

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

House Bill 2122 – Voluntary Municipal Disincorporation
PA House of Representatives Urban Affairs Committee Hearing
Testimony of Rich Fitzgerald, Allegheny County Executive

Chairmen Keller and O'Brien, and members of the House Urban Committee:

Thank you for the invitation to join you today. As I'm sure you know, the challenges that municipalities have can be extremely varied – that applies not just to those in Allegheny County, but throughout our Commonwealth and country. Some municipalities have greater needs than others, and in Allegheny County, those needs have led to a larger conversation about providing additional options for municipalities that are long-term.

As you know, municipalities can enter into intergovernmental cooperation agreements to provide and/or share services and work with another municipality. Such intergovernmental cooperation agreements also can exist between the county and municipalities, as evidenced by the county's contract to provide police service in Wilmerding Borough. The same can be found with Councils of Governments or other entities that can provide a shared service to its members. In some cases, however, there is not capacity to fill the needed service.

Communities often turn to merger or consolidation to ease financial strains. The challenge with doing so is that the municipality with which they want to merge or consolidate may not want to take on those obligations. For that reason, many past attempts have failed. Statewide few have taken that step – only five municipalities since 2000 have authorized a merger or consolidation. Since 1991, only 12 mergers or consolidations have been approved, with another 17 being rejected.

While the Pennsylvania Constitution gives the legislature the power to enact a law to permit municipalities to go out of business, or disincorporate, there not been any enabling law enacted to allow such an option. Currently, communities can only incorporate, merge with another municipalities, or consolidate with another municipality. One exception exists for Act 47 communities. Under Act 47, municipalities in financial distress may be forced to disincorporate, but it is a mandatory action applied only to those communities that have been unable to emerge from Act 47 within a set period of time.

The legislation before you has a primary focus – it is voluntary. Voluntary, voluntary, voluntary. I cannot express this enough. This bill, if enacted, provides another tool in the toolbox, and gives municipalities a unique opportunity to take advantage of the efficiencies in the delivery of municipal services that could be available at the county level. Again, it is a wholly voluntary effort, begun only by the municipal

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officials, and does not impact school districts, volunteer fire departments, municipal authorities, or any other part of a municipality or its identity.

The tool allows municipal officials to explore how its community may benefit its residents if it were to disincorporate and partner with the county. The option is voluntary and includes a robust process with public input and significant analysis and review of what an unincorporated territory could expect in regards to its expenditures, taxes, savings and services should it be approved by the electorate.

It is an option available to all municipalities in the county, regardless of whether they are in the Act 47 program. While some may consider disincorporation, due to finances, there can be many other reasons for it to be used – but no requirements that any certain characteristic must be met.

This is not a take-over or a power grab. A group of disgruntled citizens cannot make a community “go away.” Voluntary municipal disincorporation allows communities another option which takes advantage of the county’s strong economic position, while also maintaining their identity and, perhaps, also providing better services to the residents at a better cost.

The county’s financial health and well-being is directly tied to the financial health and well-being of its municipalities and residents. Working cooperatively to provide services to communities by utilizing our service efficiencies is just one way that we can support them.

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Voluntary Municipal Disincorporation Talking Points

Allegheny County is often approached by municipalities seeking assistance. While requests may vary, there are greater needs that these communities have which have led to a conversation regarding options for those municipalities. The county has assisted where it can, but providing long-term solutions for these communities is also of interest.

Currently, communities can incorporate, merge with another municipalities, or consolidate with another municipality. They cannot, however, decide to disincorporate – “go out of business.” Under Act 47, municipalities in financial distress may be forced to disincorporate, but it is a mandatory action applied only to those communities that have been unable to emerge from Act 47 within a set period of time.

Currently, municipalities can enter into intergovernmental cooperation agreements to provide and/or share services and work with another municipality. Such intergovernmental cooperation agreements also can exist between the county and municipalities, as evidenced by the county’s contract to provide police service in Wilmerding Borough. The same can be found with Councils of Governments or other entities that can provide a shared service to its members. In some cases, however, there is not capacity to fill the needed service.

Additionally, municipalities can merge or consolidate, but recent attempts have often included a municipality that is less well-off than another, resulting in a rejection of the attempt by the community with which they would merge or consolidate. Statewide, few have taken that step – only five municipalities since

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2000 have authorized a merger or consolidation. Going back to 1991, only 12 mergers or consolidations have been approved, with another 17 being rejected.

