The area to be incorporated has filed a proposal for providing either directly or by contract a minimum level of law enforcement services as required in regulations promulgated by the State Law Enforcement Division.** If law enforcement services are by contract, the proposal must indicate which governmental entity provides the service and the estimated compensation for the service.
6. **The area to be incorporated has filed a proposal demonstrating that at least three of the following services will be provided to the incorporated area no later than the first day of the third fiscal year following the effective date of incorporation. The services may be either provided by the municipality or by contract.**
 - a. fire protection at a minimum service level required in regulations promulgated by the South Carolina Fire Marshall;
 - b. solid waste collection and disposal;
 - c. water supply, water distribution, or both;
 - d. wastewater collection and treatment;
 - e. storm water collection and disposal;
 - f. enforcement of building, housing, plumbing, and electrical codes;
 - g. planning and zoning;
 - h. recreational facilities and programs; or
 - i. street lighting.

Secretary of State Regulations

The Secretary of State issued Regulation 113-200 (1993) providing for the certification of information required by S.C. Code § 5-1-30 as follows:

- A. **Population density.** Incorporators must provide a certification by the Research and Statistical Services Division (RSSD) of the South Carolina Budget and Control Board that the area in the proposed municipality has a population density of at least 300 persons per square mile.
- B. **Boundaries.** Incorporators must provide a certification by RSSD or a county planning or zoning office that no part of the area of the proposed municipality is within five miles of an active municipality. They must show they served by certified mail the notice of intent to incorporate to the Mayor, Town Manager, or similar official, of a municipality within 10 miles of the proposed municipality, as well as the Municipal Association of South Carolina. They must serve the notice at least 15 days prior to applying to the Secretary of State. Notice must include a map of proposed boundaries.
- C. **Total Land Area.** Incorporators must provide a certification by RSSD or a county planning or zoning office regarding total land area (in square miles) in the proposed corporate limits.
- D. **Current Assessed Value.** Incorporators must provide a certification by RSSD or a county assessor or auditor of the current assessed value of real and personal property in the proposed municipality. They must include with the certification a calculation of general obligation bonding capacity available without a referendum.
- E. **Service Feasibility Study.** Incorporators must provide the following minimum information for approval of a service feasibility study:
 - 1. A **map** showing proposed corporate limits and distance from corporate limits of any active municipality.
 - 2. Total **population** in proposed corporate limits based on latest U.S. Census.
 - 3. Total **land area** (in square miles) in proposed corporate limits.
 - 4. Definite list of proposed **services** to be provided by proposed municipality.
 - 5. Detailed **explanation of each service** to be provided with number, qualifications and salary ranges of personnel required to deliver services.
 - 6. Service to be obtained by **contract** must include detailed description of the service and realistic estimate of cost of service contract. Consent letters, contracts or ordinances for services to be provided by another

- governmental unit, indicating willingness to provide service, terms and conditions must be attached.
7. Current **assessed value** of real and personal property in the proposed corporate limits, including calculation of general obligation bonding capacity available without a referendum.
 8. Proposed **operating budget** for first fiscal years detailing sources and amounts of anticipated revenue, tax millage rate and anticipated revenue from property taxes. Detailed expenditures must include line items for personnel, equipment, supplies and other operating costs for each department or service.
 9. Proposed **capital budget** itemizing property, equipment, rolling stock, infrastructure and other items expected to be required in first two years of operation and proposed method of financing each item.
 10. Use any forms promulgated by the Secretary of State.

Steps Required for Incorporation

Petition for Incorporation

An incorporation initiated pursuant to S.C. Code § 5-1-40, requires a petition signed by 15 percent of qualified electors who reside in the proposed municipality to be filed with the Secretary of State. The petition must set out the proposed corporate limits and the number of inhabitants within the area.

Evaluation by the Joint Legislative Committee on Municipal Incorporation

Pursuant to § 5-1-26, a seven member committee must review the petition and documentation submitted by an area seeking municipal incorporation and make a recommendation to the Secretary of State as to whether the area meets the minimum service standard incorporation requirements as provided in § 5-1-30. The committee consists of two Senators appointed by the President Pro Tempore of the Senate; two members of the House of Representatives appointed by the Speaker of the House of Representatives; one person appointed by the Governor; one city manager or elected city official appointed by the President Pro Tempore of the Senate from a list of three persons recommended by the Municipal Association of South Carolina; and one county council member or county manager or administrator appointed by the Speaker of the House of Representatives from a list of three persons recommended by the South Carolina Association of Counties.

