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THE CHARTER AND VIRGINIA LOCAL GOVERNMENT

By WELDON COOPER

The recent Report of the Virginia Commission on Constitutional Revision and the consideration of that Report by the 1969 Special Session of the Virginia General Assembly indicates anew that the Constitutional and statutory role of the charter in Virginia local government continues to be far from clear to many Virginians. Why the charter, with its roots deep in the history of Virginia municipal government and with an amply documented record of having provided to the cities and towns broad grants of powers to be exercised at the discretion of the locality, should be misunderstood is difficult to grasp. And why the proposal of the Constitutional Revision Commission for the granting of charters to counties should have aroused such controversy and confusion as it did is an even more perplexing question.

At the risk of adding to the confusion, an attempt will be made here to set forth in as nontechnical language as possible the method which Virginia has used to provide local government, and particularly the municipalities, with discretionary powers in carrying out their functions. In this effort a caveat is offered. It would be helpful to the reader, especially if he has grown up under a system of local government in another state, not to equate the system of "home rule" in that state with what he has found in Virginia. This is not to suggest the superiority of the Virginia system. Rather it is to point out that the procedure for obtaining the reality if not the form of local home rule in Virginia, while not completely unique, is different in a number of respects from the procedure followed in most other states. Perhaps the whole point might be summarized by insisting that the Virginia system should be measured in terms of the results achieved. Such a measure can be found by evaluating the extent to which local autonomy has been obtained historically at the municipal level through the device of the special law charter.

GRANTING THE CHARTER

From colonial days to the present, the General Assembly has used two methods - general law and special law - in granting discretionary powers to the cities, counties, and towns. The device of the general law is an act which confers, say, on all counties, or on all counties above a certain population, particular powers. The special law approach is one which confers powers on a specific locality, in the past a city or a town, and which has no legal standing outside that locality.

It is the special law, which under Constitutional usage is known as a charter, that has been used by the General Assembly in delegating powers to the Virginia city and town. In 1736, for example, the Colonial General Assembly passed an act "to confirm the Charter of the Borough of Norfolk" under the terms of which "the town of Norfolk is erected into a borough by the name of the borough of Norfolk: ... ." The form of government of the borough - this is the only instance of the use of that title in Virginia local government - was set forth and certain legislative powers including what we would now call the police power and the taxing power were established. In 1782, the City of Richmond was incorporated by special law in the form of a brief charter not distinguishable, except for some of the quaint terms and provisions, from a modern-day Virginia charter. The structure of government was prescribed in the form of a bicameral city council, as was the custom in those days; the power to impose taxes on both individuals and on real and personal property was specifically granted in broad terms; and, in even broader terms, the City was granted what today would be known as the police power in the form of language authorizing the passage of ordinances believed by the City Council "necessary for the good ordering and government of such persons as shall from time to time reside within the limits of the said City, ... ."

The practice of granting special law charters to municipalities continued unchanged after the Civil War. At the time of the separation of Charlottesville from Albemarle County and its incorporation as a city, for example, the General Assembly in 1888 granted the usual broad powers to the new City, including even the power to tax incomes at rates not exceeding those levied by the State! And to come to the present, the newly incorporated City of Emporia received from the General Assembly in 1968 a charter which, in substance, was not unlike the Virginia municipal charter of a century or more ago.

SUBSTANCE OF THE CHARTER

While Virginia municipal charters differ in language content and in length, most municipalities preferring great detail while a few strive for brevity, the substance of a charter is in general concerned with only a few basic elements. These are (1) incorporation, (2) powers, (3) governing body, (4) form of government, (5) financial administration especially budget preparation, approval, and execution, (6) departmental organization, and (7) municipal courts.1 Deferring for the moment a consideration of local government powers, brief mention will be

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1. A much more detailed account of the contents of a charter may be found in J. Deyereux Weeks and Walter Stoneham, Drafting a Virginia Municipal Charter (Charlottesville; Virginia Municipal League and Institute of Government (then the Bureau of Public Administration), 1963, Joint Report No. 18).
made of the remaining parts of the typical charter.

By incorporation is meant the creation by the General Assembly of a public corporation under the name of, for example, the "City of Alexandria." The sections relating to the governing body usually create a council, provide for its size and election, and grant to it, and it alone, the legislative powers of the municipality. The section relating to the form of government provides either for the city manager plan or the mayor-council plan (in Virginia all 38 cities and almost all towns above 3,500 have the manager plan). The degree of detail on financial administration varies among the charters but in practically all instances provision is made for (1) a specific official to prepare the budget, (2) a specific date by which the budget is to be presented to Council, and, increasingly, (3) a date prior to the beginning of the new fiscal year on or before which Council must have approved the budget as revised and passed the necessary appropriation act.

The two remaining items generally found in Virginia charters relate to departmental organization and the municipal courts. Departmental organization is concerned with the administrative framework of the municipal government. In many municipalities the charter goes into considerable detail in listing the departments, boards, and commissions which the council must establish and in prescribing the method of appointment, size, and powers of those agencies. In others, the charter lists all the details of departmental organization and then empowers the council to alter, abolish, or rearrange departments, boards, or commissions. In still other instances the details of the departmental organization are not included in the charter and the council is empowered in its discretion to provide for such agencies as it desires.

The municipal court is uniformly a court not of record with jurisdiction over cases arising out of the violation of municipal ordinances, or regulations adopted under the terms of an ordinance. The charter reference to the municipal court is generally a brief one which sets forth the method of appointment of the judge of the municipal court and states that its jurisdiction shall be that prescribed by general law.

Basic Powers

The heart of a municipal charter, without which the government under it could not function, is to be found in what may be referred to as the basic powers. These powers are the police power, the financial powers, the power of eminent domain, and the ordinance-making power. Each of them merit separate attention as a part of the effort to clarify the role of the charter in Virginia local government.

The Police Power

The police power is, at one and the same time, one of the most important and yet one of the most imprecise of the powers of a local government. For our purposes, however, it can be stated that the police power embraces those powers which are necessary to provide for the "good government" of the locality, as it was expressed in earlier Virginia charters, or as more generally expressed in later charters in language along the following lines:

The city (town) of _______ shall have and may exercise all powers which are now or may hereafter be conferred upon or delegated to cities and towns under the Constitution and laws of this State, and all other powers pertinent to the conduct of municipal government, the exercise of which is not prohibited by the Constitution and laws of this State, and which in the opinion of the council are necessary to promote the general welfare of the inhabitants of the city (town). It is intended that the city (town) shall possess all powers which, under the Constitution, it would be competent for this charter to enumerate specifically, and no enumeration of particular powers shall be held to be exclusive, but in addition to this general grant.

In more specific terms, the police power is granted in substantially the following terms: to secure, preserve, and promote the health, safety, welfare, comfort, convenience, trade, commerce, and industry in the municipality and among the inhabitants thereof. Common examples of the use of the police power are milk inspection, dog leashing ordinances, zoning codes, building inspection, and traffic regulation.

Taxing and Appropriating Powers

The financial powers found in the Virginia charter include the power to tax, to appropriate, and to borrow.

The taxing power provides the local funds to support, along with State and Federal grants, the functions carried on by the locality. The scope of the taxing power is therefore a matter of central importance to a local government since a severely limited taxing power will drastically limit the scope of local government action. In this connection, the practice in Virginia from early days has been to confer extensive powers of taxation on municipalities. A large number of existing charters, for example, grant the taxing power in substantially the following language:

The city (town) of _______ may raise annually by taxes and assessments on property, persons, and other subjects of taxation, which are not prohibited by law, such sums of money as in the judgment of the council are necessary to pay the debts, defray the expenses, accomplish the purposes and perform the functions of the municipal corporation, in such manner as the municipal corporation deems necessary or expedient.

A study of this grant quickly shows that, unless banned by a specific law, such as existing laws which prohibit the levy of an income tax by a Virginia locality and deny to a locality the power to levy a business license tax on a radio or television station, the subjects of taxation, the amounts to be raised, and the purposes for which the funds are to be spent are determined locally.

The sweeping nature of this grant of the taxing power is indicated in a case heard by the Supreme Court of Appeals in 1950. In construing language granting
the taxing power, which was very similar to that quoted above, the Court said: 2

Clearly, this language was designed to confer upon the City the general power of taxation - that is, the power to levy and impose such taxes as the legislative body of the city may deem necessary for its governmental functions - except only as that power is limited by the Constitution and laws of this State and of the United States.

The grant of the taxing power cited above also includes the power to appropriate, that is to select those programs which the local government will support from tax revenues. Both grants therefore confer on the local governing body broad discretion in the exercise of its financial powers.

The Borrowing Power

The power to borrow on a long-term basis is also a significant financial power. While short-term borrowing occasionally is necessary, the important aspect of the borrowing power is the incurrence of long-term debt. Elaborate safeguards are thrown around the borrowing power both by the Virginia Constitution and by general law and many of the existing charters merely incorporate these provisions through the use of some such language as the following:

The city (town) of _______ may incur indebtedness by issuing its negotiable bonds and notes for the purposes and in the manner provided in the Constitution and general laws of this State. All bonds issued by the city (town) of _______ shall be in serial form, payable in annual installments the first of which shall be payable not more than one year from the date of issuance of such bonds; and no bonds shall be issued by the city (town) except by ordinance adopted by a majority of all members of the council and approved by the affirmative vote of a majority of the voters of the city (town) voting in the election.

The Power of Eminent Domain

Finally, the power of eminent domain, namely the power to take private property for a public purpose after due compensation, is a companion power to the powers to tax and to borrow. It is through the exercise of the power of eminent domain that a local government, for example, is able to obtain land on which to erect a city hall or a public school building through the judicial process in those instances when the locality cannot negotiate a mutually agreeable purchase price with the owner of the land. The power of eminent domain is often granted in language substantially as follows:

The city (town) of _______ is hereby empowered to acquire by condemnation or otherwise, property, real or personal, or any interest or estate therein, either within or without its corporate limits, for any of its proper purposes, and may sell, lease, manage, and control such property as its interests require, and in such manner as the council deems expedient.

In 1958 the General Assembly through the passage of the Uniform Charter Powers Act authorized powers to be incorporated in a charter by reference rather than by spelling them out in the act itself as had been done above. The Uniform Charter Powers Act in actuality is a compilation of language from existing charters and permits a broad grant of powers meeting every local need. Since 1958 many charters have taken advantage of the authority to incorporate by reference as was the case, for example, of the City of Emporia when it obtained a new charter from the General Assembly in 1968.

Judicial Attitudes

The role of the charter in Virginia municipal government is further enhanced when one views the litigation over Section 117 of the Virginia Constitution where provision is made for the granting of charters to cities and towns by the vote of at least two-thirds of the members of each house of the General Assembly. Two things can be said about that litigation: (1) the amount of litigation over the years since 1902 is much smaller than that found in other states of approximately the same population as Virginia, and (2) the attitude of the Virginia courts in general has been to recognize and approve municipal acts undertaken under the broad grants of discretionar y powers as set forth in summary form above.

A recent case provides an excellent summary of the views of the Supreme Court of Appeals relating to the authority of the General Assembly to grant special charter powers to municipalities. 3 In this instance the Court upheld a charter provision in direct conflict with general law. After reviewing a number of its past decisions, the Court stated that even though other sections of the Constitution contained prohibitions against special laws, nevertheless the charter, if granted according to the procedure provided in Section 117, would stand even if there was a direct conflict with general law. And it noted further that such a holding would not apply to counties since there was no provision for granting charters to counties. "Clearly," the Court said, "(Section) 117 gives to the legislature the power to enact by special act, laws for the organization and government of one city which differ from those enacted for another city, and which it might be powerless, in any event, to enact specifically for a county."

County Charters?

In view of the legislative and judicial practices with respect to municipal charters, why the confusion over Constitutional authorization for county charters? One argument might be that the city and county in Virginia are two entirely different types of local government and, since a county is not a municipal corporation, a charter, which heretofore in Virginia local government has been used only for cities and towns, would not be appropriate. One answer might be that Arlington and Fairfax counties, operating at present under the terms of separate acts of the General Assembly which no other counties have adopted, do in effect have charters which apply to them alone. A more effective answer, however, may be found in the results of an examination of the status of the city and the county in Virginia local government.

An exhaustive study of the Constitutional status of the Virginia city and county led to the following conclusion: 4

On the basis of this examination of the Constitution and Supreme Court opinions, it seems clear that the status of the Virginia county is not significantly different from that of the Virginia city and town so far as the legislative authority of the General Assembly to confer powers is concerned. The principal difference arises out of the method by which the General Assembly confers powers

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on counties and municipalities. In the case of counties, the grant must be made in the form of a general law. In the case of cities and towns, the General Assembly may proceed by means of a general law or through a special law granting a municipal charter, if that charter is enacted according to the procedure prescribed in the Constitution. But this is a difference in method and not one arising out of any basic distinction between a county or a city or town in Virginia constitutional law.

It would seem therefore that if county charters are desired, the single way to achieve that end so far as the present Virginia Constitution is concerned is to insert counties at the appropriate place in Section 117 so as to place county charters on the same basis as those of cities and towns. And the guess might be hazarded that the courts in such an event might in future litigation approach an interpretation of a county charter in the same manner as it has in the past in the case of cities and towns.

**THE CHARTER REVIEWED**

As was said in the beginning it is not at all clear why the role of the charter in Virginia local government has not been clearly understood. That powers to act, in the discretion of the local governing body, have been generously delegated by legislative grant is without question. One therefore finds some difficulty in understanding the proposal for the abandonment of the existing system for one which would confer "all powers" (except those specifically withdrawn by the General Assembly) on cities and counties having charters as a means of advancing "home rule" at the local level. It is doubtful that this approach would provide any greater degree of actual, not Constitutional, home rule than exists at the present time.

The difficulties of interpretation are accentuated because the Virginia system does not fit the traditional concept of local government home rule. The idea of "constitutional" home rule, that is a grant of local home rule in a state's constitution, was regarded by the reformers earlier in this century as the only means to save the localities from complete control by the legislature. There was ample evidence in many of our states to support the need for an area of decision-making beyond the power of the state legislature to control. As the student of municipal government has discovered long ago, however, constitutional home rule has suffered because of the constant litigation as to what areas of governmental action are statewide and therefore subject to state control and what is local and therefore reserved solely for local action.

Certainly a visitor from another state, and especially one with constitutional home rule, is likely to recoil with some horror at the seemingly defenseless status of Virginia municipalities. These local governments are completely dependent on the State legislature for their charters which can be granted, or not granted, in any form the General Assembly desires. Actually, as noted above, the Virginia municipalities over many years past have been granted an extraordinary list of broad powers and therefore may be said to possess home rule in the actual meaning of that word.