This proposed legislation provides another tool in the toolbox, and provides a unique opportunity for a municipality to take advantage of the efficiencies in the delivery of municipal services that could be available at the county level. It is a wholly voluntary effort, begun only by the municipal officials, and does not impact school districts, volunteer fire departments, municipal authorities, or any other part of a municipality or its identity.

The tool allows municipal officials to explore how its community may benefit its residents if it were to disincorporate and partner with the county. The option is voluntary and includes a robust process with public input and significant analysis and review of what an unincorporated territory could expect in regards to its expenditures, taxes, savings and services should it be approved by the electorate.

This is not a take-over or a power grab. A group of disgruntled citizens cannot make a community "go away." Voluntary municipal disincorporation allows communities another option which takes advantage of the county's strong economic position, while also maintaining their identity and, perhaps, also providing better services to the residents at a better cost.

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Voluntary Municipal Disincorporation Frequently Asked Questions (FAQs)

What is Voluntary Municipal Disincorporation?

Voluntary Municipal Disincorporation (VMD) is legislation being introduced in the State House and Senate that will only be available for use by municipalities in Allegheny County. It outlines a voluntary process that authorizes a municipality, after a public vote of its citizens, to become an unincorporated district with services provided to residents by the county.

Can't municipalities already "go out of business?"

While municipalities can form, merge and consolidate, there is not currently any option for a governing body to choose to disincorporate. Municipalities that are "financially distressed" as declared under Pennsylvania's Financially Distressed Municipalities Act, or Act 47, can be forced to disincorporate if they do not emerge from that status within a statutorily-set time frame.

Why don't municipalities just merge or consolidate?

Communities often turn to merger or consolidation to ease financial strains. The challenge with doing so is that the municipality with which they want to merge or consolidate may not want to take on those obligations. For that reason, many past attempts have failed. Statewide few have taken that step – only five municipalities since 2000 have authorized a merger or consolidation. Since 1991, only 12 mergers or consolidations have been approved, with another 17 being rejected.

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If only Act 47 communities can disincorporate now, is this only for municipalities in financial distress?

At the state level, there was a great deal of concern related to municipalities that were designated as Act 47 communities. Specifically, once a municipality went into the program, it was not coming out. As a measure to encourage steps be taken to assist in the financial recovery, the state legislature added a provision that provides that an Act 47 community will go into state receivership if it does not exit Act 47 after five years.

VMD is an option available to all municipalities in the county, regardless of whether they are in the Act 47 program. While some may consider VMD due to finances, there can be many other reasons for it to be used – but no requirements that any certain characteristic must be met.

Can't the county just provide services without the municipality disincorporating?

Yes, that is certainly an option. The county is currently doing so in the Borough of Wilmerding which approached the county seeking police services, including patrol. The contract to provide those services was approved by County Council and services began in January 2017.

Municipalities have a broad variety of needs and requests and the county does everything that it can to assist in providing support, or meeting those needs.

If we're interested in beginning the process for voluntary disincorporation, what must we do first?

First, the governing body (council, board of commissioners or supervisors) must pass a resolution that expresses preliminary interest in the idea of disincorporation.

Can the public start the process instead, if municipal officials will not?

No. This process is voluntary, but it is one that must begin with the municipal officials as the full participation and input of the municipality is necessary for this step to be considered.

What happens after the resolution has been passed?

Within 10 days after the passage of the resolution passes, it is sent to the County Manager who will then contact the municipality. After a discussion with the municipality regarding its goals and challenges, the county and the municipality will exchange information and records. Such an exchange undoubtedly would include substantial and detailed information relative to the operation of the municipality, including its finances, obligations, contracts, services and more. The county and municipality then will draft an “essential services plan” that outlines what the county could provide to the municipality if the citizens of the municipality decide to disincorporate.

That’s a lot of information. Is this process going to be done quickly?

The bill provides for 180 days to come up with an essential services plan. If it is not completed in that time frame, one 90-day extension may be taken. If the plan is not agreed to, the process ends. If the municipality agrees to the plan in theory, a public notice of hearings is made and a public meeting scheduled for the residents to view the plan and have questions answered.

So, the municipality doesn’t have to vote on the plan?

The vote on the plan occurs after the public hearing/meeting so that there is opportunity to hear from residents and allow them to weigh in on the proposed essential services plan first. Any revisions to the plan would have to be published at least 15 days prior to the final approval of the plan, which would be done by another vote of the governing body in its regularly scheduled meeting. If the proposal does not receive approval, the process ends.

If the plan passes, then what?