Election

After receiving an incorporation petition meeting requirements of § 5-1-40 and receiving the written recommendations of the Joint Legislative Committee on Municipal Incorporation, the Secretary of State issues a commission to three or more residents of the proposed municipality. These individuals are empowered to:

- a. hold an election not less than 20 or more than 90 days after issuance of the commission; and
- b. appoint three election managers to conduct the election after notice is published in a newspaper of general circulation in the community or posted in three public places. The notice must be given not less than five or more than 15 days before the election in the area proposed to be incorporated. It must contain detailed information concerning the election.

The election is conducted according to the general law governing special elections *mutatis mutandis*, except as otherwise provided in S.C. Code Title 5, Chapter 1. General law on conduct of elections is found in S.C. Code Title 7.

Registered electors living in the area to be incorporated vote on the following questions as prescribed by S.C. Code § 5-1-50:

- a. incorporation
- b. name of municipality
- c. form of government
- d. method of election (prescribed in § 5-15-20)
- e. whether the election shall be partisan or nonpartisan
- f. the terms of the mayor and council members

When any of the above questions proposed in an election contain more than two options, the option receiving the highest number of votes will prevail.

Provided, however, notwithstanding the results of selections made by voters as to questions (d), (e) and (f) above, **the initial council shall consist of four council members and a mayor, all elected at-large in a nonpartisan election for terms of two years.** Thereafter, selections made by electors could be implemented. Under § 5 of the Voting Rights Act, the Justice Department must preclear all changes affecting voting rights. The letter to the Department of Justice should request preclearance for the election of the question of incorporation and election of the council members of the newly incorporated municipality. Should the incorporation be approved, request for the election of the council members in the original request will expedite the process.

Election Returns

The election managers must make sworn returns of the election result to the election commissioners. The returns must show the total number of votes cast and the number of votes cast on each question proposed. S.C. Code § 5-1-60.

The election commissioners must certify under oath the election result to the Secretary of State. S.C. Code § 5-1-70.

Issuance of Certificate of Incorporation

If the majority of electors vote in favor of incorporation, the Secretary of State issues a certificate of incorporation to the election commissioners (S.C. Code § 5-1-90) after the incorporation fee required by S.C. Code § 5-1-80 is paid to the State Treasurer. The municipality will have all privileges, powers and immunities and be subject to the limitations provided by law (S.C. Code § 5-1-70) upon election of municipal officers pursuant to § 5-1-90. See also § 5-1-10.

The incorporation fees are

- (a) population of 1,000 or less - \$100
- (b) population between 1,000 and 5,000 - \$300
- (c) population more than 5,000 - \$600

Election of Municipal Officers

After receiving the certificate of incorporation, the election commissioners immediately provide for the election of municipal officers, pursuant to Chapter 15 of Title 5 governing municipal elections, and in accordance with the certificate as to the form of government. S.C. Code § 5-1-90.

The certificate of incorporation is not effective until municipal officers are elected and qualified. Only the elected municipal council may exercise the powers of the municipality. S.C. Code § 5-1-90.

Cancellation of Certificate of Incorporation

A certificate of incorporation is automatically forfeited when a municipality has decreased in population to less than 50 inhabitants. S.C. Code § 5-1-100.

A certificate of incorporation may be surrendered by two-thirds vote of electors in an election initiated by petition of a majority of registered electors of the municipality.

A certificate of incorporation shall be canceled by the Secretary of State if he determines that the municipality is neither performing municipal services nor collecting taxes or other revenues and has not held an election during the past four years.

Suit Challenging Incorporation

A suit to challenge the incorporation procedures of a municipal corporation must be brought within 60 days after the issuance of the certificate of incorporation. S.C. Code § 5-1-110.

The Supreme Court (*Glaze v. Grooms*, 324 S.C. 249, 478 S.E.2d 841 (1996)) held that § 5-1-110 did not bar a suit challenging incorporation three weeks prior to issuance of a certificate of incorporation.

S.C. Code § 5-1-10 provides that the incorporation or corporate capacity of a municipality shall not be attacked in court except as provided by statute.

Checklist for Incorporation

1. Obtain petition for incorporation signed by 15 percent of electors residing in the area to be incorporated, setting out proposed corporate limits and number of inhabitants. § 5-1-40. No form is prescribed.
2. Comply with Secretary of State Regulation 113-200 and certify required information meeting prerequisites in S.C. Code § 5-1-30. No forms are prescribed.
3. File petition and certified information with Secretary of State.
4. Review by Incorporation Commission.
5. *Commissioners appointed by Secretary of State publish notice and conduct election on questions as prescribed by S.C. Code § 5-1-50.
6. *Election managers make returns to commissioners. § 5-1-60.
Commissioners certify election results to Secretary of State. § 5-1-70.
7. If election favors incorporation, pay incorporation fee to State Treasurer. § 5-1-80.
8. Secretary of State issues certificate of incorporation to commissioners. § 5-1-90.
9. *Commissioners immediately provide for election of municipal officers pursuant to municipal election laws in S.C. Code Title 5, Chapter 15. Initial council consists of mayor and four council members elected at large in nonpartisan election for two-year terms. § 5-1-50.
10. Qualify mayor and council to take office. Commence operation as a municipality. § 5-1-90.