To say that Virginia localities, the cities and towns from early days, and the counties increasingly so in recent years, have enjoyed actual home rule in that they are vested with a high degree of discretionary action is not to say, however, that all is well with local government and especially the core cities in the metropolitan areas. Quite the contrary is true, of course, with respect to some of these cities. Whatever the degree of local discretion may be, the fact remains, for example, that a broad taxing power may be of no avail when confronted with an expanding population and needs and a declining tax base. And the same can be said for the other powers mentioned above. In any event, approaches to the solution, or perhaps more correctly the amelioration, of these problems can be devised without a drastic change in a system which, on the whole, has worked well in Virginia in providing the power to act to municipalities, both large and small and with sharply contrasting environments, and which can be, if desired, extended to the Virginia county by a simple amendment to the State Constitution.
LOCAL GOVERNMENT AND THE 1971 VIRGINIA CONSTITUTION

By DONALD C. DIXON

Most of the substantive provisions relating to Virginia local government in the revised fundamental law of the State are contained in Article VII of the 1971 Constitution. Included in that Article are definitions of types of local government, restrictions limiting certain actions by the localities, and options available to the General Assembly and to the localities themselves in matters relating to local governmental organization, powers, changes of boundaries, and debt incurrence. This examination briefly compares the constitutional status of Virginia local government as set forth in the 1971 and 1902 Constitutions and assesses the significance of the 1971 provisions. What is intended here is a general overview, confined almost exclusively to Article VII but with a recognition of the importance of other Articles, especially the one devoted to taxation and finance.

TYPES OF LOCAL GOVERNMENT

Section 1 of Article VII defines “county” as any existing county or any such unit created. This definition is particularly interesting because it uses the term county to define county. This oldest of Virginia local governmental units, evolving from eight shires created in 1634, has never been defined clearly either in the various Virginia constitutions or in statutory law.

The term “city” is defined as an independent incorporated community with a population of at least 5,000 and which has become a city as provided by law. Although the minimum population requirement remains the same as in the 1902 Constitution, the addition of the word “independent” gives constitutional sanction for the first time to the Statewide practice of city-county separation in Virginia. (Ironically, the General Assembly in 1971 charged a legislative study commission, the Commission on City-County Relations, with considering the modification or abandonment of city-county separation in the same year that the constitutional definition sanctioning the practice took effect.)

Section 1 defines “town” as any existing town or any incorporated community within one or more counties that has a population of 1,000 or more and has become a town as required by law. This minimum population figure represents a significant change from the 1902 Constitution which stated only that incorporated communities with a population of less than 5,000 would be known as towns. The 1902 Constitution thus left to the legislature the power to determine the minimum population required for a town and for many years this minimum figure was set at 300. The General Assembly raised this minimum to 1,000 in 1964, however, in order to reduce governmental fragmentation, and the 1971 Constitution uses that same minimum population for towns.

Another important feature of Section 1 constitutionally introduces “regional government” as a unit of general government organized as provided by law. Although serious question of the
constitutionality of a 1968 general law permitting localities to form regional governments never arose, this definition lays to rest any doubts whatever that regional governments are constitutional.4 Unthinkable when the 1902 Constitution was framed and adopted, the concept of a layer of general government between the cities, counties, and towns and the State government has achieved formal constitutional status. Within the limitations of other sections of the 1971 Constitution, the legislature is thus free to experiment with various types of regional governments whether they be in the form of the currently authorized service district or of some other unit that may be devised in the future.

Finally, as a prelude to other provisions of the local government article, the first section defines “general law” to be a law that applies alike to all counties, cities, towns, or regional governments or to a reasonable classification thereof. The inclusion of “reasonable classification” merely incorporates one of the major tests developed over the years by the Virginia Supreme Court in determining the validity of general laws that apply to units in a class—for example, counties having a stipulated population density or cities falling above a specified minimum population. A “special act” is a law applicable to a specific county, city, town, or regional government and for enactment requires an affirmative vote of two-thirds of the members elected to each house of the General Assembly.

ORGANIZATION AND POWERS

The second section of the local government article provides the fundamental constitutional guidelines to the General Assembly for its actions relating to local governmental organization and powers.5 The Assembly is required to provide by general law for the organization, government, powers, change of boundaries, consolidation, and dissolution of counties, cities, towns, and regional governments. Giving the legislature flexibility, this section authorizes the Assembly to provide by general law for optional plans of government for counties, cities, or towns subject to a favorable local referendum. Receiving additional latitude, the Assembly may provide by special act for the organization, government, and powers of a particular county, city, town, or regional government, including such powers of legislation, taxation, and assessment as the legislature may determine. Finally, as a protection for local governments, the section stipulates that any law providing for the organization of a regional government require the approval of a majority of voters in each county and city, or part thereof, which is included in a regional government.

This part of Article VII continues the historically established principle that local governments are creatures of the State and acknowledges the authority of the State to create local governments, to grant organizational arrangements and powers, and to abolish them.6 Moreover, it follows a trend of relaxation by constitutional amendment of certain rigid provisions in the 1902 Constitution which shackled county government with an inflexible structure and made mandatory certain requirements for municipal organization that the cities found burdensome. Authorization in Section 2 for a special act for any county also merits attention, for this new provision enhances the legislature’s ability to respond to varying local situations. Under the 1902 Constitution, the General Assembly had to proceed by general law or general laws of special application in providing for county government, while it could enact both general laws and special acts (charters) for municipalities.7 The 1971 Constitution abolishes that distinction and admits counties to full partnership with the cities in terms of methods of receiving organizational arrangements and powers under Section 2 and other provisions. The Constitution thus affords the Assembly increased latitude in providing for local organization and powers and in tailoring them to diverse local needs that change over time. The very inclusion of provisions for regional governments dramatically recognizes evolving needs.

Another section requires the election in each county and city of officials that have deep roots in Virginia governmental history and long ago achieved status as constitutional officers: a treasurer, sheriff, Commonwealth’s attorney, clerk, and commissioner of the revenue. Lending flexibility, the provision requires that the duties and compensation of these officers be prescribed by general law or special act. Another indication of the adaptability of the 1971 Constitution is the authority granted to the Assembly to provide for county or city officers or methods of their selection, including permission not only for intergovernmental sharing of the required officers, but also for abolishing those constitutional officers. The Assembly can achieve this end either by a general law effective in a locality when approved in a local referendum or by a special act requested by any county or city after a favorable local referendum. In effect, this section, along with Section 2, expands and extends to cities a provision of the amended 1902 Constitution permitting the Assembly to offer to counties forms of organization and government different from the traditional constitutional form.8

6. The Commission on Constitutional Revision recommended that the judicial rule of strict construction of local powers be reversed constitutionally and that cities and certain counties be authorized to exercise any powers and functions not denied by the Constitution, their charters, or legislative enactments. Satisfied with past legislative generosity and fearful of a gradual constriction of local powers if the Constitution included such a provision, many localities opposed the recommendation, which the legislature did not like either. The Constitution leaves undisturbed the traditional relationship between the State and the localities.


7. See Con., 1902, Sec. 65 and Secs. 110 and 117, as amended.

of local governing bodies. Section 5 of the local government article does require that the governing body of each county, city, or town be elected by the qualified voters, but departs from past constitutional practices by not requiring that members of any local governing bodies be elected by district. If districts are used, they must be composed of contiguous and compact territory and be constituted to give, as nearly as practicable, representation in proportion to the population of the district. This wording is highly significant; for it permits, for example, multimember districts for local governing bodies. The number and boundaries of the election districts may be changed, and reapportionment of representation on the governing body must take place every ten years. The requirement of representation in proportion to population follows a decision of the U.S. Supreme Court that applied the one-man-one vote rule to a local governing body having general governmental powers over the territory it serves.

Other sections of the local government article impose significant restrictions and provide protections that warrant only a brief reference here. With limited exceptions, no person can hold simultaneously more than one of the constitutional offices, and members of a local governing body are prohibited from holding an office filled by that body. A specific procedure is required in the enactment of ordinances relating to any ordinance or resolution must be recorded. Prior consent by a municipality must be obtained for the use of corporate property by public utilities and other enterprises. Certain restrictions are imposed upon the sale and lease of corporate property.

The 1971 Constitution continues restrictions upon the incurrence of long-term municipal debt by limiting the amount to not more than 18 percent of the assessed value of real estate subject to municipal taxation. Under the 1902 Constitution certain classes of debt were not considered in calculating this limitation. The 1971 Constitution further liberalizes the limitation by excepting revenue bonds repayable over a period of more than one year, by not requiring such bonds to be approved in a local election, and by exempting municipal contract obligations to support regional projects authorized by interstate compact or by the legislature through a general or special act.

No county or regional government or districts thereof can contract debt without authority by general law from the legislature. Unless such debt consists of certain types of revenue and refunding bonds and bonds issued for county school purposes and sold to a State agency, the legislature must require that the voters of the region, county, or district approve the incurrence of debt. Although restrictions on the incurrence of county and district debt now include regional governments, the more liberal provisions for municipal debt apply to county and regional governments. Moreover, under a new provision, a county may elect to be treated as a city for issuing bonds if the county voters approve.

ANNEXATION AND CONSOLIDATION

The 1971 Constitution requires the legislature to provide by general law for a change of boundaries, consolidation, and dissolution of counties, cities, towns, and regional governments and expressly prohibits special acts for the extension or contraction of boundaries of any county, city, or town. A requirement of the 1902 Constitution that general laws be enacted for the extension and contraction of the limits of cities and towns is expanded and applied to counties and regional governments.


That Virginia constitutional and statutory provisions for annexation are subject to the Federal Voting Rights Act of 1965 offers an excellent example of the operation of the State Constitution in the American federal system. For so long as Virginia remains under the purview of that Act, municipal annexations must receive approval from the United States Attorney General or the Federal District Court of the District of Columbia that neither the purpose nor the effect of the annexation was racially discriminatory.

The provision for consolidation departs considerably from the 1902 Constitution, which provided only for the consolidation of counties and then only by a favorable referendum in each affected county. Although no constitutional requirement for local referendums on consolidation now exists, the Code requires approval in local referendum in each involved locality, a requirement that neither the legislature nor the localities are likely to change in the foreseeable future.

As an exception to a requirement of uniformity of taxation upon the same class of subjects within the territorial unit levying the tax, the 1971 Constitution continues legislative authority to permit differential real estate tax rates in municipalities that have annexed territory. The Constitution substantially revises this exception and, in order to foster consolidations, extends it to include newly created and consolidated governments.

The Constitution goes far beyond the 1902 document in authorizing intergovernmental cooperation. The legislature by general law or special act may empower any local unit of government to exercise powers, perform functions, and participate in the financing of these activities with the State or any other unit of government. Further, the Assembly may provide for the transfer to or the sharing with a


11. Con., 1971, Art. VII, Secs. 6, 7, 8, and 9. These sections were adapted and continued from the 1902 Constitution.


regional government of any services, functions, and related facilities of any unit of government within the boundaries of a regional government. This authority to provide for intergovernmental cooperation lends great freedom to the Assembly in fashioning such sharing to the special needs of particular localities or regions.

TOWARD A MORE FLEXIBLE FRAMEWORK

A theme of flexibility thus recurs continually even in this brief review of Article VII of the 1971 Constitution. Arguments can be advanced emphasizing specific restraints and perhaps unnecessary constraints implicit in many provisions. Upon what basis, then, does the case for flexibility set forth here lie? First, the restrictions certainly can be viewed as reasonable. Another component of flexibility consists of the constitutional inclusion of ingrained political practices, such as the traditional population minimum of 5,000 for cities and the continuation of the constitutional officers, but in a manner authorizing those practices to be altered without constitutional amendment. Moreover, through several methods the Constitution directs and permits the legislature to confer organizational arrangements and powers upon local and regional governments in order to respond to present and future needs. The Constitution thus possesses adaptability through continuing some traditions, but permitting evolution within its own structure.

A mere glance at the contrasts between the 1971 Constitution and several of its predecessors buttresses the case for flexibility. The 1971 Constitution does not contain, for example, a fragile and ironic triumph such as securing in the 1930 Constitution only a fleeting constitutional sanctuary for the ailing old county court system in a period of rapid political change. Neither does it err as did the 1870 Constitution in imposing an alien, inefficient governmental arrangement, the county townships that were quickly abolished by amendment. Nor is it laden with superfluous detail as was the 1902 Constitution or does it place manacles as did that document upon county and city government that took nearly a quarter of a century to remove.

In historical perspective the 1971 Constitution offers unprecedented flexibility in its provisions for local government and moves closer toward the classic concept of a state constitution as a skeletal instrument of only basic restraints. Its intended resilience, in fact, promises far greater durability than its much-admired early predecessors. Demonstrating amply that in the long run constitutions are only experimental, the early forerunners also illustrate that the Virginia constitutions of simplicity did not guarantee elasticity; for the few details on local government represented fundamental political victories frozen in those documents. All constitutions represent political compromises, and although the 1971 document is no exception, it presents a compromise more realistic than any of its ancestors. It neither freezes moribund tradition nor breaks sharply with the past. It neither precludes nor forces change, but permits substantial evolution. In brief, at least in terms of local government, the Virginia Constitution of 1971 acknowledges deep traditions and present political forces, but wisely blends them with foresight for future development within its own framework. That is no small achievement in fashioning a state constitution.

Note: With this issue Weldon Cooper retires as Editor of the News Letter. The third Editor, the first Editor having been Wilson Gee from 1925 to 1957, will be Clifton McCleskey who takes over with the first issue of Volume 50 on September 15, 1973. Mr. McCleskey will also hold the positions of Professor of Government and Foreign Affairs and Director of the Institute of Government. -The Editor
VIRGINIA LOCAL GOVERNMENT, 1776-1976
By WELDON COOPER

The author is Robert Kent Gooch Professor of Government at the University of Virginia.

This is the first in a series of six articles commemorating the Bicentennial of the American Revolution.

Viewed against the backdrop of local government in Virginia as it was in 1776, one finds in 1976 much that is familiar as well as much that is new. As far as the general-purpose units of local government are concerned—namely the county, city, and town—at least one of each was already present in the year of independence. The county, which first appeared on the scene in 1634 when eight such units were established by the Assembly, was by far the most visible, covering as it did the inhabited parts of the new state. In contrast, only one city and four towns were in existence in 1776. Williamsburg, the capital city, was formally constituted “a City incorporate” in a charter granted by the lieutenant governor of the colony on July 28, 1722. The first town, Richmond, had been incorporated in 1742; it was to attain city status in 1782. The other three incorporated towns were Dumfries (1749), Smithfield (1752), and Leesburg (1758). The remaining municipality was the Borough of Norfolk, which attained corporate status in a charter dated September 15, 1736. (Norfolk continued as a borough until 1845, when that title disappeared with the change in name to the City of Norfolk.) Thus, the foundations on which Virginia local government rest in 1976 had been established in rudimentary form by the time of independence.