There is another approval process. The plan would be presented by the County Executive as legislation to the 15-member County Council for its consideration and review. If the legislation does not pass, the process would end. If it does pass, it would be then presented to the County Executive for signature. He or she could veto the legislation, and County Council would also have the option to override that veto.

What happens after County Council and the County Executive approve the plan?

Within 30 days of that approval, the municipality would request that the question of adopting the plan and disincorporating be presented to its voters at the next election.

Is there public input?

In addition to the public meetings and public hearing noted above, the public has the ultimate input on the plan through its vote. At the next election, the electorate of the municipality would determine whether they wish to adopt the plan and disincorporate. If the plan is not approved, the process ends.

If the plan is approved, does the municipality just go away?

No. Like any election results, the vote must be certified by the Board of Elections. Once that occurs, there are 180 days to allow for the affairs of the municipality to “wind down” as laid out in the essential services transition plan. It is at the end of that time period that the municipality dissolves and becomes an unincorporated district.

What happens to the municipal officials?

At the end of the transition period, those offices would no longer exist.

Will there still be a municipal building? What about the trucks and other items that the municipality owns?

As previously noted, each essential services plan will be unique and directly tied to the needs and requirements of that municipality. The assets of each community, including municipal buildings, will be reviewed as part of the process and would become part of the proposal for review and consideration by the governing body and electorate. Any proposed disposition would also be determined during the essential services planning and revenues generated from that disposition would be used to pay down existing municipal debt or provide services.

If there are no municipal officials, who do we call if we have an issue that needs addressed in our community?

The County Council member who represents the municipality will remain the representative of the unincorporated district. Additionally, the County Manager would be responsible for the day-to-day administration of the district and establish appropriate administrative structures to provide services. The legislation also provides for the creation of a three-member district advisory committee. That committee would hold quarterly meetings and provide recommendations to the county on the administration of the district.

What municipal services will be provided?

Each individual essential services plan will be unique. It will be crafted based on existing services and needs, as well as finances and other factors, and will be presented to the governing body and the public for consideration and approval before it is implemented. Services could be provided by the county directly, or could be provided through agreements between the county and third parties, as appropriate. Moreover, the essential services plan can only be revised by County Council following public comment and hearings within the district.

Why would Allegheny County do this?

The county's financial health and well-being is directly tied to the financial health and well-being of its municipalities and residents. Working cooperatively to provide services to communities by utilizing our service efficiencies is just one way that we can support them.

What about our community? Does it just go away as well?

While the community will no longer be a municipality, the community will continue to exist. In fact, the legislation states that the municipality shall be identified as the Unincorporated District of _____ (the former municipality's name). The identity remains an important part of the community, as do its authorities, churches, baseball teams, VFWs, community groups, and more. VMD does not erase that identity or sense of community. It is an alternative way to provides services to the residents of that community only.

Will there still be municipal taxes? Who will they be paid to?

Allegheny County will collect all the taxes that were collected by the municipality (e.g. – local property taxes, Act 511 taxes) and those funds will be used to deliver services within the unincorporated district. This information will be laid out as part of the essential services plan.

Who will enforce the current ordinances?

The county will be responsible for enforcement. The county will also be the record-keeper for the former municipality and will retain all records and documents consistent with existing federal and state laws.

What happens to the municipal employees?

Allegheny County will absorb the employees, subject to collective bargaining and other union agreements. Detailed information relative to those employees will all be laid out in the essential services plan.

My municipality currently contributes financially to our fire department and library. Will those contributions go away if we disincorporate?

Obligations or priorities such as these will be discussed and reviewed during the process to formulate the essential services plan. All obligations of the municipality will be met in the essential services plan. Priorities that are not obligations, but which are important to a community, can also be incorporated into an essential services plan as appropriate.

Is that it? Are we never a municipality again?

All options available in state law related to incorporation, merger and consolidation remain opportunities for the unincorporated territory. VMD does not preclude such an option in the future.

What's next? Can we choose to do this tomorrow?

The legislation has just been introduced in the House and Senate. The bill will be referred to committee for consideration in both chambers. It can be amended and the legislature could hold hearings and other informational sessions related to the bill. The bill will have to pass both the House and Senate in the same form

before being presented to the Governor for signature. Once signed into law, it will take effect immediately. At that point, a municipality may begin the process for voluntary municipal disincorporation.