** All changes affecting voting rights are subject to preclearance by the Justice Department under § 5 of the Voting Rights Act before implementation. MASC suggests requesting preclearance for all elections required for incorporation when filing with the Justice Department. Consult an attorney to assist in complying with these requirements.*

Appendix A

Resource List for Incorporation

A. Documents:

- Certificate of Population Density
- Certification of Current Assessed Value of Property
- Service Feasibility Study
- Map of the Boundaries of the Proposed Area

B. Contact Information:

1. Councils of Government

a. **Appalachian Council of Government**

(Serving Anderson, Cherokee, Greenville, Pickens, Oconee and Spartanburg counties)
30 Century Circle, PO Box 6668, Greenville, SC 29607
Phone: 864.242.9733 Fax: 864.242.6957

b. **Berkeley - Charleston - Dorchester Council of Governments**

(Serving Berkeley, Charleston and Dorchester counties)
1362 McMillian Avenue, Suite 100, North Charleston, SC 29405
Phone: 843.529.0400 Fax: 843.529.0305

c. **Catawba Regional Council of Governments**

(Serving Chester, Lancaster, York and Union counties)
215 Hampton Street (29730), PO Box 450, Rock Hill, SC 29731
Phone: 803.327.9041 Fax: 803.327.1912

d. **Central Midlands Council of Government**

(Serving Fairfield, Lexington, Newberry and Richland counties)
236 Stoneridge Drive, Columbia, SC 29210
Phone: 803.376.5390 Fax: 803.376.5394

e. **Lowcountry Council of Governments**

(Serving Beaufort, Colleton, Hampton and Jasper counties)
634 Campground Road, PO Box 98, Yemassee, SC 29945
Phone: 843.726.5536 Fax: 843.726.5165

f. **Lower Savannah Council of Governments**

(Serving Aiken, Allendale, Bamberg, Barnwell, Calhoun and Orangeburg counties)
2748 Wagener Road (29801), PO Box 850, Aiken, SC 29802
Phone: 803.649.7981 Fax: 803.649.2248

g. **Pee Dee Regional Council of Governments**

(Serving Chesterfield, Darlington, Dillon, Marlboro, Florence and Marion counties)
2319 Regional Road (29501), PO Box 5719, Florence, SC 29502
Phone: 843.669.3138 Fax: 843.669.4392

h. **Santee-Lynches Council of Governments**

(Serving Clarendon, Kershaw, Lee and Sumter counties)

36 W. Liberty, PO Box 1837, Sumter, SC 29151

Phone: 803.775.7381 Fax: 803.773.9903

i. **Upper Savannah Council of Governments**

(Serving Abbeville, Edgefield, Greenwood, Laurens, McCormick and Saluda counties)

222 Phoenix Street, Ste. 200 (29646), PO Box 1366, Greenwood, SC 29648

Phone: 864.941.8050 Toll Free: 1.800.922.7729 Fax: 864.941.8090

j. **Waccamaw Regional Council of Governments**

(Serving Georgetown, Horry and Williamsburg counties)