If there were similarities, however, the intervening two centuries also have brought enormous changes. Of the many developments that might be mentioned, one would certainly have to include (1) the emergence of a system of city-county separation for which the principal characteristics had been firmly established by the end of the first century after independence; (2) the dominance of the county in the early years of independence and well into the nineteenth century; (3) the rise of the municipality to at least a coequal position with the county by the end of the nineteenth century; (4) the appearance of the urban county in the second and third quarters of this century; and (5) the profound influence of the emergence of metropolitan areas, one result of which was the arrival in 1969 of the newest member of the local government fraternity, the planning district.

CITY-COUNTY SEPARATION

Perhaps the most important, and certainly the most intriguing, development during the years under review was the appearance over time of a statewide system of city-county separation. Under this system, those municipalities dubbed as cities were constituted independent units of local government, as separate and apart from the adjacent county or counties as one county was from another. Barely discernible in 1776, this pattern had clearly become fixed in the local government system by the end of Reconstruction. Moreover, the separation of city and county, while recognized in the statutes, by the courts, and in practice, did not have constitutional sanction until the 1971 Virginia Constitution defined a city for the first time as “an independent incorporated community.” In contrast, those municipalities known as towns remained within the county as a second layer of government in that unit, a practice commonly followed for almost all municipalities in other states. To compound the confusion, one can still find in Virginia units of local government carrying such titles as County of James City, County of Charles City, and Town of Gate City!

Chester W. Bain in his “A Body Incorporate”: The Evolution of City-County Separation in Virginia (Charlottesville: University Press of Virginia, 1967) presents an authoritative account of the slow but steady emergence after 1776 of a system of local government under which cities and counties occupied a coequal status as “primary political subdivisions” of the Commonwealth. Bain finds that nowhere in the colonial charters of Williamsburg and Norfolk is there any indication of an intention to confer on them a position of independence in relation to the counties in which they were located. Moreover, Norfolk (1845), Petersburg (1850), and Alexandria and Lynchburg (1852) received in their city charters no specific grant of independence. Nevertheless, there were individual acts which, when viewed collectively, marked the beginning of the Virginia city of today. In the 1776 Constitution, for example, Williamsburg and Norfolk were given separate representation in the House of Delegates, a provision which was duplicated for some of the newer cities in succeeding constitutions.

As incorporated towns began to appear in the early decades of the nineteenth century, Bain finds many examples of a gradual growth of separation even before the formal title of city was assigned by the General Assembly. Developments after the adoption of the 1851 Virginia Constitution speeded this process with
of large rivers made possible water-borne commerce far inland and thus encouraged a wide dispersion instead of a concentration of population. Complementing this pattern of growth was the early appearance of tobacco as the premier “money crop” on which the plantation system was based. The growth of self-sufficiency because of the ease with which the tobacco trade was conducted mitigated against the development of trade centers, since both the planters and the English merchants with whom they traded did not need such centers. The county with its larger geographic area was therefore much more suited to the needs of the time than was the municipality.

Within each county the center of local government power early in the colonial period came to be vested in the county court, which exercised all the powers of government at the local level without regard to whether those powers were legislative, executive, or judicial in nature. Indeed, the county court was so strongly entrenched as an institution of local government that it was carried over intact into the new era in 1776 and sanctioned only by implication in the constitution of that year. Efforts to reduce the power of the county court were undertaken by reformers in the Constitutional Convention of 1829-30; and while these efforts were unavailing, developments between that convention and the one held in 1850-51 began the downfall of the county court. The 1851 Constitution reflected such a sentiment in a number of urban areas. The county court was made elective by popular vote. Important in this loss of status was the rising influence of the circuit judges who had exercised in prior years. The town, then, while retaining many of the services that the county had exercised in prior years, had become a city. The town, then, while retaining many of the services that the county had exercised in prior years, had become a city. The town, then, while retaining many of the services that the county had exercised in prior years, had become a city.

Since the incorporation of a town merely adds a second layer of local government to that already existing in the county, the resulting effect is a minimum of disruption. The principal reason for such an action is to furnish some services either not available from the county or being provided at a lesser level than that desired by town residents. In the instance of city incorporation, just the opposite is the case. Since any portion of Virginia’s territory not in a city is perforce located in a county, the immediate result of city incorporation is the division of a county into two parts where before there had been only one. Thus, the appearance of a new city, except in the instance of city-county consolidation, means an increase in the number of primary political subdivisions in Virginia. (In other states such an act would be equivalent to the creation of a new county.)

In contrast to the counties, which have declined in number since 1925 from 100 to 95, and the towns, which have stabilized at approximately 190, the number of cities has almost doubled, mounting from 22 in 1925 to 41 in 1976. Moreover, the bulk of the growth
has occurred in the modern period, with about three-fifths of the cities coming into existence since 1900. The names of only four cities have disappeared from the official roster—three as a result of city-county consolidation and one by virtue of a city-county merger under a different name. The net result is that the number of primary political subdivisions (cities and counties) has increased from 122 in 1925 to 136 in 1976. Virginia thus stands alone among the fifty states in its policy of continuing to permit the creation of additional primary political subdivisions.

THE URBAN COUNTY

One clear result of municipal growth, and especially the increase in the number of cities, was the eclipse of the county as the dominant unit of local government. Once almost the exclusive scene of local government activity, the county languished as the cities and the larger towns began to assume the newer and expanded functions of local government, leaving to the county the limited number of state functions for which, in the traditional language, the county served as an "administrative district of the state." The city, in addition to its expanding role, enjoyed another advantage; namely, a system of annexation, first by the legislature and after 1904 by the courts, which assumed the city to be a growing entity in both area and function. The county, in contrast, was envisioned as a more static unit, to some extent in area and to a much greater extent in terms of functions. (The definitive work here is Chester W. Bain, Annexation in Virginia: The Use of the Judicial Process for Readjusting City-County Boundaries [Charlottesville: University Press of Virginia, 1966].) The classic statement of the difference between the Virginia city and county is that of Justice Abraham P. Staples of the Virginia Supreme Court in his opinion in the case of Norfolk County v. City of Portsmouth, 186 Va. 1032 (1947), where he held that under the constitution and statutes of Virginia there had been established "the policy of placing urban areas under city government and keeping rural areas under county government." Under this doctrine, logic demanded that when those areas of a county adjacent to a city became urbanized, they should be annexed by the city since the city was the one particularly equipped to provide the service needs of those areas.

Ironically, this expression of the urban-rural distinction and its enshrinement in Virginia jurisprudence was being undermined at the very time it was being proclaimed. The threat to the purity of the city-county distinction was the "urban county" which began to appear in the metropolitan areas of the state and which did not always follow the pattern of continuous population expansion beyond the boundaries of the city. Instead, much of the growth occurred unevenly in different parts of the county remote from the city. These urban counties, Arlington perhaps being the first example, began by necessity to provide services of a local government nature and thus to take on characteristics similar to those of a city. No longer, therefore, could overwhelming proof be established in annexation cases that the city could meet the service needs of a county area sought to be annexed in a manner that the county could not. Notable among these urban counties that followed Arlington in appearance were Fairfax and Prince William in Northern Virginia and Henrico and Chesterfield in the Richmond area.

The growth in the number of local government services provided by the urban counties thus tended to bring into question the long-held distinction in law between a county and a city. Under the 1902 Constitution, this distinction was maintained with separate articles devoted to county and municipal government. Events from the 1940s on, however, made it increasingly difficult in practice to distinguish between a city and a county; anything a city could do a county could also do provided the necessary legislative authorization was obtained. Therefore, for all practical purposes the 1971 Constitution, which dealt with local government in a single article, made the county the coequal of the city in Virginia local government law.

THE METROPOLITAN AREAS

The emergence of the urban county in Virginia was a part of a nationwide movement leading to urban concentrations that came to be known as metropolitan areas. The most dramatic example of such a metropolitan concentration in the United States, termed by Jean Gottmann the "Megalopolis," is the area stretching from Boston and southern New Hampshire through Washington, D.C. and Richmond to its southern anchor in Tidewater Virginia. The portion of this concentration in Virginia, known as the "Urban Corridor," constitutes only a small part of the total area of the state, but it is the location of most of the population growth that is now occurring. Of the eight metropolitan areas recognized by the U.S. Bureau of the Census lying in whole or in part in Virginia, only the Roanoke, Lynchburg, and the Virginia portion of the Bristol, Virginia-Tennessee areas are outside the Urban Corridor. And just as the classical theory of city-county separation began to break down in the case of the urban county, so did that theory become inapplicable to the metropolitan areas. Annexation was no longer the solution, either because one city could not annex another city or because an urban county more and more could demonstrate to an annexation court its ability to provide local government services.

By the mid-60s the problems created by these new developments could no longer be ignored. The 1966 General Assembly, on the recommendation of Governor Mills E. Godwin, Jr., created the Metropolitan Areas Study Commission (known as the Hahn Commission after its chairman, T. Marshall Hahn, Jr.) with instructions to propose solutions for legislative consideration. The report of that commission (Metropolitan Virginia: A Program for Action [Richmond: Division of State Planning and Community Affairs, 1967]) had as its central recommendation with regard to governmental structure the establishment of (1) regional planning districts and (2) a unified metropolitan government called a "service district." In each instance local participation was voluntary, by action of the local governing board in the case of planning districts and by a popular referendum in each of the participating local government units for the creation of service districts. In the eight years since the service district was authorized, no serious attempt has been made to establish such a unit in any part of Virginia. On the other hand, there are presently twenty-two planning districts, each with a commission and a staff, covering the entire state.

What about this new entry, the planning district? While the jury is still out and probably will remain out for some time, some preliminary observations can be made. For one thing, the planning district has been made an integral part of the review procedure in the federal-state grant process. In addition, the regional composition of the membership of the planning district commission (which includes officials and citizens of the
cities, counties, and larger towns embracing the area covered by the planning district) has compelled a view of local government planning and related problems on a broader basis than the interests of a particular local government alone. As might have been expected, however, the level of performance among the districts has been uneven. In some instances, it might have been better for the executive director of the district to have had a background in local government management instead of planning. In other instances, the impossibility of drawing boundaries in such a way as to provide in all cases a district with a clear community of interest has brought together in one group members with the most disparate views and interests. In still other instances, the difficulties arising from the fact that the planning district is a regional agency located somewhere between the traditional local governments and the state has caused a tug-of-war in which the planning district itself gets caught in the crossfire. Another obstacle has arisen especially in the less populated and predominantly rural planning districts, where the state has had to provide an increasing proportion of the costs because of the sheer necessity of providing enough resources to assemble a minimum staff. This has had the effect in some districts of developing a state-oriented staff for the simple reason that the state is the chief provider.

The planning district is now approaching its seventh birthday, and it is probably safe to assume that it is here to stay. The original scheme of things as envisioned by the Hahn Commission was for the planning district over time to assume operating responsibilities which in the more urban areas might take on the characteristics of an areawide government. Despite the general lack of movement along these lines, the opportunity is now available for two or more local governments in a planning district jointly to request that district to assume certain operational activities without the necessity in each instance of setting up a special agency. In a scattering of instances, planning districts have assumed certain small operating functions growing out of the desires of two or more of the cities, counties, and towns composing the district. Whether that opportunity will be used to full advantage is a question to which the answer is not yet clear.

NO-GROWTH AND THE FUTURE

The attempt here to suggest only the major changes in Virginia local government over the bicentennial period has of necessity led to the omission of other significant developments. Among those that might have been included is the gradual exclusion of the judiciary from participation in local legislative and administrative matters. It was not until the 1971 Constitution, for example, that the circuit judge was excluded for the first seven years is encouraging.

Perhaps of greatest importance for the future is the fact that Virginia local government by and large is in a no-growth phase of its history as far as acquiring new functions of government are concerned. A glance at a local government budget quickly reveals that the localities are concerned with providing such traditional services as public education, police protection, and fire protection. Some of the earlier local functions, public health for example, have come largely under state control and guidance. And the newer functions, such as the control of air and water pollution, have not even been seriously considered for local administration. This is not to say that a zero growth policy in terms of expenditures is here; a glance at any local budget would indicate a trend to the contrary. Yet it seems that growth in the functions of local government is largely if not completely at an end. What this development portends at the beginning of the third century of independence will increasingly be an important part of any consideration of the future role of local government in Virginia.
TOWN-COUNTY RELATIONS IN VIRGINIA
By Mary Jo Fields and Sandra H. Wiley

The authors are both research assistants on the staff of the Institute of Government.

Town government in Virginia is surely one of the most neglected areas of research in the Commonwealth. At first glance, the towns' population totals seem to indicate that this neglect is warranted, for the 188 towns in Virginia account for only about 7 percent of the total state population and 11 percent of the total population residing in the counties. However, towns do account for 58 percent of the state's 324 units of local general purpose government (counties, cities, and towns), and only twenty-one of the state's ninety-five counties have no incorporated towns within their boundaries.

Furthermore, the significance of towns in Virginia cannot be judged solely on the basis of statistics. Many residents are justifiably proud of the lifestyle associated with their towns and of the long and historic tradition of their town governments (seven of Virginia's towns were incorporated before 1800). In addition, although many towns in Virginia are quite small in terms of population, they nonetheless possess a wide array of legal powers and responsibilities that define, to a degree, their relationship with the counties in which they are located. An analysis of the ways in which counties and towns work together or at cross-purposes can add to the understanding of Virginia local government as well as provide insights into intergovernmental relations. As a step toward further encouraging the study of town governments in Virginia, this newsletter focuses on town-county relations, long overshadowed by the more controversial patterns of city-county relations.

THE LEGAL FRAMEWORK

The traditional distinction made in the United States between counties and municipal corporations (towns and cities) has been that counties are established as administrative and territorial subdivisions of the state, while municipal corporations are established by an area's residents for the purpose of providing local services that are neither needed nor wanted by the surrounding area. The Commonwealth of Virginia historically recognized this distinction by giving cities and towns broader powers to offer local services such as garbage collection, street lighting, and fire protection. However, as the twentieth century's rapidly expanding population began to spill over the boundaries of counties and towns, many once-rural counties found themselves with suburban concentrations of population needing municipal-type local services as well. To help meet this demand, the Commonwealth has gradually given counties more discretion and powers regarding county management and service provision. In 1966, the General Assembly granted to counties many of the powers that had already granted to cities and towns. Similarly, the 1971 Constitution blurred the traditional distinction by dealing with counties, cities, and towns in a single local government article. The 1971 Constitution also for the first time gave constitutional recognition to Virginia's cities as independent incorporated communities not a part of the adjacent county. It goes on then to define towns as "any existing town or an incorporated community within one or more counties which has become a town as provided by law" (Article VI, Section I), thus explicitly adopting the principle that a town, unlike a city, legally remains a part of the county in which it is located, its residents subject to county taxes and entitled to county services. Towns may become cities if they have a minimum population of 5,000 and meet other conditions set by state law; currently, sixteen Virginia towns meet the population standard.