ALLEGHENY COUNTY

ALWAYS INSPIRING

FOR IMMEDIATE RELEASE
May 11, 2017

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Voluntary Municipal Disincorporation Report Released by Current, Former County Executives and Institute of Politics Chair

PITTSBURGH – County Executive Rich Fitzgerald, former county executives James C. Roddey and Daniel A. Onorato, and Mark Nordenberg, Chair of the University of Pittsburgh's Institute of Politics (IOP), today released the latest report from the nonpartisan policy forum. "Voluntary Municipal Disincorporation: Creative Solutions for Counties of the Second Class" proposes state legislative authority that would allow an incorporated municipality to become an unincorporated area which receives services directly from the county.

"We are extremely fortunate to have so many individuals in this community who were willing to give of their time and talents to create this report, and I thank them – and particularly Jim, Dan and Mark for their leadership in this effort," said Fitzgerald. "This proposal is just another tool in the toolbox, allowing municipal officials to voluntarily disincorporate, if it is in their best interest, with the area becoming part of the county."

While recent changes to the Municipal Financial Recovery Act, Act 47, allow municipalities to disincorporate as a remedy to their financial distress, a municipality which is not facing such constraints has no such option. The recommendation from the Voluntary Municipal Disincorporation Task Force is based on Act 199 of 2014 and amendments to Act 47. Under the plan, voluntary municipal disincorporation would be open to all municipalities in counties of the second class, regardless of geographic size, population, or finances. The absence of eligibility criteria would allow municipalities with a variety of needs to use disincorporation.

"Allegheny County has the highest number of municipalities in Pennsylvania, and second most municipalities in any county in the United States. With municipal governments being asked to deal with more challenges and provide additional services when local revenue sources are dwindling, elected officials are facing difficult decisions," said Roddey. "This initiative applies only to Allegheny County, is voluntary and is one choice that municipalities have not had to date, unless they're in dire financial straits. State legislation would authorize such a process to address that void and allow municipalities to take proactive steps to ensure residents are provided the services that they need and want."

Under the recommended plan, the newly unincorporated area would become an entity of the county, with the county having a duty to administer and provide services to the unincorporated area. The county may exercise any powers and perform any function in the governing and administration of the area, with the county executive and county council performing the executive and legislative duties, respectively.

"This process, and discussion, extended over several months with numerous adjustments and improvements being made to this recommended plan. I think this is a solid plan which could do a great

deal of good for municipalities in the county," said Onorato. "Most importantly, this proposal and the move to an unincorporated area ultimately lies in the hands of the voters."

Under the proposal, the debts incurred by the municipality before it disincorporated remain the responsibility of the residents of the unincorporated area and shall be paid from their existing revenues. This arrangement, along with the transfer of municipal taxing powers, ensures that such debts will not be the responsibility of the county. Authorities and volunteer fire departments would continue to operate within the unincorporated area.

"Not only does Allegheny County have an extraordinarily large number of municipalities, but there is great disparity between them – in terms of size, population, and the economic bases upon which they rely to responsibly deliver municipal services. This option to voluntarily disincorporate gives the leaders and residents of a municipality the power to act before its financial situation is so challenged that the municipality is pulled into Act 47 oversight processes," said Nordenberg. "Just as important, under this process, the disincorporated municipality becomes a part of the county, as opposed to becoming a part of the state, which ensures that the delivery of essential services remains local and that residents continue to have local representation through the county executive and county council. The committee that shaped this recommendation was led by two of the county's most respected leaders, representing both of our major political parties. The committee itself, which worked on this project for nearly a year, also included some of the most knowledgeable professionals in this area, with perspectives on municipal finance and governance drawn from their distinguished served at the state, county and local levels of government."

Today's press conference was also attended by members of the Pennsylvania House of Representatives and County Council showing support for the initiative. In attendance were Democratic Caucus Chair Rep. Dan Frankel, Democratic Appropriations Committee Chair Rep. Joseph F. Markosek, Rep. Harry Readshaw, Rep. Jake Wheatley, Rep. Rick Saccone, Rep. Harold A. English, Rep. Ed Gainey, Rep. Jason Ortitay, Rep. Anita Astorino Kulik, Council President John DeFazio, Council Vice President Nicholas Futules, At-Large Council Member Samuel DeMarco III, District 1 Council Member Thomas Baker, District 4 Council Member Patrick J. Catena, District 5 Council Member Sue Means, District 10 Council Member DeWitt Walton, District 11 Council Member Paul Klein.

In order for the proposal to move forward, state legislation would need to be passed to enable municipalities to take such a step. Fitzgerald, Roddey, Onorato and Nordenberg met with members of the county delegation in Harrisburg on Monday to discuss the report, its recommendations and next steps. The full report can be found online at <http://iop.pitt.edu/vmd/report.pdf>.