1230 Highmarket Street, Georgetown, SC 29440

Phone: 843.546.8502 Fax: 843.527.2302

2. State Officials and Committees

a. **Secretary of State**

PO Box 11350, Columbia, SC 29211

803.734.2170

b. **State Treasurer**

PO Box 11778, Columbia, SC 29211

803.734.2101, treasurer@sto.state.sc.us

c. **Senate Judiciary Committee**

803.212.6610, sju@scsenate.org

3. Selected State Agencies

a. **Office of Research and Statistics**

1000 Assembly Street, Room 425, Columbia, SC 29201

803.734.3793

b. **Election Commission**

2221 Devine Street, Suite 105, PO Box 995, Columbia, SC 29202

803.734.9060

c. **Department of Revenue**

301 Gervais Street, PO Box 125, Columbia, SC 29214

803.898.5000

4. County Auditors
- **Abbeville County**, Auditor's Office
P. O. Box 184, Abbeville, SC 29620
Phone: 864.366.5312
Fax: 864.366.8104
 - **Aiken County**, Auditor's Office
P.O. Box 94, Aiken, SC 29801-3834
Phone: 803.642.1508
Fax: 803.642.1530
 - **Allendale County**, Auditor's Office
P.O. Box 583, Allendale, SC 29810
Phone: 803.584.8132
Fax: 803.584.8113
 - **Anderson County**, Auditor's Office
P.O. Box 8002, Anderson, SC 29622
Phone: 864.260.4309
Fax: 864.260.4206
 - **Bamberg County**, Auditor's Office
P.O. Box 179, Bamberg, SC 29003
Phone: 803.245.3006
Fax: 803.245.3006
E-mail: bamaud@hotmail.com
 - **Barnwell County**, Auditor's Office
P.O. Box 711, Barnwell, SC 29812
Phone: 803.541.1040
Fax: 803.541.4587
 - **Beaufort County**, Auditor's Office
P. O. Box 458, Beaufort, SC 29901
Phone: 843.470.2558
Fax: 843.470.2550
 - **Berkeley County**, Auditor's Office
223 N. Live Oak Drive,
Moncks Corner, SC 29461-3707
Phone: 843.719.4034
Fax: 843.719.4128
 - **Calhoun County**, Auditor's Office
102 Courthouse Drive, Suite 101,
St. Matthews, SC 29135
Phone: 803.874.3623
Fax: 803.874.1242
 - **Charleston County**, Auditor's Office
2 Courthouse Square,
Charleston, SC 29401-2206
Phone: 843.958.4203
Fax: 843.958.4222
 - **Cherokee County**, Auditor's Office
P.O. Box 32, Gaffney, SC 29342-0032
Phone: 864.487.2543
Fax: 864.902.8427
 - **Chester County**, Auditor's Office
2076 Pinckney Road,
P.O. Drawer 580, Chester, SC 29706
Phone: 803.385.2607
Fax: 803.385.6651
 - **Chesterfield County**, Auditor's Office
Courthouse, 200 W. Main St,
Chesterfield, SC 29709
Phone: 843.623.2338
Fax: 843.623.3676
 - **Clarendon County**, Auditor's Office
P.O. Box 697, Manning, SC 29102-0697
Phone: 803.435.2013
Fax: 803.435.8258
E-mail: clarendonauditor@sc.rr.com
 - **Colleton County**, Auditor's Office
P.O. Box 128, Walterboro, SC 29488
Phone: 843.549.2131
Fax: 843.549.6584
 - **Darlington County**, Auditor's Office
1 Public Square, Room 205,
Darlington, SC 29532-3213
Phone: 843.398.4110
Fax: 843.398.4172

- **Dillon County**, Auditor's Office
P.O. Box 32, Dillon, SC 29536-0032
Phone: 843.774.1418
Fax: 843.841.3729
- **Dorchester County**, Auditor's Office
201 Johnston Street,
St. George, SC 29477-2443
Phone: 843.563.0118
Fax: 843.563.0169
- **Edgefield County**, Auditor's Office
127 Courthouse Square,
Edgefield, SC 29824-1350
Phone: 803.637.4064
Fax: 803.637.7155
E-mail: Auditor@edgefieldcounty.sc.gov
- **Fairfield County**, Auditor's Office
P.O. Box 88, Winnsboro, SC 29180
Phone: 803.635.6524
Fax: 803.635.2767
- **Florence County**, Auditor's Office
180 N. Irby Street MSC-B,
Florence, SC 29501
Phone: 843.665.3088
Fax: 843.676.8627
E-mail: auditor@florenceco.org
- **Georgetown County**, Auditor's Office
P.O. Drawer 421270,
Georgetown, SC 29442
Phone: 843.545.3021
Fax: 843.545.3284
- **Greenville County**, Auditor's Office
301 University Ridge #800,
Greenville, SC 29601
Phone: 864.467.7062
Fax: 864.467.5960
- **Greenwood County**, Auditor's Office
528 Monument St. R-107,
Greenwood, SC 29646
Phone: 864.942.8543
Fax: 864.942.8724
- **Hampton County**, Auditor's Office
P.O. Box 575, Hampton, SC 29924
Phone: 803.943.7504
Fax: 803.943.7592
- **Horry County**, Auditor's Office
P.O. Box 1205, Conway, SC 29528
Phone: 843.915.6621
Fax: 843.915.6050
- **Jasper County**, Auditor's Office
P.O. Box 807, Ridgeland, SC 29936
Phone: 843.726.7732
Fax: 843.726.7733
- **Kershaw County**, Auditor's Office
515 Walnut Street, Room 204,
Courthouse, Camden, SC 29020
Phone: 803.425.1500 x 5324
Fax: 803.425.7673
- **Lancaster County**, Auditor's Office
P.O. Box 2016, Lancaster, SC 29721
Phone: 803.285.7424
Fax: 803.416.9328
- **Laurens County**, Auditor's Office
P.O. Box 907, Laurens, SC 29360-0907
Phone: 864.984.2535
Fax: 864.984.3922
- **Lee County**, Auditor's Office
P. O. Box 241, Bishopville, SC 29010
Phone: 803.484.5341 ext. 329
Fax: 803.484.6512
- **Lexington County**, Auditor's Office
212 S. Lake Drive, Lexington, SC 29072
Phone: 803.359.8445
Fax: 803.359.8538