Towns are distributed fairly evenly throughout the counties in most parts of the state, except in the Northern Neck and Richmond suburban areas, where few communities are incorporated. While most


2The moratorium on the transition of towns to cities, due to expire July 1, 1980, was part of a broader temporary moratorium on city-initiated annexations enacted by the General Assembly in the early 1970s to give that body time to find a solution to some critical problems in city-county relations. In 1979 the General Assembly enacted a package of legislation that revised the annexation statutes, some of the formulas determining state aid to localities, and the provisions for towns becoming cities. The conditions under which towns can become cities, too numerous to explain here, are set forth in Virginia code, secs. 15.1-977.23 and 15.1-982.1 through 15.1-1009.

The Institute of Government is pleased to announce the following new publication:

Zoning and Subdivision Law in Virginia: A Handbook
by Stephen P. Robin

This volume presents an overview of the legal framework of land use regulation and control in Virginia through a discussion of twenty different subjects. Copies of the handbook are available at a price of $3 each (with a 20 percent discount for orders of five or more copies) from the Institute of Government, 207 Minor Hall, University of Virginia, Charlottesville 22903. Please make all checks payable to the University of Virginia.
Arlington and Henrico counties have been given greater power for their own roads, except for interstate and primary highways, whereas roads in all but two counties, as well as in the small towns, are part of the state's road and highway system. In keeping with their general lack of responsibility for roads, counties also have only limited, specified powers of traffic regulation.3

In recognition of the growing interdependence of local governments and the increasing potential for duplication of effort, the state has encouraged interlocal cooperation through a broad grant of authority allowing two or more jurisdictions to agree to exercise jointly any power they can exercise alone. In addition, the General Assembly has enacted numerous statutes authorizing interlocal cooperation in specific functional areas. Localities also may enter into a number of interlocal agreements, such as mutual aid assistance pacts and service contracts. Thus, a legal framework exists for towns and counties to work closely together to deal with common problems.

SOURCES OF FRICTION

As this overview makes clear, the distinctions between the respective roles of the county and the town are becoming increasingly blurred; the 188 towns and 95 counties in the Commonwealth today possess similar legal powers in many areas of their day-to-day operations. Even so, they are still quite diverse in economics, geography, population, and traditions. Not surprisingly, then, counties and towns have chosen to work out their relationships in a variety of ways and on the basis of a number of factors other than just the legal powers encouraging cooperation. In an attempt to find out more about their relationships, personal and telephone interviews were conducted with numerous county and town officials. Though not designed to yield quantifiable data, these interviews make clear that a wide variety of forces comes into play in town-county relations.

One such set of forces consists of the way in which counties and towns perceive themselves and each other. Some towns, as a matter of local civic pride, want to handle as many town affairs as possible without county involvement or interference. This attitude seems particularly apparent in recreation. Counties tend to support consolidation of such services under their aegis to avoid duplication; towns tend to resist such a move, in part because they think that their own programs are better than those of the counties.

Behind the concern of some towns to keep the county government at arm's length is a firmly held view that historically they have been treated as stepchildren by the county. Whether correct or not, this perception almost guarantees that where it prevails, any interaction or cooperation with the county

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\textsuperscript{3}Arlington and Henrico counties have been given greater power here, since they are responsible for the roads within their boundaries. 

counties have from one to three towns within their boundaries, some counties have as many as six or seven—and Accomack has fourteen. The vast majority of Virginia's towns are small; 104 of them have under 1,000 residents. Even so, the towns range in size from Duffield in Scott County, which has a population of 63, all the way to Blacksburg, in Montgomery County, which has a population of 27,693. The size of the town in proportion to the total county population also varies widely. In Montgomery County, 67 percent of the residents live within the county's two incorporated towns, while only 0.5 percent of Albemarle County's population resides in Scottsville, the county's only town.

Town residents also have some other responsibilities. In Virginia's annexation laws, town residents have the right to petition the circuit court for the purpose of annexing county property into the town's corporate limits. In addition, county residents in adjacent areas can petition the court directly for annexation into a town. Although areas annexed by a town remain a part of the county, town annexation, especially if it affects contiguous areas, may still be controversial, particularly if the town meets or is close to the other county's legal standards for becoming a city. Also, the county may lose some revenue from the annexed area because some town levies pre-empt county ones. Thus, town annexations may affect county collections from the business, professional, and occupational license tax; the utility license tax; the utility consumer tax; the motor vehicle license tax; and the county 1 percent retail sales tax. However, the property tax revenues of a county are not reduced by annexation; any town levies on property are added on to existing county ones. A recurring issue in town-county relations is whether or not town residents receive a fair share of county services in return for the taxes paid by town residents.

ROLES OF THE COUNTY AND TOWN

The roles of the county and the town are defined both by their traditional legal status and by changing demographics. In its role as a subdivision of the state, the county still retains primary responsibility for election administration and has specified duties in connection with the state court system as well. Also counties, unlike towns, must have elected constitutional officers, whose duties are considered partly state and partly local in nature. (The state statutes do allow two of the county's constitutional officers—the commissioner of revenue and the treasurer—to be appointed to similar positions by the town government.)

Some local functions that are considered to be of statewide importance also have been traditionally within the county's domain. In education, for instance, only four towns in the state are separate school divisions, while the remainder of the towns are included in county divisions. Similarly, towns in practice have no responsibility for the provision of public health and welfare services, which are provided by the counties under the regulation of the state and federal governments.

While the county has retained the major responsibility for these functions, the growth of suburban areas has caused the county also to enter into the delivery of municipal-type services once considered the exclusive purview of the towns. For example, towns and counties now have similar grants of authority to create many public works, including water, sewer, electrical, gas, and other utility systems; to provide for garbage collection; to regulate solid waste disposal. They also have similar powers in many other areas of activity, including libraries, recreation, and planning and zoning.

Planning and zoning, particularly, reflect a major expansion of the county's role through both mandatory and permissive legislation. The state now requires every locality to appoint a planning commission, to develop a comprehensive plan, and to enact ordinances regulating subdivisions. In addition, counties as well as towns are finding zoning to be a useful tool in the regulation of growth and land use. The state has been fairly firm in assigning to towns the power to plan and zone within their corporate boundaries, while limiting the county's jurisdiction to unincorporated areas only. This general rule holds true for zoning purposes and, except in three counties, for subdivision regulations as well.

However, the county's comprehensive plan, under some conditions, may include town territory, although the plans have no legal status therein unless approved by the town council. Likewise, the town's plan may be extended to adjacent county areas under similar conditions and with the approval of the county board of supervisors.

Counties have even entered an area of public service perhaps most closely associated with municipal government—the protection of property. Both counties and towns may establish their own fire departments; alternatively, they may appropriate funds to volunteer companies for equipment and physical facilities. (Volunteer squads also generally provide emergency rescue services and are supported by contributions from the county or the town, or both.) For many years, however, county fire marshals have been involved in law enforcement, the former through the operation of a police department and the latter through the operation of the sheriff's department, with only a few counties authorized to establish a police department. However, effective July 1, 1980, the authority to establish a police department will be extended to all counties in the state. The county sheriff's department (or police department) has the power within town limits to enforce state criminal law and county ordinances, but not town ordinances. Towns have no similar power and have no legal effect beyond corporate limits. Effective July 1, 1980, however, any locality will have police powers over property it owns that is located outside its boundaries (e.g., reservoirs and sanitary landfills).

One clear and continuing distinction between the functions of towns and of counties involves the construction and maintenance of streets and highways. All towns over 3,500 population are responsible for their own roads, except for interstate and primary highways, whereas roads in all but two counties, as well as in the small towns, are part of the state's road and highway system. In keeping with their general lack of responsibility for roads, counties also have only limited, specified powers of traffic regulation.

In recognition of the growing interdependence of local governments and the increasing potential for duplication of effort, the state has encouraged interlocal cooperation through a broad grant of authority allowing two or more jurisdictions to agree to exercise jointly any power they can exercise alone. In addition, the General Assembly has enacted numerous statutes authorizing interlocal cooperation in specific functional areas. Localities also may enter into a number of interlocal agreements, such as mutual aid assistance pacts and service contracts. Thus, a legal framework exists for towns and counties to work closely together to deal with common problems.
will be regarded with suspicion and hostility. But the past colors counties' perceptions of towns as well, for some county respondents expressed resentment that town officials never seem to want to have anything to do with them except when they need funds or assistance.

It is not history alone that generates conflict and friction, however. Rural residents may resent county funding of urban-type services mainly beneficial to town residents, such as water and sewerage systems or storm warning systems. Town dwellers, on the other hand, sometimes feel that the county favors unincorporated areas over incorporated ones in the provision of services. For example, some counties help to fund volunteer fire departments throughout the county, but the towns are expected to supplement the county's effort by contributing to those departments serving the town's population. Similarly, some towns complain because the county will not assist them with those town programs that also serve persons living immediately beyond the town's borders.

The root problem, of course, is the great difficulty of ensuring, or even of getting agreement on the principle, that towns and non-town residents alike get only the public services they pay for, and pay only for those services they receive (and not for someone else's). But even when services are evenly distributed, disagreement between townspeople and others may still arise over the proper level or quality of services. This is readily apparent in the field of public education. Town residents sometimes press for higher teacher salaries, more capital improvements, and a higher quality of education than the other county residents are willing to support. Difficulties can even arise out of such seemingly innocuous decisions as closing all county schools—including those located within a town—when snow has made rural roads impassable. A town may have cleared its streets, but the school for its children will still be closed.

Another issue with considerable potential for muddying town-county relations is that of annexation. Comments from respondents reveal that in some cases the bitterness of past annexation battles, particularly those resulting in towns becoming islands, has erected barriers to cooperation that are difficult to overcome. Even without that sort of legacy, cities. Fortunately, in some cases both sides have recognized that a town's transition to a town council meeting frequently for informal, congenial discussion of mutual problems and concerns, while in other counties they are continuously at loggerheads with each other. No doubt objective factors are involved in the contrasting situations, but both town and county officials repeatedly stressed the importance of the personal factor in bridging their differences.

The presence of professional administrators is also invaluable in fostering cooperation and communication between counties and towns. Town managers and county administrators alike report frequent informal exchanges and contacts with their counterparts in other localities as a routine part of their job. Also, town managers and county administrators are much more likely to view town-county problems in an objective, nonpartisan fashion and may be better able than local elected officials to defuse highly controversial issues without allowing their interdependence and jointly to make conscious efforts to solve their problems without a change in status. Geography can affect town-county relations in several ways. A town that is the county seat, or is located near the county seat, very likely will have more informal, day-to-day contacts with county officials than one that is a great distance away, in an isolated part of the county. Some larger counties report attempts to deal with the geographical problem by locating branch county offices in those towns distantly located from the county seat. (If, however, the county expects the town government to contribute directly to the funding of these offices, the effort may become a new source of conflict.) Another county is combatting the problem of geographical isolation for one town through conscious efforts to promote state improvements to farm-to-market roads leading to the town. A town's population relative to that of the county is also significant, as is the presence of a city adjacent to the town. If such a city is the county seat (as is the case with almost 15 percent of the counties), the county may be more inclined to enter into cooperative arrangements with the city, to the neglect of the town. Furthermore, because the stakes in a county's relationship with a city are so much higher (the annexation problem), there is a tendency in counties with adjacent cities for that relationship to overshadow their concern for their own towns.

BASES FOR COOPERATION

From what has been said, it is evident that town and county officials do sometimes find ways to solve their problems amicably. Whether or not they do so, respondents insist, depends in no small part on the personalities of the various officials and leaders involved. Personality seems to be especially important in the relationships between law enforcement agencies; it was frequently cited as an important reason for a good (or bad) working relationship between the county sheriff's department and town police. But the influence of individual personalities is not peculiar to that area. Town mayors and chairmen of county boards of supervisors in some counties make it a point to meet frequently for informal, personal contacts, while in other counties they are continuously at loggerheads with each other. No doubt objective factors are involved in the contrasting situations, but both town and county officials repeatedly stressed the importance of the personal factor in bridging their differences.

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wanted by the town. The town, which had not been consulted during the planning of the county project, then decided to develop its own facility and requested the county’s financial assistance to do so—a request that caused the county some consternation.

Finally, amid the multiplicity of factors that can determine the course of town-county relations, one should note the crucial importance of politics. Electoral or other political considerations sometimes lead candidates for the county board of supervisors to commit themselves to being, in effect, town spokesmen on the county board. Other instances are reported in which town leaders have organized political moves to achieve effective representation on, if not outright control of, the county board. But the political process does not always work to harmonize town and county interests. According to some local officials, candidates for the county board sometimes downplay the importance of the town and emphasize instead the value of concern for the county as a whole. The politics of town council elections may also reflect mixed tendencies, with some campaigns stressing the need aggressively to seek county aid and support, while the goal of others is to preserve town independence to the greatest extent possible.

The political interaction between towns and counties is further complicated by the fact that county elections are partisan in nature, while town elections are often to varying degrees nonpartisan.

COOPERATION AND FINANCES

At the heart of many aspects of town-county cooperation are financial considerations. Financial pressure can be a major force promoting cooperative ventures such as water and sewerage operations that are prohibitively expensive for a single small government to support. For example, the six towns in Southampton County have asked the county to assume all responsibility for the town-operated water systems. While the county has been reluctant to agree to the towns’ request, it has been performing the maintenance for the systems and is initiating a regional water system that includes one of the towns.

Even when financial considerations are not the primary motive for a cooperative effort, the localities involved are still faced with decisions about the allocation of costs—as, for example, the financing for volunteer fire departments that serve both the town and the county. Often, the town pays for most or all of the building and land costs, while both jurisdictions share in the purchase of equipment. Some counties and towns have developed innovative financial arrangements for law enforcement services. Thus, the Town of West Point contracts with the sheriff’s department of King William County for full-time police protection. In Southampton County, three towns have a written agreement with the county whereby a deputy sheriff is assigned to each town. In return, each town pays one-half of the expenses for its resident deputy, with the county paying the other half.

Cooperative arrangements may also grow out of the need to ensure the future economic health of both the county and the town. This is particularly applicable when a town is already eligible (or will soon be) to become a city. The Town of Wytheville’s petition for city status was the impetus for a revenue-sharing agreement between Wythe County and its two towns. According to the terms of the agreement, a designated portion of the county’s total 1 percent sales tax revenue is paid to each of the two towns; in return, the towns agree not to incorporate as cities. (In actuality, the possibility of city status for the second town, Rural Retreat, is remote because of its small size.) This course of events has served as a catalyst for the development of a closer working relationship between the county and the towns in other matters as well.