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Voluntary Municipal Disincorporation Task Force Membership:

Dr. George Dougherty

Assistant Professor

University of Pittsburgh Graduate School of Public and International Affairs

Ms. Terry Miller

Executive Director

Institute of Politics and Elsie Hillman Civic Forum

The Honorable Mike Fisher

U.S. Federal Judge

Court of Appeals, Third District

Mr. Mark Nordenberg

Chair, Institute of Politics

Chancellor Emeritus, University of Pittsburgh

Mr. Michael Foreman

Local Government Policy Specialist

Pennsylvania Department of Community and Economic Development

The Honorable Daniel A. Onorato, Co-Chair

Executive Vice President, Public Policy

Chief Government Relations and Community Affairs Officer – Highmark Health

Ms. Vanessa Gleason

Mr. John Quain

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THE PENNSYLVANIA STATE ASSOCIATION OF BOROUGHES

House Bill 2122
Municipal
Disincorporation



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Chairman Keller, Chairman O'Brien, and members of the House Urban Affairs Committee. Thank you for inviting the Pennsylvania State Association of Boroughs (PSAB) to comment on House Bill 2122. My name is Ron Grutza and I serve as the Assistant Director of Government Affairs at PSAB.

The Pennsylvania State Association of Boroughs (PSAB) is a statewide, non-partisan, non-profit organization dedicated to serving 957 borough governments. Since 1911, PSAB has represented the interests of boroughs and helped to shape the laws that laid their foundation. The Association improves and assists local governments through legislative advocacy, research, education and other services. With more than 2.6 million Pennsylvanians residing in borough communities, our members strive to deliver quality leadership and service to citizens across the Commonwealth.

PSAB is pleased to present the committee with our perspectives on House Bill 2122, sponsored by Representative Dom Costa. House Bill 2122 amends the Second Class County Code to provide a process to disincorporate municipalities in Allegheny County. Under the proposal, the county would assume the municipal services and administration of an unincorporated district.

Although the process would be a voluntary mechanism, PSAB has several concerns about enacting this concept into law. First, Pennsylvania municipalities already have options in current law to change their form of government. The Municipal Consolidation & Merger Act (53 Pa.C.S. § 731, et seq.) provides municipalities the options of either having one municipality take over the other or creating a new municipality by consolidating two or more municipalities. Municipalities also have the option of using the Home Rule Charter and Optional Plans Law (53 Pa.C.S. § 2901, et seq.) to create a unique style of governance for their community. In fact, municipalities could choose to consolidate multiple municipalities under a home rule charter.

Act 199 of 2014 amended the Municipalities Financial Recovery Act (Act 47 of 1987) to, among other things, add the option of municipal disincorporation of nonviable municipalities. If an Act 47 community meets the criteria, a coordinator or receiver may recommend to the Secretary of the Department of Community & Economic Development (DCED) to disincorporate the municipality. PSAB believes many of the communities House Bill 2122 seeks to help could already use the provisions in Act 47 to disincorporate. Further, the court could theoretically appoint an individual from the county government to serve as the service district administrator.

Second, PSAB believes this legislation would continue to set the wrong public policy precedent in Pennsylvania. We opposed the disincorporation concept in Act 199 of 2014 because we knew, as is evidenced today by this hearing, this concept would be used to expand disincorporation to other communities. Today it's Act 47 communities, under House Bill 2122 it is only municipalities in Allegheny County, and two years from now there will probably be another proposal for mandatory disincorporation or a boundary commission. PSAB has opposed these ideas in the past because they will not solve the underlying problems.

Finally, municipalities that wish to use the concepts found in House Bill 2122 can today, under current law, enter into an Intergovernmental Cooperation Agreement (ICA) with Allegheny County to provide essential municipal services. We like to refer to this style of consolidation as "functional consolidation."

Residents in such a municipality would keep their local identity while receiving essential services from the county. PSAB does not believe disincorporating any area of Pennsylvania would benefit residents or the commonwealth. However, working together with other municipalities or the county through an ICA would be a much simpler and cost-effective way to achieve the goals of this legislation.

For the reasons stated above, **PSAB opposes House Bill 2122**. We believe communities should use the tools in current law to cooperate with other municipal corporations without the unnecessary expenses involved with disincorporation. We urge the members of the committee to continue providing municipalities with tools to end municipal financial distress.

Thank you for the opportunity to comment on House Bill 2122. Please contact me if you have any questions on my testimony.