- **Marion County**, Auditor's Office
P.O. Box 672, Marion, SC 29571-0672
Phone: 843.423.8205
Fax: 843.423.8392
- **Marlboro County**, Auditor's Office
P. O. Box 468, Bennettsville, SC 29512
Phone: 843.479.5608
Fax: 843.479.5648
E-mail: mcauditor@bellsouth.net
- **McCormick County**, Auditor's Office
133 South Mine St., #103,
McCormick, SC 29835-9034
Phone: 864.465.2107
Fax: 864.465.0071
- **Newberry County**, Auditor's Office
P.O. Box 362, Newberry, SC 29108
Phone: 803.321.2105
Fax: 803.321.2106
- **Oconee County**, Auditor's Office
415 South Pine St., Walhalla, SC 29691
Phone: 864.638.4158
Fax: 864.638.1015
E-mail: auditor2@oconeesc.com
- **Orangeburg County**, Auditor's Office
P.O. Drawer 9000,
Orangeburg, SC 29116
Phone: 803.533.6200
Fax: 803.533.5841
- **Pickens County**, Auditor's Office
222 McDaniel Avenue B-7,
Pickens, SC 29671-2556
Phone: 864.898.5895
Fax: 864.898.5846
- **Richland County**, Auditor's Office
P.O. Box 192, Columbia, SC 29202
Phone: 803.576.2600
Fax: 803.576.2605
- **Saluda County**, Auditor's Office
100 E. Church Street, Suite 3,
Saluda, SC 29138
Phone: 864.445.2521
Fax: 864.445.9316
E-mail: salauditor@earthlink.net
- **Spartanburg County**, Auditor's Office
366 N. Church Street,
Spartanburg, SC 29303-3637
Phone: 864.596.2118
Fax: 864.596.3446
- **Sumter County**, Auditor's Office
13 E. Canal Street, Sumter, SC 29150
Phone: 803.436.2136
Fax: 803.436.2133
E-mail: auditor@sumtercountysc.org
- **Union County**, Auditor's Office
P.O. Box 752, 210 West Main Street,
Union, SC 29379-0200
Phone: 864.429.1618
Fax: 864.429.1608
E-mail: auditor@countyofunion.com
- **Williamsburg County**,
Auditor's Office
P.O. Box 7, Kingstree, SC 29556-0007
Phone: 843.355.9321 x 142
Fax: 843.355.9306
E-mail: wburgauditor@yahoo.com
- **York County**, Auditor's Office
P.O. Box 25, York, SC 29745-0025
Phone: 803.684.8501
Fax: 803.684.8553

5. Professional Associations

a. **South Carolina Police Chiefs Association**

PO Box 61170, Columbia, SC 29260-1170

Phone: 803.790.5042

Fax: 803.790.5043

b. **South Carolina State Firemen's Association**

PO Box 855, Irmo, SC 29063

Toll Free: 1.800.277.2732

Appendix B

Public Notice

Incorporation Election

Special Election

The Incorporation Commission of the (name of the area voting on incorporation) announces a special election to determine a question of incorporation, to be held on (date).

The polling places for this special election are (enter the names and locations of the polling places for the district).

People desiring to vote in the upcoming election must be registered by (enter a date that is 30 days before the election). To register, one must contact the County Board of Voter Registration.

Questions on the incorporation ballot will be the following:

- 1) incorporation
- 2) name of municipality
- 3) form of government
- 4) method of election (prescribed in 5-15-20)
- 5) whether the election shall be partisan or nonpartisan
- 6) the terms of the mayor and council members

The polls shall open at 7:00 a.m. on Election Day and close at 7:00 p.m.

At 2:00 p.m. on said Election Day, the poll managers will begin examining the absentee ballot return envelopes. This examination will be held at (location of examination).

On Thursday, _____, at (time) at (location) the Incorporation Commission will hold a hearing to determine the validity of ballots challenged in this election.

Appendix C

PETITION

SAMPLE

STATE OF SOUTH CAROLINA

COUNTY OF _____

STATEMENT OF PURPOSE OF PETITION: _____

NO	SIGNATURE OF VOTER	COMPLETE RESIDENT ADDRESS OF VOTER	REGISTRATION CERTIFICATE NUMBER OF VOTER	PRECINCT OF VOTER
1	Sign Name _____ Print Name _____	Street _____ City _____		
2	Sign Name _____ Print Name _____	Street _____ City _____		
3	Sign Name _____ Print Name _____	Street _____ City _____		
4	Sign Name _____ Print Name _____	Street _____ City _____		
5	Sign Name _____ Print Name _____	Street _____ City _____		
6	Sign Name _____ Print Name _____	Street _____ City _____		
7	Sign Name _____ Print Name _____	Street _____ City _____		
8	Sign Name _____ Print Name _____	Street _____ City _____		
9	Sign Name _____ Print Name _____	Street _____ City _____		
10	Sign Name _____ Print Name _____	Street _____ City _____		
11	Sign Name _____ Print Name _____	Street _____ City _____		

IMPORTANT: ONLY SIGNATURES OF REGISTERED VOTERES OF THE SAME COUNTY CAN BE PLACED ON THIS PAGE.