The motivations behind joint agreements cannot always be neatly categorized. An interesting example of an agreement generated by several forces involves a fifty-year agreement between Roanoke County and the Town of Vinton. In essence, the town has given up its right to seek city status for twenty years in exchange for partial county financing of the water system serving the town and its surrounding area. In addition, the town has agreed not to promote or seek annexation actively for the same twenty-year period, although citizen-initiated annexations are still permissible. Agreements based on a sharing of finances may become more common in the future, in part encouraged by 1979 legislation that allows counties not immune from annexation and their towns to enter into agreements that both define town annexation rights and provide for a sharing of resources and liability.

CONCLUSION

Town-county relations in Virginia cover a broad spectrum. In some instances, it is fair to say, towns have had little political influence, and town-county relations have been so distant that the towns have withdrawn as much as possible from any interactions with the county. Similarly, counties sometimes felt so victimized by past town actions (particularly in the event of town transition to city status) that they are extremely wary of any town attempts to strengthen their own positions. However, it is encouraging that some counties and towns have recognized their mutual needs and have successfully developed good working relationships, including a variety of cooperative agreements, to ensure their continued well-being.

That line of development is not necessarily the direction of the future. Some observers believe that the expanded role of the county and the small size of many of the towns have left the towns with few reasons for existence. Others are staunch defenders of the town’s role in the intergovernmental scheme. Whatever the ultimate prospects for the town as a governmental unit, for now the welfare of the Commonwealth’s counties and towns depends heavily on their willingness to continue to search for the most effective and economical ways to coexist.

*Virginia Code, sec. 15.1-1058.1.*
AN UPDATE ON LOCAL GOVERNMENT CONSOLIDATION IN VIRGINIA
By Mary Jo Fields

THE CONSOLIDATION PROCESS IN VIRGINIA

Consolidation is the merger or combining of two or more governments. A consolidation usually takes one of three forms: (1) the complete unification of the governments in an area, resulting in one government and uniform services for the entire jurisdiction; (2) the unification of some, but not all, governments with the retention of service differentials, generally by taxing or service district. Virginia law allows each of these types of consolidation.

Because consolidations are difficult to achieve, another type of reorganization has been suggested as an alternative to consolidation. The comprehensive urban county involves the transfer of some functions to an areawide government, usually a county government, with the retention of more specialized functions by municipal governments. Thus the comprehensive urban county really is a partial functional consolidation. While current Virginia law does not provide for this type of consolidation, the General Assembly probably will be asked to consider legislation allowing it since the Staunton-Augusta County proposal (discussed later in this article) would establish this type of arrangement.

Constitutional and statutory provisions governing the consolidation process in Virginia are flexible and fairly simple. Generally, the state laws do not place obstacles in the way of local efforts to consolidate; further, the General Assembly generally has responded to requests to amend the process to facilitate merger negotiations. In contrast, some other states either do not permit local governments to merge or have fairly restrictive and cumbersome statutes governing the process.

The Virginia Constitution, in Article VII, Section 2, provides a broad grant of authority to the General Assembly to enact procedures for the consolidation of counties, cities, towns, and regional governments. Article X further allows the legislature to permit different rates of real property taxation in consolidated governments.

The consolidation procedure established by the General Assembly allows any one or more counties or cities with a common boundary or any county and all of its towns to consolidate as a county or city. The
following outline includes only the major steps in the consolidation procedure required by state law.¹

1. The local governing bodies negotiate a consolidation agreement. (The Code also provides for citizen-initiated consolidation efforts; a decision by the Virginia Supreme Court on the constitutionality of these provisions currently is pending.)

2. After the agreement is reached, the agreement must be filed with the circuit court, neighboring jurisdictions must be notified of the agreement, and the agreement must be published in local newspapers.

3. If a consolidated city is proposed, a special three-judge court determines if the city is eligible for city status.

4. The referendum on consolidation is held; to pass, it must receive a favorable majority vote in each jurisdiction proposing to consolidate.

5. The General Assembly must enact a charter for a consolidated city; in some instances, General Assembly approval must be sought if a consolidated county is proposed.

6. In the case of a consolidated county, new county officers are elected prior to consolidation, unless the consolidation agreement otherwise specifies the membership of the governing body.

7. On the date specified in the agreement, the consolidated government comes into being.

Virginia law allows local officials wide latitude in designing the form of a consolidated government. A county or city can be proposed; special taxing and service districts can be established; the size and method of election of the governing body can be determined. Also, town governments can be retained; in fact, towns do not have to be a party to a consolidation agreement between a city and county. In this case, the agreement does not have to be approved by the town council, and town voters do not have to approve the consolidation in a separate referendum. The discretion permitted local officials under state law certainly has contributed to the high success rate (when compared to other states) that consolidation efforts in Virginia have enjoyed.

While the flexibility of the statutory process governing consolidation can affect the consolidation effort, it by no means is the only factor that motivates consolidation campaigns. Experience in Virginia and elsewhere in the nation suggests that major structural changes often occur because of a “precipitating event” that may be viewed as a crisis situation by either the local electorate or political leaders. Other important factors include the support of local political leaders and the sense of a community of interests between the consolidating governments.

HISTORY OF CONSOLIDATION EFFORTS IN VIRGINIA

Several of the consolidations that have occurred in Virginia had a common precipitating event—the threat of annexation by a central city. The threat of annexation, coupled with the statewide practice of city-county separation, was a factor in the series of events leading to the creation of the five consolidated cities in Tidewater Virginia, although the importance of annexation varied from situation to situation.

Hampton, the first example of city-county consolidation in the state, resulted from the merger of the City of Hampton, Elizabeth City County, and the Town of Phoebus in 1952. Annexation certainly was a major factor in this case; Hampton was more or less forced to join consolidation efforts when Elizabeth City and Phoebus began considering merger as a city to prevent Hampton from annexing, a move that would have left Hampton with no means of expansion. (While Hampton was the first merger of a city and county, the cities of Richmond and Manchester had merged in 1910, and the towns of Waynesboro and Basic City had consolidated in 1923.)

Then in 1952 Warwick County incorporated as a city to thwart possible annexation attempts by Newport News. Concern about the economic and political future of the region led these two cities to consolidate in 1958.

Until 1960 the state's consolidation statutes applied only to a limited number of local governments in the state. In that year, however, the statutes were amended to apply statewide, primarily to accommodate merger talks between the City of Richmond and Henrico County. The consolidation referendums held in those localities failed, however, and instead consolidation activity moved south across the Hampton Roads port. In 1962, the City of Virginia Beach and Princess Anne County merged as the City of Virginia Beach; the City of South Norfolk and Norfolk County merged as the City of Chesapeake. Both these consolidations were viewed as means of avoiding annexation by the central cities of Norfolk and Portsmouth.

After 1962 consolidation efforts were unsuccessful until the merger of the cities of Suffolk and Nansemond in 1974. During those twelve years, referendums on consolidation were defeated in Winchester-Frederick County (1969), Roanoke-Roanoke County (1969), Charlottesville-Albemarle County (1970), and Bristol-Washington County (1971). The only consolidations that occurred during these years were town mergers—between Tazewell and North Tazewell in 1963 and Christiansburg and Campbell in 1964. Then in 1972 Nansemond County consolidated with its two small towns—Holland and Whaleyville—as the City of Nansemond. Two years later, the merger of the cities of Nansemond and Suffolk went into effect. While annexation had a role to play in these consolidations, some city officials feel that a more important motivation was the voters' feeling that a consolidated government would save money.

Frustrated with the problems of boundary adjustments between Richmond and Henrico County, the 1971 General Assembly enacted a moratorium on both annexations and city incorporations for certain areas of the state. The next year, this moratorium was applied statewide to all counties adjoining cities; in addition, the General Assembly put a halt to the ability of these counties to become cities through consolidation. The moratorium removed consolidation as a possibility for some local governments, and interest in consolidation waned as a result. Between 1972, when Suffolk and Nansemond voters elected to merge, and 1983, only one consolidation referendum was held—in the town of Front Royal and Warren County in 1976. That consolidation effort was unsuccessful.

As previously noted, the recent surge in consolidation can be attributed in part to the lifting of the moratorium in 1979 and to other parts of the 1979 annexation package, particularly the provisions relating to negotiation of boundary disputes. Whether any of the efforts will culminate in a merger, however, is open to question. In fact, one of the consolidation efforts has already met defeat at the polls.

RECENT CONSOLIDATION ACTIVITY
Pulaski County-Pulaski County Town-Dublin Town

The most recent consolidation referendum held in the state sought the approval of the voters of Pulaski County and the towns of Pulaski and Dublin on whether their governments should consolidate as the County of Pulaski. The referendum was defeated by the voters in each of these localities in July 1983. The results of the referendum were a major blow to efforts to reorganize the local governments in Pulaski County.

Those efforts began during the early 1980s with a series of meetings between officials...
Emporia-Greensville County

The consolidation of the City of Emporia and Greensville County has been discussed for over a decade. The most recent impetus for consolidation began in 1978 when a group of citizens petitioned the circuit court to force the initiation of the consolidation process. City and county committees were appointed to develop a consolidation plan, but they were not successful in their efforts. Then in April 1981 the circuit court appointed a citizens committee to develop the consolidation agreement, as allowed by Virginia's consolidation procedure. The city, however, challenged the constitutionality of these provisions of the procedure. That case has been heard by the Supreme Court of Virginia, which is expected to render an opinion early in 1984.

In the meantime, the Emporia city council voted to annex over six miles of Greensville County territory. In September 1982 the city and county, with the help of a mediator, announced that they had signed an intergovernmental agreement that allows Emporia to annex over four square miles. The Commission on Local Government subsequently gave its approval to this agreement in May 1983. However, the agreement will not become effective, and the annexation will not take place, until the Supreme Court's opinion on the constitutionality of citizen-initiated consolidation efforts is handed down. If the court rules that the consolidation effort is to proceed, then the annexation case will be postponed until that effort is resolved. A successful completion of a consolidation agreement and approval of that agreement at the polls would mean an end to the annexation case. If the consolidation effort fails, however, the annexation will proceed.

Thinking About Consolidation

Recent experience in Virginia reinforces the idea that some type of precipitating event may be necessary for the voters and elected officials to contemplate or agree to a governmental change as drastic as that of consolidation. Research on local government consolidations in Virginia and across the nation often point to the need for this precipitating event to spark the consolidation momentum. Consolidation efforts, however, represent more than a response to some type of pending political crisis. A well-developed body of literature in public administration favors larger and more efficient local governments, which are sometimes best obtained through consolidation. In any consolidation campaign, a number of additional arguments for the effort are advanced; opponents of consolidation counter these with their own set of arguments. Here is a brief summary of the arguments that generally are made both for and against consolidation.

Arguments in Favor of Consolidation

1. A consolidated government is more efficient and effective than several smaller governments. Costs can be held down and perhaps reduced through the elimination of duplicative services, personnel, and equipment. Further, the larger unit may be able to take advantage of "economies of scale" or lower per-unit costs for government services.
2. Consolidation helps eliminate spillovers or externalities. Many government services benefit citizens in adjoining areas who neither pay for the service nor share in the effort involved in its delivery. These "spillovers" are eliminated if the taxing jurisdiction is coterminous with the service jurisdiction. While the complete elimination of spillovers is probably impossible, the larger jurisdiction is better able to avoid the problem than are several smaller ones.
3. The environment for decision making and long-range planning is improved. A single government in an area is better able to coordinate policies and decisions than are several governments.
4. Consolidated governments, with only one governing body, are easier for the citizens to understand and use. Decision making and service responsibilities are more clearly defined and understood.
5. Consolidation matches area needs with area resources. Tax burdens within a community are equalized through the creation of a government that more clearly corresponds to area needs.

Arguments Against Consolidation

1. Larger, consolidated governments do not save money; in fact, statistics show that larger governments have greater per capita costs than smaller ones.
2. By consolidating, the benefits of diversity of governments are lost. Citizens are not able to show their approval or disapproval of government policies by voting. Consolidation results in a monopoly that stifles the competitive drive, produces uniformity, and decreases options for citizens.
3. Consolidation weakens community identification. Citizens' identification with counties, cities, and towns will not be carried over to the new, larger consolidated government.
4. People are closer to smaller governments than larger ones. Further, smaller governments are more easily controlled by the people. Two or more governments are preferable to one bigger government that will rely on a larger impersonal bureaucracy.
5. Consolidation trades the status quo for the unknown. Resistance to change often thwarts attempts at consolidation. (On the other hand, dissatisfaction with the status quo may be a precipitating event, if some type of crisis emerges.)

Conclusion

Whatever the arguments are for or against consolidation, this process, like annexation, has been a means for some cities to solve the problems of fixed borders, declining populations, and stagnant economies. In Virginia, however, the process has been used to prevent the expansion of central cities by surrounding them with other cities, which cannot be annexed. Thus the consolidations in Tidewater resulted in a landlocked Norfolk and Portsmouth. If the Staunton-Augusta County proposal is approved, Waynesboro will be unable to grow.

Other cities, such as Richmond and Roanoke, are unable to annex territory because the counties that border them are immune from annexation. Cities reaching annexation agreements since 1979 may have had their last chance at territorial expansion since the county areas surrounding them may well be immune from annexation by the time the cities are allowed to start the process again. Thus, cities such as Fredericksburg, Harrisonburg, and Williamsburg may find themselves precluded from future annexation efforts. Charlottesville has excluded itself permanently from annexation through its participation in the revenue sharing agreement with Albemarle County.

Whether consolidation will be a viable future alternative for cities that cannot exercise the annexation option is open to question. It may well be that other "precipitating events" will develop, or, as could happen in Charlottesville and Albemarle County, the spirit of cooperation engendered by revenue-sharing agreements or cooperative activities may help lead to consolidation. On the other hand, consolidation activity may well continue at its present pace, but with very few completed mergers.

Because the tier-city is part of the county, tier-city residents vote for both county and
elimination of some positions and increased
this, he estimates are that
property tax; consumer utility tax; business,
form of government, the only other elected
officials for the county are the sheriff, Common
wealth’s attorney, and circuit court
clerk. The tier-city has a seven-member
council elected at large. No separate constitu
tional officers are elected in the tier-city.
Because the tier-city is part of the county, tier-city residents vote for both county and
tier-city officeholders.

Division of services. Additional services that can be provided by the tier-city include
city; street, roads, sidewalks, and storm
drain; garbage collection and disposal;
water and sewerage; public transportation;
parking; and cable television. Functions to
be assigned to the county include education,
health, welfare, courts, property assessment,
fire services, voter registration, library ser
vices, street lighting, and housing of prison
ers. The consultants predict that through the
elimination of some positions and increased
efficiency, the consolidation would save
almost half a million dollars in the first
budget year.