Appendix D

Act 77

South Carolina General Assembly
116th Session, 2005-2006

(A77, R79, S318)

AN ACT TO AMEND CHAPTER 1, TITLE 5, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MUNICIPAL INCORPORATION, SO AS TO ESTABLISH A JOINT LEGISLATIVE COMMITTEE ON MUNICIPAL INCORPORATION TO REVIEW THE FILING OF AN AREA SEEKING INCORPORATION AND TO RECOMMEND TO THE SECRETARY OF STATE WHETHER THE MINIMUM SERVICE STANDARDS FOR MUNICIPAL INCORPORATION ARE MET, TO DEFINE “PUBLICLY-OWNED PROPERTY” “CONTIGUOUS” FOR PURPOSES OF MUNICIPAL INCORPORATION, TO PROVIDE FOR THE COMPOSITION OF THE COMMITTEE, AND TO PROVIDE ADDITIONAL REQUIREMENTS THAT A PROPOSED MUNICIPALITY SHALL MEET.

Whereas, municipal boundaries are limited only by the state’s statutory law requirements; and

Whereas, some municipalities already extend across county lines; and

Whereas, if a publicly-owned property, such as a road or waterway, is within the exclusive territory of a single municipality, that municipality could extend its boundaries across the State, preventing areas that otherwise meet the statutory requirements for municipal incorporation from attaining local self-governance; and

Whereas, the General Assembly finds and declares that publicly-owned property is for the benefit of all the citizens of the State and not to be used as the exclusive territory of any one municipality. Now, therefore,

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

Joint Legislative Committee on Municipal Incorporation established

SECTION 1. Chapter 1, Title 5 of the 1976 Code is amended to read:

CHAPTER 1

Incorporation

Section 5-1-10. (A) A municipality having a certificate of incorporation issued by the Secretary of State and a township established by act of the General Assembly are declared to be perpetual bodies, politic and corporate, entitled to exercise all the powers and privileges provided for

municipal corporations in this State, and subject to all the limitations and liabilities provided for municipal corporations in this State.

(B) The incorporation or corporate capacity of a municipality or township established by act of the General Assembly must not be attacked in any court in this State except as provided by statute.

Section 5-1-20. As used in Chapters 1 through 17 of this title, unless the context clearly indicates otherwise:

(1) 'Municipality' means a city or town issued a certificate of incorporation, or township created by act of the General Assembly.

(2) 'Publicly-owned property' means any federally-owned, state-owned, or county-owned land or water area.

Section 5-1-22. The General Assembly finds and declares the following to be the public policy of the State of South Carolina:

(1) publicly-owned property may be incorporated or annexed by a municipality as provided by the state's statutory law; however, publicly-owned property is for the benefit of all citizens of the State and is not the exclusive territory of any one municipality; and

(2) incorporation or annexation of publicly-owned property does not confer or convey to a municipality control over the publicly-owned property that in any way:

(a) interferes with the superior authority of the federal, state, or county government; or

(b) prevents an area seeking to be incorporated from using the publicly-owned property to establish contiguity as provided in Section 5-1-30(A)(4).

Section 5-1-24. (A) After June 30, 2005, citizens of an area seeking municipal incorporation shall file an application for incorporation with the Secretary of State's office containing:

(1) a petition setting out the corporate limits proposed for the municipality and the number of inhabitants residing within the proposed corporate limits, and signed by fifteen percent of the qualified electors who reside within the proposed municipality; and

(2) documentation concerning the minimum service standard incorporation requirements as provided in Section 5-1-30.

(B) Upon receipt of a filing for a proposed municipal incorporation, the Secretary of State shall transfer a copy of the filing to the Joint Legislative Committee on Municipal Incorporation for review.

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

(B) The committee consists of seven members:

- (1) two Senators appointed by the President Pro Tempore of the Senate;
- (2) two members of the House of Representatives appointed by the Speaker of the House of Representatives;
- (3) one person appointed by the Governor;
- (4) one city manager or elected city official appointed by the President Pro Tempore of the Senate from a list of three persons recommended by the Municipal Association of South Carolina; and
- (5) one county council member or county manager or administrator appointed by the Speaker of the House of Representatives from a list of three persons recommended by the South Carolina Association of Counties.