Taxes. Under the agreement, the county
has exclusive power to levy the personal
property tax; consumer utility tax; business,
professional, and occupational license taxes;
and local motor vehicle registration licenses.
Both the county and tier-city have authority
to levy real estate taxes. Thus, tier-city
residents would pay real estate property
taxes to both tiers of government. Despite
this, the estimates are that current Staunton
city residents would experience a 20 percent
reduction in real estate taxes; current
Augusta County residents that become tier
city residents would see increases in their
real estate taxes, while the remainder of
Augusta County residents would realize a
slight reduction in taxes.

Expansion of the tier-city. The tier-city
will not be able to regain city status for thirty
years following consolidation. Ten years after
consolidation, however, the tier-city
will be able to initiate annexation suits. The
territory included in Augusta County’s pet
ition for partial immunity will not be subject
annexation by the tier-city.

Since October, when the plan was submit
ed to the city and county, both localities
have prepared lists of objections, additions,
recommendations, and corrections to the
proposal. Points on which the city and
county are unable to reach agreement will be
submitted for arbitration to the appeals
commission, whose decision is binding. As
of early December, the city and county were
debating a number of issues, including the
boundary of the tier-city, whether the
county should operate under the county
manager form of government, whether fire
services should be consolidated in the
county government, the number and bound
aries of the county magisterial districts, and
what revenue sources the tier-city will
have.

Clifton Forge-Covington-
Alleghany County

The independent cities of Clifton Forge
and Covington and Alleghany County had a
combined population in 1980 of about
28,500 persons. These three local govern
ments were facing stagnant or declining
population growth and decreases in state
and federal aid, and they were concerned
about the future economic growth and develop
ment of their region. Covington was
threatening to initiate an annexation suit; the
county and Clifton Forge were consider
ing consolidation as a means of forestalling
Covington’s ability to annex.

In an effort to work together, in March
1982 the three localities agreed to explore a
range of alternatives for delivering public
services in the Alleghany Highlands. The
alternatives selected for study included
annexation by Covington, economic growth
sharing, consolidation of Clifton Forge and
Alleghany County, consolidation of all three
governments, and consolidation of services
but not governments. The study’s results,
released in February 1983, concluded that
consolidation of all three governments was
the best long-term solution for the area’s
governmental problems.

In November the three governments
agreed to develop a consolidation plan that
will be put before the voters in a referendum
by May 1985. The consolidation plan will
include an annexation back-up agreement
that will specify voluntary boundary adjust
ments in the event the consolidation attempt
is unsuccessful.

Charlottesville-Albemarle County

In February 1982 governing bodies of the
City of Charlottesville and Albemarle County
reached an agreement in which Charlottesville
relinquishes its right to
annex county territory in exchange for shar
ing the revenues collected from real estate
property tax levies in the county. 7 Revenues
are shared as follows:

I. The city and county put a
share of their real property tax
revenues in a revenue-sharing
from the Town of Pulaski and Pulaski County about a possible town annexation suit. These meetings evolved into the appointment of a joint study committee on consolidation, city status, and annexation, with members appointed from the county and the towns of Pulaski and Dublin. This committee commissioned a report, issued in August 1982, on functional and governmental consolidation, as well as city status for and annexation by the Town of Pulaski. The report recommended the complete consolidation of the two towns and the county—city status was judged to be too costly, and annexation would be only a temporary solution, while consolidation would save money.2

A consolidation agreement then was prepared by a consolidation advisory committee; by March 1983, the three localities had agreed to hold the referendum on the consolidation. The consolidation agreement did not receive unanimous support from all of the governing bodies involved, however; and, as noted earlier, it was rejected by the voters.

The consolidation agreement would have established a unique local government in Virginia—a consolidated county.3 The agreement proposed that the two towns and the county merge as a county, that the county be divided into shires (two of which would consist of the former towns of Pulaski and Dublin), and that the Dublin and Pulaski shires also would serve as special taxing and service districts. Additional services—sidewalk and street maintenance, fire protection, law enforcement, recreation, and street lighting—would be provided within these districts. The governing body of the consolidated county would be a seven-member board of supervisors, elected from single member districts for four-year terms.

The defeat of the consolidation referendum in the county and the towns highlights the importance of the factors that motivate consolidation. First, while annexation by the town was an issue, there really was no "precipitating event" or crisis situation to command the allegiance of both the electorate and political leaders for consolidation. Second, local leaders were decidedly not united about the consolidation—as an example, newspaper articles noted that four members of the Pulaski town council voted in favor of holding the referendum on consolidation but did not endorse the proposed agreement.

On the other hand, two factors should have worked for the consolidation. First, once again the flexibility of Virginia statutes governing consolidation was proven. The 1982 General Assembly, in order the facilitate the negotiations among the governments in Pulaski County, amended several sections of the consolidation statutes relating to the establishment of shires, special service and taxing districts, and the consolidation of a county and all towns within it as a county. Legal barriers to reaching a consolidation agreement thus were not a problem in Pulaski County.

Second, the consolidation effort should have been aided by the fact that the county already provided some services to town residents, including education, social services, and the functions performed by constitutional officers. Because independent cities were not involved in the consolidation campaign, it would seem that the merger might have been somewhat easier to achieve.

Regardless of the dependent status of Virginia towns, however, town residents have strong ties to their communities. Several persons at the public hearings held on the consolidation campaign in Pulaski County testified that they feared the loss of community identity in a consolidated county. Newspaper accounts on the day after the referendum noted that voters had indicated more concern about protecting their community identities than saving tax dollars through merger.

**Staunton-Augusta County**

Staunton, the birthplace of the city manager form of government in the United States, is now a partner in the proposed creation of a new form of local government in Virginia: the tier-city. The proposal, while new to Virginia, resembles proposals for the creation of urban county governments in other states. Indeed, the proposal is not a complete consolidation, as two governments will continue to exist.

The proposal for the consolidation of Augusta County and Staunton into a consolidated Augusta County and the tier-city of Staunton was unveiled in October 1983. The city and county now are trying to resolve differences over some of the points in the consolidation plan. The localities are working under an immediate deadline—any bills to amend state statutes that concern the consolidation must be filed with the General Assembly by January 11. If the city and county are able to reach final agreement on the consolidation plan and the General Assembly makes the needed statutory changes, the referendum will be held in the fall of 1984. Provided the referendum is approved by both the county and city voters, the consolidation will take place on July 1, 1985.

The consolidation plan followed a year and a half of meetings, confrontations and negotiations between the county and city that began in April 1982, when Augusta County filed notice with the Commission on Local Government that it intended to petition for partial immunity of some county territory from city annexation and city incorporation. The Waynesboro city council voted in August to begin annexation proceedings; the Staunton city council took similar action in October. In the meantime, negotiations between the county and each of the cities had begun, with the purpose of reaching a negotiated settlement for the partial immunity and annexation proceedings. In December 1982 the Commission on Local Government recommended against partial immunity for Augusta County, and negotiations over the annexation suits resumed again. While Waynesboro continued to press for annexation, Augusta County and Staunton began considering consolidation as a solution to their interlocal problems. By March 1983, the localities had agreed to study the consolidation of their governments into a single, two-tier government in which general government services would be handled by the first tier and special urban services, by the second.

The agreement reached between the city and county also specified that the localities were to hire a consultant to develop a consolidation plan based on the two-tier government, appoint an advisory committee to assist the consultant, and appoint an appeals commission to handle disagreements about the consolidation study. The agreement contains strong incentives for consolidation: if the referendum on consolidation is not approved, Staunton will annex Augusta County territory. The amount of territory will depend on which government fails to approve the agreement or, if the agreement passes, on the results of the consolidation referendum. If either the county board or the county voters reject consolidation, Staunton will annex about 16 square miles of territory. In the event the city council or city voters reject consolidation, the city will annex only 11 miles. The rejection of the consolidation plan by the city and the county means the city will annex about 13 miles.4

In October, only several months after the county and city had agreed to study consolidation, a consolidation plan was presented to the localities. Some of the major points included in the plan, as proposed by the consultant hired by the localities, are summarized below.5

**Form of government.** A consolidated county (to be named Augusta) is proposed as the upper or general tier of government. The second tier is the tier-city of Staunton, which includes almost double the area of the present city of Staunton. The proposed tier-city, unlike other cities in Virginia, is not
THE CONSTITUTION AND THE COMMONWEALTH: THE VIRGINIA COURT DAYS FORUMS, 1984-86

“The Constitution and the Commonwealth: The Virginia Court Days Forums” is a series of twenty public forums on the United States Constitution to take place at various sites throughout the Commonwealth over the next three years. The series is intended to promote a broader public understanding of persistent issues of constitutional governance, as the nation looks ahead to its third century under the Constitution; to foster a greater appreciation of the Constitution and of Virginia’s contribution to its creation and evolution; and to encourage citizen participation in the discussion of public affairs through the revival of the Court Days tradition of eighteenth century Virginia.

Each forum will be held in a city or county courthouse at a site relevant to the constitutional issue to be discussed. The forum itself will bring together a panel of experts—drawn from the fields of history, political economy, philosophy, and law—with a general audience, who will join with the panel in a free-flowing discussion of ideas and points of view on the topic of that forum. The historical background and contemporary debate on the issue to be discussed at a particular forum will be examined in an article in the University of Virginia News Letter, which will be issued six to eight weeks in advance of the forum. Ten of the twenty forums will be videotaped by the Central Virginia Educational Television Corporation for later broadcast on WCVE-TV, Channel 23, in Richmond.

The first forum—to be held at the Courthouse of 1770 in Colonial Williamsburg on February 28, 1984—will deal with the topic, “The Constitution as Symbol and Substance: What Does Constitutionalism Mean?” The panelists for the forum include A. E. DICK HOWARD, White Burkett Miller Professor of Law and Public Affairs at the University of Virginia and author of Commentaries on the Constitution of Virginia; MERRILL D. PETERSON, Thomas Jefferson Professor of History at the University of Virginia and author of The Jefferson Image in the American Mind; WILLIAM F. SWINDLER, John Marshall Professor of Law Emeritus at the College of William and Mary, and author of Court and Constitution in the 20th Century; and THAD W. TATE, Director of the Institute for Early American History and Culture at the College of William and Mary and author of “The Social Contract in America, 1774-1787,” in the William and Mary Quarterly. Further details on the Williamsburg forum will appear in the January 1984 News Letter.

SCHEDULE OF FORUMS
(CH=Courthouse)

1984 Forums

THE CONSTITUTION AS SYMBOL AND SUBSTANCE (Colonial Williamsburg CH of 1770)/RELIGION AND THE CONSTITUTION (Orange Co. CH)/DEMOCRATIC REPRESENTATION UNDER THE CONSTITUTION (Loudoun County CH)/COURTS AND THE CONSTITUTION (Richmond City John Marshall Courts Bldg.)

1985 Forums

FEDERALISM AND THE CONSTITUTION (Danville City CH)/THE PHILOSOPHICAL ROOTS OF THE CONSTITUTION (Albemarle Co. CH)/THE FEDERAL GOVERNMENT AND INTERSTATE COMMERCE ( Wise Co. CH)/TECHNOLOGY AND THE CONSTITUTION (Augusta Co. CH)/CONFLICTING RIGHTS UNDER THE CONSTITUTION (Hanover Co. CH)/SUFFRAGE AND THE CONSTITUTION (Roanoke City CH)/SCHOOLS AND THE CONSTITUTION (Hampton City CH)/CHANGING THE CONSTITUTION (Westmoreland Co. CH)/ THE CONSTITUTION AND THE BUREAUCRACY (Alexandria City CH)

1986 Forums

FOREIGN POLICY UNDER THE CONSTITUTION (Fredericksburg City CH)/DEMOCRACY AND THE CONSTITUTION (Winchester City CH)/THE CONSTITUTION AND THE WORLD ECONOMY (Norfolk City CH)/FEDERALISM AND THE CONSTITUTION (Bristol City CH)/NATIONAL AND STATE CITIZENSHIP UNDER THE CONSTITUTION (Petersburg City CH)/STATE CONSTITUTIONS AND THE U.S. CONSTITUTION (Henrico Co. CH)/CAPITALISM AND THE CONSTITUTION (Lynchburg City Old Houstings CH)

Editor’s note: Since 1987 will mark the 200th anniversary of the United States Constitution, the News Letter is carrying regularly in this space announcements of upcoming activities and publications on constitutional themes of interest to Virginians. Funding for this service has been provided in part by a grant from the Virginia Foundation for the Humanities and Public Policy. For further information on the 200th anniversary of the U.S. Constitution in Virginia, contact Timothy G. O’Rourke at the Institute of Government, 207 Minor Hall, University of Virginia, Charlottesville 22903 or A. E. Dick Howard at the Office of the Governor, Richmond 23219.
The Need to Review Virginia’s Local Government Structure

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THE NEED TO REVIEW
VIRGINIA'S LOCAL GOVERNMENT STRUCTURE

Report of the Local Government Attorneys of Virginia, Inc.

In April 1986 Governor Gerald L. Baliles addressed the Local Government Attorneys of Virginia, Inc. (LGA) at its spring conference at Wintergreen. The governor spoke of the challenges facing local government as Virginia prepares to enter the 21st century. In his remarks, Governor Baliles posed the question, "Is Virginia's local government structure able to meet these challenges?"

Shortly after the governor's address, the board of directors of the association convened a task force of fifteen members to consider that question from the perspective of the local government attorney.

The final report of that LGA task force has recently been released. The report's purpose, as stated in its foreword, is to highlight, for all Virginians, "some of the most intractable problems now facing local government in the Commonwealth":

The report is intended to be an educational document—one that can be read and understood by all citizens who are concerned about the future of local government in Virginia, and who seek to ensure that local government is able to provide economic, efficient, and responsive services to its citizens....

Virginia's local governments have served the Commonwealth well during its first 300 years, and their continued strength and viability are crucial to the preservation of our representative democracy. It is with a strong belief in the future health of our local governments that we present this report to the leaders and citizens of Virginia.

The News Letter is pleased to be able to reprint the LGA task force report here. The editors gratefully acknowledge the cooperation of the Local Government Attorneys of Virginia, Inc., for permission to make this informative report available to our readers.

Note: The LGA is Virginia's principal professional association for attorneys who represent the cities, counties, and towns of the Commonwealth and for those private attorneys who specialize in local government law. The LGA task force included fifteen lawyers, from both the public and private sectors, representing a cross-section of Virginia's counties, cities, and towns.

The LGA task force effort was led by Edward J. Finnegan, Loudoun County attorney, and John H. Foote, Prince William County attorney; LGA's current president is Dean Foster, Scott County attorney. The LGA task force was staffed by the Center for Public Service at the University of Virginia.

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The LGA has considered a wide range of questions, and we have concluded that each turns on three interrelated themes that are demanding increased attention:

- The historical justification for the differing treatment now accorded cities, counties, and towns may no longer have any basis.
- Local governments lack sufficient incentives to reach solutions to what are increasingly regional problems.
- Local governments are often not given the necessary enabling authority to address major local problems.

After reviewing the evolution of local government, this report sets forth some
examples of the problems that our localities have faced and will continue to face. The report concludes with eight recommended courses of action that the task force believes will aid the Commonwealth and its local governments to meet the present and future needs of our citizens.

Virginia’s governmental and business leaders should look closely at the strengths and weaknesses of local government today, so that fractures in its structure will not lead to failures in the future.

**A BRIEF HISTORY**

When the first Europeans reached Virginia, they settled in forts and plantations for protection and productive purposes. In 1634, however, the legislature divided the settled regions of the Commonwealth into eight shires, patterned after the local divisions the colonists had known in England. Shires quickly became known as counties, and served as the basis for representation of state government at the local level, and as the areas from which representatives were chosen in the General Assembly.

**First City Charter Granted in 1722**

In 1699 the General Assembly created a new capitol and town at Williamsburg, but it was not until 1722 that Governor Alexander Spotswood granted that community Virginia’s first city charter. That charter set forth the local government authority for election of a mayor, recorder, alderman, and councilmen, and for the right to sue and be sued, acquire property, and have a seal.

Virginia’s first constitution, in 1776, did not mention local government except as districts for electing members of the General Assembly. Before the Constitution of 1830, however, the cities of Williamsburg and Richmond had been formally incorporated, and several towns had been granted the power to tax, set boundaries, make rules, and erect a town hall.

For the seventy-two years the 1830 Constitution was in effect, incorporated towns and cities were virtually indistinguishable. But things were changing. During those years the urban population of Virginia grew from less than 5 percent of all its residents to almost 20 percent; and in 1870 the General Assembly enacted legislation that appeared to formalize the distinctions between the two types of government. It was the Constitution of 1902 that made the distinction of fundamental import. Cities were to be incorporated units with population of 5,000 or more; towns were also to be incorporated, but were to consist of fewer than 5,000 residents. Three small cities were allowed to keep their city status. Counties remained rural, largely undisturbed by the march of events.

The increasingly formal distinctions between cities, counties, and towns thus were based on the needs of incorporated areas to serve a broader urban population, who required a higher level of services than their rural neighbors. Rural populations continued to be served by governments that needed fewer powers because they faced fewer problems generated by urbanization.

**Counties Now among Most Populous Areas**

Virginia’s population continued to grow steadily, and less than fifty years after the Constitution of 1902 formalized the distinctions between governmental units, the 1950 Census identified no fewer than 47 percent of Virginians as urban dwellers. Thirty years later, the 1980 Census found half of Virginia’s most populous jurisdictions to be counties. Today Fairfax and Prince William counties alone have a combined population of over 800,000 people. The aggregate population of the eight cities of Tidewater, in comparison, is just over 1,000,000.

As long as the urban and rural distinctions remained sharp between cities and counties, the varying contours of city and county structure were adequate. In truth, the growth in urban counties over the last twenty years has been nothing short of explosive, and urban counties are now much more like cities in the intensity of their development and the service requirements of their citizens.

Similarly, over the same twenty years several rural counties have chosen to become cities to protect themselves from continued annexations. Several towns also have become cities, to manage their own school systems.

**Local Government Arrangements May Not Reflect Modern Needs**

Despite these changes, however, the General Assembly continues to legislate as if the differences that once existed continue to prevail. The question that now looms is whether the legal distinctions existing among the three forms of jurisdictional organization, though soundly based in history, have any continuing utility. Do these distinctions currently result in deficient organization and an inequitable and indefensible distribution of local powers? Is there some other arrangement that would more accurately meet the needs of the modern political world?

**The Case in Point**

Our assessment of the weak points in Virginia’s local government structure arose from our shared experiences. Through our many exchanges of these experiences, we began to detect a thematic pattern underlying weak points. Again and again we found ourselves making awkward distinctions, and we frequently came back to consideration of three fundamental stumbling blocks: (1) the distinctions in powers among local jurisdictions that have

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1 Limited space has made it necessary to delete Appendix A of the original report, entitled Differences Between Cities, Counties, and Towns: A Partial Listing. A copy of this table is available upon request.
essentially identical responsibilities hinder solutions to local problems; (2) ineffective means of regional and intergovernmental cooperation severely limit a cooperative response to problems that overrun traditional authority; and (3) adequate local authority to address local and regional problems simply does not always exist.

The following examples, drawn from our experiences, illustrate areas of concern to our members.

**LABELLING:** Borrowing Powers

*A historic courthouse in rural Virginia showed signs of age, and the building needed significant renovation to bring it up to modern court standards. This work would cost more than the county could budget in one year, and the Virginia constitution requires county boards of supervisors to hold a referendum on a bond issue before borrowing the necessary funds.*

The circuit court judge is empowered to issue an order requiring the renovations. In another locality the judge had done just that, declaring his courthouse "unfit for justice," refusing to hold court again until the building was renovated. In this instance, the judge noted the good-faith efforts of the board of supervisors by sending the debt question to referendum, and decided not to issue such an order.

When the referendum was held, however, the voters turned down the proposed renovation. Another referendum was held, and again the debt question was defeated. The county board was thus forced to divide the renovations into several smaller jobs, which have been contracted on a year-to-year basis.

Each small job will involve a separate bidding process, which will mean more expense for the contractors, the county, and the taxpayers. The project's total cost will probably exceed the original estimates for the renovations because of this piecemeal approach, which will result in the inefficient use of contractors' time, inadequate assurances to assist the contractor in borrowing funds at a favorable rate, and inflated costs of construction.

The prudent administration of any business, including the business of county government, often requires the commitment of money beyond a single fiscal year, principally for capital projects that the elected leadership of a community determines necessary to the future well-being of the jurisdiction. Capital projects today require extraordinary amounts of money in relation to current revenues and expenditures, but they are almost invariably less costly to the citizens when funded by bonds than through current revenues. The demand for general fund money for such projects is placed in direct competition with day-to-day needs for police, fire protection, and schools.

**Debt Referendum Requirements Differ**

In contrast to the dilemma facing counties, most city councils and many town councils in the Commonwealth need no referendum to issue general obligation bonds to accomplish projects deemed necessary for the community. The only constitutional limitation is that total indebtedness cannot exceed 10 percent of the locality's assessed real estate valuation. Having no constitutional requirement for a referendum, most municipalities can more readily commit future revenues to needed projects. Whether such a commitment requires a tax increase or the issuance of long-term indebtedness, it is the elected municipal government's choice to make, without case-by-case approval from the electorate.

**Counties Must Issue Referenda**

Counties, in contrast, may not commit these future funds without a referendum, which, though it surely tests the will of the community toward long-term plans and resources, is a cumbersome, costly, and difficult process. Though the 1971 constitution provides that a county may elect by referendum to be treated as a city for bonding purposes, this requirement itself is an instance of differential treatment.

**LABELLING:** Powers of Taxation

*Two adjacent localities, a city and a county, were considering a request from their joint chamber of commerce to take part in establishing a conference bureau. County officials believed that this proposal benefited primarily the local tourist-related businesses; because of the county's policy of using general revenue only for projects expected to benefit the county as a whole, they objected to supporting the bureau with property taxes. Other, more limited tax sources were sought. The county had available only a transient lodging tax, set at the maximum 2 percent limit allowed by the General Assembly. The city had a 4 percent lodging tax in place. County officials decided to seek authority from the General Assembly to increase their local lodging tax to 4 percent, the amount allowed the city. The local hotel and motel owners and the chamber of commerce agreed to support the requested increase. The local legislators agreed to introduce legislation to accommodate the local request.*

The legislation died in committee in Richmond. The state hotel and motel association had not agreed to back the tax, nor had the retail merchants. These groups successfully lobbied legislators who, on general principles, did not think the county needed the extra taxing capability. The conference bureau was not created.

In Virginia the authority to levy taxes is determined by the General Assembly principally according to jurisdictional labelling. Cities and counties simply do not have equal taxing authority to meet equal needs.

**LABELLING:** Towns

*A town in a rapidly developing county has its own parks, recreational facilities, and library, all provided through local tax dollars. The facilities are used by townspersons and county residents alike. The town also has a police department and conducts planning activities within its boundaries. The town has relieved the county of the burden of providing these programs; and, since other county residents have not requested them, the county can avoid the expense of a parks and recreation program and a library system. Town residents pay taxes to both the town and county and they contend that they are paying for county services such as law enforcement and planning activities that they do not use.*

A town in a rural county has no manager, one part-time police officer, one well, and a small sewage treatment facility to serve its 240 people. The State Health Department has served notice that the well and sewer
system do not meet minimum requirements and that new facilities must be constructed. The town council has no resources, and no idea how to meet the emergency.

No new town has been created in Virginia since 1966. In those towns that provide a full range of services, town residents often find themselves supporting county services that they never see or use. Smaller towns, in contrast, may not have the resources or expertise to deal with even minor service delivery problems.

**LABELLING: State Funding Formulas**

Law enforcement services are rendered by the sheriff in most counties. In all cities, many towns, and some large counties, however, they are the function of a police department. Where there are police departments, sheriffs serve solely as officers of the court and jailers, and the creation of regional detention facilities in some localities has deprived both city and county sheriffs even of their corrections functions. State funding for sheriffs' offices and police departments, however, is not based on due regard for actual duties. These complex and confusing formulas have operated so that state funding for law enforcement in municipalities is simply less than that for the law enforcement function in sheriffs' departments.

+++ Funding for roads and other transportation improvements in localities is unequally allocated. Most counties and small towns do not construct and maintain roads; the state bears that responsibility. Counties work with the Department of Transportation through the Six Year Road Plan, but the amount of construction and maintenance is generally limited by the funding available to the Department. Cities and larger towns, on the other hand, have primary responsibility for managing their own road networks, and are directly provided funds for the purpose.

+++ Two adjacent localities, one a city and the other a rural county, are considering their forthcoming annual budgets. The city is weighing the school board's request against its funding needs for police, fire, public works, street improvements, and myriad social programs for the disadvantaged, elderly, and handicapped. The county school board's request is without the same competition from most of these services.

The city's poor population creates a need for broader and more intensive social services and a more costly school system. The educational demands of inner-city children are generally higher because the "magnet effect" of the city's social services draws in a higher proportion of those needing such services. The county does not need to provide all of the services to the extent required in the city because of this difference in the population characteristics. While the county has some social programs, their scope and number of clients is far below those of the city.

The city's real property tax rate is 50 percent higher than the county, yet only 30 percent of its budget is spent on education; the county spends 75 percent of its budget on education. The state's basic school-aid formula does not take into account this disparate demand on local resources; it is based on average daily membership and tax capability. Other factors—such as the demographic differences and the many competing demands for funds experienced by many urban jurisdictions—simply are not considered.

The identification of a jurisdiction as a city or county has significant effects on the allocation of powers, particularly with respect to fiscal matters, which are hard to justify on purely functional grounds. While state funding formulas purport to allocate funds based on need, rather than on jurisdictional label, monies are often distributed on the basis of that label. In consequence, each type of jurisdiction can argue persuasively that the formulas are unfair, and each has an interest in forcing uneven distribution of available funds.

**Regional Problems: The Environment**

A rapidly growing city has a severe water shortage. The community has instituted numerous conservation measures, to which cooperative citizens have responded, resulting in a lower per capita water use than anywhere else in the state. Still, the need for more water persists. The area is attractive to developers, and the building goes on.

The community has tapped all possibilities for water within its boundaries. It has entered into contracts with neighboring jurisdictions in emergency situations. It has even sought water from another state. Numerous lawsuits have been filed, but no resolution appears imminent. At one point the community thought it had agreement of all parties to a transfer of water from another place, but interjurisdictional politics dashed those hopes. Meanwhile, the water situation does not improve.

+++ A rural county is part of a three-county water, sewer, and solid waste authority. Most of the authority's production and treatment facilities are presently located in one county, although the plan is to make the system regional.
Toward that end, the authority recently allowed a line from the water treatment plant to be extended, at no expense to the authority, into a neighboring county that is also a member of the authority. That action has caused the county in which the plant is located to be concerned that “its” water is now going to other than its own citizens. The river is the boundary line between the two counties, and it also serves as a resource for other counties downstream. The concerned county feels that decisions over which is has no control are being made about its water; consequently, it is seeking to withdraw from the regional authority.

A large county gets most of its drinking water from a reservoir with a catchment basin that includes portions of four counties. To protect its supply from pollution, the county down-zoned approximately 40,000 acres and became embroiled in over forty lawsuits. All of its efforts are jeopardized by the inaction of two other counties in the basin that do not use the reservoir as their principal water supply and have less incentive to plan land use in their jurisdictions to protect it.

Several localities, including counties, towns, and a city, joined together to form an authority to build and operate a regional wastewater treatment plant. When the plant was built, one of the counties began construction of the sewer line to the regional plant. The shortest route for the line was through the city. The city turned down the required special use permit. After considerable time, money, and concessions by the county on unrelated issues, the city reconsidered its decision and approved the special use permit. Hostile feelings remain.

A city, faced with an order from the State Health Department to close its existing solid waste disposal site, began the search for a new location. Because the city’s land was 95 percent developed, an adjacent county location was the obvious choice.

At considerable expense, the city acquired an option on what consultants recommended as the best site. Loud public outcry from county residents contributed to a denial of a special use permit. This was repeated twice, on different sites.

The city sued the county, and the judge told the county to come up with a location.

The county proposed joint use of the existing county landfill, but its location in the watershed of the major water supply had eliminated that site from earlier consideration. In spite of negative environmental aspects and increased costs to the city because of greater hauling distances and the need to improve a small rural road, the city agreed to use the existing county site.

It is increasingly self-evident that some governmental problems, especially those concerned with preserving the environment, are so difficult or pervasive that they cannot be resolved solely through unilateral local action.

Further, local permit requirements, even in the case of joint services, can inhibit putting the necessary structures into place for interlocal collaborative action. This situation adds to the expense and increases hostility, making future cooperation more difficult. It can even result in environmentally unsound decision making.

REGIONAL PROBLEMS: Economic Development

A developer visits a bank seeking assistance in constructing a major industry in the “local area.” The banker advises him that each of the four properties he is considering is located in a different jurisdiction; thus, he will have to meet four separate sets of requirements and deal with four separate governments to plan and develop the needed roads, services, and utilities.

Two civic centers in nearby cities, each representing a significant public investment, are in fierce competition with each other for business. The various “free” extras offered to entice entertainers and conventions undermine the profitability of both these centers, making it difficult for either to pay for itself.

Locality has many political incentives to work independently on economic development, but few to work together. Attracting a new industry or shopping center is generally a “winner-take-all” game. The competition for new development actually may lessen the overall return to the region, not only by discouraging potential developers, but also by prompting governments to lower the standards for land use controls that best serve the local citizens. Land use controls may be weakened within the “winning” jurisdiction, thereby adversely affecting both the locality and its neighbors in the long run.