(C) The members are appointed to serve terms of two years, initially beginning on July 1, 2005, and until their successors are appointed and qualify. A vacancy must be filled in the same manner as the original appointment for the unexpired term.

(D) The committee shall elect a chairman from its membership for a one-year term. The position of chairman rotates among the members.

(E) The committee meets at times and places as it may determine.

(F) Staff for the committee must be provided by the President Pro Tempore of the Senate and Speaker of the House of Representatives.

Section 5-1-30. (A) Before issuing a corporate certificate to a proposed municipality, the Secretary of State shall determine based on the filing submitted and the recommendation of the Joint Legislative Committee on Municipal Incorporation whether the proposed municipality meets the following requirements:

- (1) the area seeking to be incorporated has a population density of at least three hundred persons a square mile according to the latest official United States Census, except as provided in subsections (B) through (E);
- (2) no part of the area is within five miles of the boundary of an active incorporated municipality, except as provided in subsections (B) through (E);
- (3) the area seeking to be incorporated has filed a service feasibility study that has been reviewed by the Joint Legislative Committee on Municipal Incorporation and approved by the Secretary of State;
- (4) the area proposed to be incorporated is contiguous as defined and as described in this item. 'Contiguous' means adjacent properties that share a continuous border. If a publicly-owned property intervenes between two areas proposed to be incorporated together, which but for the intervening publicly-owned property would be adjacent and share a continuous border, the intervening publicly-owned property does not destroy contiguity;

(5) the area seeking to be incorporated has filed a proposal for providing either directly or by contract a minimum level of law enforcement services as required in regulations promulgated by the State Law Enforcement Division. If law enforcement services are by contract, the proposal must indicate which governmental entity provides the service and the estimated compensation for the service; and

(6) the area seeking to be incorporated has filed a proposal demonstrating that at least three of the following services, either directly or by contract, will be provided to the incorporated area no later than the first day of the third fiscal year following the effective date of incorporation:

(a) fire protection at a minimum service level required in regulations promulgated by the South Carolina Fire Marshal;

(b) solid waste collection and disposal;

(c) water supply, water distribution, or both;

(d) wastewater collection and treatment;

(e) storm water collection and disposal;

(f) enforcement of building, housing, plumbing, and electrical codes;

(g) planning and zoning;

(h) recreational facilities and programs; or

(i) street lighting.

(B)(1) When an area seeking incorporation has petitioned pursuant to Chapter 17 the nearest incorporated municipality to be annexed to the municipality, and has been refused annexation by the municipality for six months, or when the population of the area seeking incorporation exceeds seven thousand persons, then the provision of the five-mile limitation of this section does not apply to the area.

(2) For purposes of item (1) of this subsection, a refusal to annex the area by the municipality includes a statement from the municipality that the area does not meet the statutory requirements for annexation.

(C) The five-mile limit does not apply when the boundaries of the area seeking incorporation are within five miles of the boundaries of two different incorporated municipalities in two separate counties other than the county within which the area seeking incorporation lies, and when the boundaries of the proposed municipality are more than five miles from the boundaries of the nearest incorporated municipality that lies within the same county within which the proposed municipality lies, and when the land area of the territory seeking incorporation exceeds one-fourth of the land area of the nearest incorporated municipality.

(D) The population requirements do not apply to areas bordering on and being within two miles of the Atlantic Ocean and to all sea islands bounded on at least one side by the Atlantic Ocean, both of which have a minimum of one hundred fifty dwelling units and at least an average of one dwelling unit for each three acres of land within the area and for which petitions for incorporation

contain the signatures of at least fifteen percent of the qualified electors of the respective areas seeking incorporation.

(E) The five-mile limit does not apply to counties with a population according to the latest official United States Census of less than fifty-one thousand.

Section 5-1-40. (A) The Joint Legislative Committee on Municipal Incorporation shall return the copy of filing to the Secretary of State with a written decision of its recommendation concerning the application for municipal incorporation.

(B) The Secretary of State shall provide the applicant with a copy of the committee's written decision.

(C) A recommendation by the committee or a determination by the Secretary of State that the requirements of Section 5-1-30 have not been met does not preclude the area seeking from submitting a subsequent application.

Section 5-1-50. (A)(1) After receipt of a recommendation from the Joint Legislative Committee on Municipal Incorporation, the Secretary of State shall determine whether the requirements of Section 5-1-30 have been met. If the Secretary of State determines that the requirements of Section 5-1-30 have been met, he shall issue to three or more persons residing in the area of the proposed municipality, a commission empowering them to:

(a) hold an election not less than twenty days nor more than ninety days after the issuance of the commission; and

(b) appoint three managers of election who shall conduct the election.

(2) Notice of the election must be published in a newspaper of general circulation in the community or by posting in three public places within the area sought to be incorporated which contains detailed information concerning the election. The notice must be published or posted not less than five nor more than fifteen days before the date of the election.

(B)(1) At such election, all registered electors living in the area sought to be incorporated must be allowed to vote on the following questions:

(a) incorporation;

(b) name of the municipality;

(c) the form of government;

(d) method of election as prescribed in Section 5-15-20;

(e) whether the election is partisan or nonpartisan; and

(f) the terms of the mayor and council members.

(2) When any of the above questions proposed in an election contain more than two options, the option receiving the highest number of votes will prevail.

(3) If a community votes in favor of incorporation pursuant to this section and selects a form of government in an election, notwithstanding the results of the selections made by the voters as to questions (d), (e), and (f) in item (1) of this subsection, the initial governing body of the incorporated municipality consists of four council members and a mayor, all elected at large in a nonpartisan election for terms of two years.

(C) The managers of election shall conduct the election, unless otherwise provided for in this chapter, according to the general law governing the conduct of special elections mutatis mutandi.

Section 5-1-60. The managers of the election shall make their sworn returns of the result of the election to the commissioners. The returns must show the total number of those voting in the election, together with the number of those voting on each question proposed.

Section 5-1-70. The commissioners shall certify the result of the election under oath to the Secretary of State, and if the result is in favor of incorporation, the Secretary of State shall issue a certificate of incorporation to the municipality and the municipality has all the privileges, powers, and immunities and are subject to the limitations provided by law.

Section 5-1-80. Before delivery of a certificate of incorporation, the Secretary of State shall require the production of a receipt from the State Treasurer for the payment of the following incorporation fees for municipalities with a population:

- (1) of one thousand or less, one hundred dollars;
- (2) between one thousand and five thousand, three hundred dollars;
- (3) over five thousand, six hundred dollars.

Section 5-1-90. The certificate of incorporation must be issued to the commissioners who immediately shall provide for the election of municipal officers pursuant to Chapter 15 and in accordance with the certificate as to form of government. Until the municipal officers are elected and qualify, the certificate of incorporation does not become effective and the powers of the municipality must be exercised only by the municipal council when the municipal council is created by election.

Section 5-1-100. (A) When following its incorporation a municipality's population has decreased to less than fifty inhabitants, the certificate of the municipality must be automatically forfeited and void. If a majority of the registered electors of a municipality files a petition requesting the municipal certificate be surrendered with the municipal council, the council shall order an election to determine the question, at which election all qualified electors of the municipality must be permitted to vote, and if two-thirds of those voting vote in favor of surrendering the certificate, the council shall certify the result to the Secretary of State, who shall cancel the certificate issued to the municipality.

(B) If the Secretary of State determines that any previously incorporated municipality is neither performing municipal services nor collecting taxes or other revenues and has not held an election during the past four years, he shall cancel the certificate of the municipality.

Section 5-1-110. A suit to challenge the incorporation procedures of a municipal corporation pursuant to the provisions of Chapters 1 through 17 must be brought within sixty days after the issuance of the certificate of incorporation.”

Severability

SECTION 2. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of Chapter 1, Title 5 of the 1976 Code as amended by this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the chapter, the General Assembly hereby declaring that it would have passed each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 3. The provisions of this act take effect July 1, 2005; however, the appointment of the members of the Joint Legislative Committee on Municipal Incorporation may be made upon signature by the Governor.

Ratified the 18th day of May, 2005.

Became law without the signature of the Governor -- 5/25/05.

Appendix E

Voting Rights Act: Section 5 Preclearance

South Carolina and its political subdivisions must comply with the requirements of Section 5 of the Voting Rights Act of 1965 (42 U.S.C.A. § 1973, et seq.), as amended in 1982. Section 5 of the Act prohibits states and political subdivisions from implementing a change in any standard, practice or procedure which might affect voting rights without first obtaining approval from the U.S. District Court for the District of Columbia or from the U.S. Attorney General.

The Incorporation Commission should make the submission for preclearance of the election at least 90 days prior to the date of the election.

Procedures for Submission to Attorney General Under Section 5 of the Voting Rights Act – 28 C.F.R. Part 51

Mail by United States Postal Service:

Chief, Voting Section
Civil Rights Division,
Room 7254 - NWB
Department of Justice
950 Pennsylvania Avenue N.W.
Washington, DC 20530

Mail by overnight express services:

Chief, Voting Section
Civil Rights Division,
Room 7254 - NWB
Department of Justice
1800 G St., N.W.
Washington, DC 20006

Mark envelope and letter: Submission Under Section 5 of the Voting Rights Act

Contents of submission: {See 52 CFR Section 51.26, Section 51.27 and Section 51.28.}

For more information: Call 800.253.3931 or 202.307.2767