REGIONAL PROBLEMS: Human Services

An elderly resident dependent on welfare income finds herself unable to stay in her rural home because she needs to be closer to medical facilities. Her county, rural and sparsely populated, has no hospital, no public transportation, no housing authority, and no subsidized housing units. She reads about new subsidized housing units for the elderly in the city. She decides she should move there, where her rent will be affordable and she will be near the hospital, should anything happen to her.

A young, unemployed male resident of a rural county is looking for work—but he has no car, and he needs training to be able to qualify for the jobs listed in the local paper. Because he wants to advance himself in the world, he moves to the city, where he can enroll in a publicly supported training program, and where public transportation is available.

The school superintendent of a small city must implement an individualized educational program for a local disabled child. The program that the child needs is expensive, and the superintendent knows that a similar program is already in place in a nearby urban county school system. He suggests to the family that it consider moving to this neighboring county, where the child can get the attention she needs.

Educational and social problems know no jurisdictional boundaries; they exist everywhere. Because urban localities generally offer more intensive human services than their rural counterparts, these services often act as a magnet, drawing in from outlying areas those citizens who need them. The concentration of persons needing a particular service makes delivery of that service more feasible. In addition, the number of persons needing services makes social problems more obvious; as a result, the electorate is often more supportive of social programs that will respond to those needs.
Rural populations must look for services to county governments, which serve as arms of the state. Often some people’s needs are overlooked just because they are not highly visible. Neither the funding for social programs available nor the organization of service delivery is adequate to provide adequately for all the state’s citizens.

REGIONAL PROBLEMS: Nonexistence of Incentives at State Level

A city was ordered to upgrade its existing wastewater treatment plant. The neighboring county was planning a treatment plant to protect it from annexation. The federal government had the funds to build a plant to meet the local needs but would not assign them unless the two localities worked out an agreement.

After lengthy negotiations, the city and county formed a regional water and sewer authority. While they could have built separate plants, they would have lost the federal money.

Needs for the elderly were identified throughout the state on a regional basis. Planning was done to suggest ways to meet these needs. The federal government would support programs, provided they were delivered by a regional agency. As a result, most of Virginia is served by regional or area-wide boards for aging, allowing for better coordination and some savings in administration, thereby allowing a higher percentage of the funds to be spent on direct services.

Present incentives for local government cooperation are inadequate, and fiscal and other incentives can be valuable tools to encourage a cooperative response to problems affecting more than one locality. Sufficient incentives can help develop a cooperative regional response to a problem, but Virginia rarely uses this approach.

Indeed, in one part of the Commonwealth, consolidation was recently rejected by the voters, at least in part because of the expected loss of school aid if the three jurisdictions became one. This affirmative disincentive to regional solutions is exemplary of the failure to make such solutions more attractive.

REGIONAL PROBLEMS: Boundary Disputes

A city began a proceeding with the Commission on Local Government to annex certain territory of an adjoining county. Later, the county initiated a proceeding before the commission to obtain immunity from annexation for the same basic area. The county then filed a court suit to enjoin the city from pursuing annexation.

The city responded by filing a separate court action to enjoin the commission from reviewing the immunity suit until the previously filed annexation request was completed. Both court actions were dismissed at the trial court, but the county sought an appeal that was denied by the Supreme Court a year later. In the meantime, the commission conducted hearings and discussed its reports of findings on the requests for annexation and immunity.

After several months of unsuccessful negotiations, the city filed its court action for annexation, which was immediately followed by a county suit for immunity from annexation. As required by state law, the annexation suit was stayed pending the hearing on the immunity petition. Approximately a year later, after discovery and trial, the three-judge court denied and dismissed the immunity petition.

The court rejected a request for a further stay of the annexation suit during an appeal. The county then filed an original action in the Virginia Supreme Court to stop the annexation trial, which was denied. The trial court scheduled hearings in the annexation case, but the county filed an appeal from the immunity decision. After several months of discovery and a two-week trial, the court awarded the city most of the territory originally requested.

The county then filed an appeal from the annexation order. While both appeals were pending before the Supreme Court, the city and the county finally reached a settlement that resulted in the dismissal of the appeals approximately five years after the litigation had started.

Although agreement was reached, it was only after two Commission proceedings, four trial court actions, three appeals to the Virginia Supreme Court and one original Supreme Court action. It is fair to ask whether the parties had reached resolution, or exhaustion.

In general, the 1979 changes to the state’s procedures for annexation have allowed for wide-ranging interjurisdictional agreements. But they have also resulted in a much longer and significantly more expensive process for handling boundary change requests and other forms of interjurisdictional disputes. In areas of the state where annexations are still possible, most matters of routine intergovernmental cooperation are decided in the context of their potential effect on boundary change disputes. Ironically, the 1979 legislation may be one of the state’s few effective incentives to regional cooperation.

ENABLING AUTHORITY: Waiting for the General Assembly

When cities, counties, and towns were originally authorized to enact ordinances regulating the subdivision and development of land, they were given authority to administer and enforce those ordinances. In consequence, a city enacted a subdivision ordinance requiring payment of certain fees for review of proposed subdivision plats. A developer challenged the requirement that he pay for this essential review, and the Supreme Court held that localities lacked the authority to impose it. The locality was forced to obtain enabling legislation to remedy this constrictive and burdensome opinion.

A town and a county were in the midst of a hotly contested annexation proceeding. The town needed a significant amount of new land in order to ensure a market for its new water and sewer facilities, to offset increased costs of local administration, and to permit it to plan more completely for its environs. The county believed that the petition was merely the first step in the town’s transition to city status, and was concerned that an area which it had long planned for industrial and commercial development would be lost to it.

After intense negotiations, the two jurisdictions were willing to enter an agreement that resolved the town’s problems generally, and guaranteed that it would not seek city status for twenty-five years. Before the agreement could be signed, however, lawyers for both sides advised that there was no enabling authority for either to enter such a wide-ranging agreement. The enabling
legislation was eventually obtained, but at
the risk of losing the agreement itself be-
cause of the year-long delay necessitated
by seeking the legislation.

The strict limitations imposed on Vir-
ginia’s localities often deprive them of the
flexibility they need to address modern
problems of governance. Indeed, these
limitations can prove a trap for the unwary.
The General Assembly finds itself increas-
ingly besieged by localities wishing some
amendment to the Code to permit action
desired by local constituents. Some are
minor issues of implied powers, and some
are major issues, like local bottle bills and
handgun legislation. Whatever the mea-
ure, the localities seek powers that their
people demand.

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ENABLING AUTHORITY:
Land Use Controls

A developer sought approval from the
board of supervisors for his subdivision
plats. Because the planned development,
once complete, would account for almost
half of the traffic on the abutting secondary
roads, and because the development would
consequently necessitate road improve-
ments, the county denied approval unless
the developer either paid for the cost of re-
constructing the two state secondary roads
abutting his property or reconstructed them
himself.

The developer sued the county, and he
lost in the trial court. However, the Virginia
Supreme Court overruled the trial court’s
decision and held that no express local
authority exists to require a subdivision
developer to construct improvements to
existing public roads.

Land use control remains an exception-
ally troublesome issue for local govern-
ments. The time has come to take a com-
prehensive look at the powers granted to
localities to regulate land development and
its effects on every public service, from
public education to public roads. While the
state considers land use a local issue, it has
significantly limited local freedom to de-
velop an adequate response to the pressures
and costs of growth.

Proper land use control requires active
participation of local governments. Land
use control has traditionally been a local
prerogative, and new legislation is needed
to expand the locality’s capacity to control
the impact of development on transporta-
tion arteries and other public facilities, and
to facilitate the formulation of intelligent
policy.

This review of Virginia’s local government
organization reflects both the strengths and
weakness of our system. Virginia’s local
government structure has no fundamental
flaws; but the situation is not perfect either.
Localities are now faced with demands that
were simply unheard of a few years ago.
These demands, coupled with changes in
the law, including increased liability for
local government operations once thought
entirely immune, have profoundly affected
local government affairs.

The labels county, city, and town, which
we have historically applied to Virginia’s
localities, no longer accurately distinguish
their needs and attributes. They assume
importance, however, both in state fund-
ing decisions and in the grant of powers.
But urban localities, be they cities or coun-
tries, enjoy the same level of competence,
and they deserve similar treatment by the
General Assembly.

The most intractable issues facing Vir-
ginia’s local governments today affect more
than one locality, and the regional scope of
these problems will grow. Threats with re-
gard to air and water quality and safe waste
disposal, inadequate water supplies, dete-
riating and insufficient transportation sys-
tems, and human service needs produced
by our exceptional rates and patterns of
growth will require cooperative responses.

The incentives for local cooperation,
however, are sorely deficient. While lo-
calities have made real strides in intergov-
ernmental cooperation, the interests of a
single jurisdiction too often encourage
parochial positions. State leadership must
often pave the way for interlocal coopera-
tion, but that happens far too seldom. And
until the unique problems associated with
interjurisdictional disputes can be resolved,
they will continue to be the single most
divisive issue in local government relations.

The General Assembly must think about
ways to enhance the state’s influence in
helping localities to reach amicable settle-
ments of their mutual problems. Incentive
funding from the state would encourage
new and multijurisdictional approaches to
service delivery. Moreover, if the General
Assembly wants local governments to ad-
dress properly both local and regional is-
ues, it ought explicitly to give localities
the needed powers to do so—and thus
loosen the current judicially imposed stric-
tures on local authority.

Recommendations

To ensure that Virginia’s local government
structure is equipped to handle present
demands and future pressures, the LGA
recommends that the Commonwealth take
the following steps:

1. Critically review distinctions be-
tween the powers of cities and counties
to borrow funds.

2. Reconsider differences in local tax-
ing powers, and the justifications for
capping revenue sources for counties,
when cities are not similarly limited.

3. Establish and continually refine a
comprehensive statistical profile of the
Commonwealth’s counties, cities, and
towns that will recognize current and
varying conditions of each localities.

4. Routinely review state funding for-
rmulas to determine whether they pro-
vide adequate levels of support and dis-
tribute available monies where the need
is greatest, without regard for artificial
jurisdictional distinctions.

5. Undertake a comprehensive com-
parison of the cost of providing services
at a designated level of quality in the
urban, rural, and developing areas of the
Commonwealth.

6. Review local government’s power to
regulate land use, and provide greater
authority for local and regional initia-
tives in land use and transportation
management.

7. Identify and eliminate impediments
to interjurisdictional agreements arising
from state policies, to ensure that state
policies encourage, rather than dis-
courage, regional solutions to regional
problems.

8. Undertake a recodification of Title
15.1 of the Virginia Code. This title is
the body of statutory law for counties, cities, and towns, and has received no comprehensive review for twenty-five years now; by common agreement it is in disarray.

The law of local government has been hard pressed to keep pace with the developing demands of political reality. If, as Justice Holmes said, the life of the law is experience, then our recent experience teaches that the pressures will grow, that responsibilities and needs will expand, that traditional distinctions between counties, cities, and towns will continue to blur, and that traditional justifications for limiting public service delivery to jurisdictional boundaries will erode.

Local government organization in Virginia is an evolutionary brew, once based on a relatively clear and discrete system that no longer suffices to describe reality. The ad hoc decisions made about the division of powers and responsibilities between and among the jurisdictions and subgovernments of this state have created a confusing, sometimes overlapping, and sometimes inadequate arrangement of convenience that has been inadequately challenged.

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William H. Hefty
Private practice, Richmond

Carter Glass IV
Mays and Valentine, Richmond

It is our hope that this report will assist those who are now attempting to make those changes in local government that will permit locally elected officials to provide for the needs of our citizens in the twenty-first century.
The Future of Local Government in Virginia
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The Future of Local Government In Virginia

FINAL STATEMENT OF THE 1990 VIRGINIA ASSEMBLY

As Virginia embarks on an uncertain future, its local governments will be challenged to serve a more diverse Commonwealth, a more divided Commonwealth. Can the state's present local government system continue to serve us well?

Local governments perform a vital role in our democracy. They are a check on accumulation of power at the state and national levels. They encourage innovation and give voice to our diversity. They allow for the expression of popular sovereignty—assuring local control over local concerns, ensuring that local problems are handled according to local conditions and preferences. By encouraging and permitting participation in government, localities are schools of citizenship and training grounds for public leaders.

Virginia's local governmental system has several distinctive features:

- Virginia is the only state with a comprehensive system of city-county separation.
- Virginia is the only state in which all school board members are appointed rather than elected, and one of the few in which school divisions are subordinate units of local government.
- Virginia has a small number of local governments, especially municipalities, when compared to other states.

Local government is the bedrock of Virginia's governmental system—the most immediate, tangible, and accessible expression of the essential communities in which Virginians live. No short list can do justice to the wide-ranging contributions that Virginia's local governments make to our quality of life. They deliver vital public services. They educate our children; protect the public's health and safety with police, fire, and public sanitation services; administer health and human services; and operate libraries, museums, concert halls, parks, and recreation programs. Through their power to zone and otherwise regulate land use and control building, local governments are stewards and shapers of the physical surroundings.
Old distinctions between counties and cities are anachronisms. They have become increasingly dysfunctional, detracting from the effectiveness of the state's intergovernmental system.

- Virginia uses few independent or special districts that possess independent taxing powers.
- More than most states, Virginia relies on the council-manager plan of local governance, under which a popularly elected governing body employs a professional administrator.

This distinctiveness of our system is matched by its disparateness. The state's largest county, Fairfax, is more populous than eight states in the federal union. The Commonwealth's largest city, Virginia Beach, now has more people than either Cincinnati, Oakland, Pittsburgh, Minneapolis, Atlanta, or Miami. In contrast, over half of Virginia's cities and almost half of its counties have fewer than 20,000 residents. Twenty-seven cities and counties have fewer than 10,000 residents. The governmental settings vary from the highly metropolitan—with two metropolitan statistical areas of more than one million residents—to the very rural.

As local governments have grown, they have evolved from the eight shires of colonial times to a complex system of 95 counties, 41 cities, and 190 towns. Local governments have also taken on roles and responsibilities unimagined by our forebears. Old distinctions between cities and counties have blurred; some counties supply city services, some cities have large agricultural areas, and some towns operate public schools.

While local government boundaries may appear immutable, they too have changed to meet changing circumstances. New counties have been carved from old. Towns have become cities. Cities and counties have merged. Planning districts have been created to incorporate regional perspectives.

Overall, our local government system has served the Commonwealth well. But as Virginia enters a new century, the system is undergoing rapid change. Virginia is undergoing a transition from an Old to a New Dominion. And as the state embarks on an uncertain future, its local governments will be challenged to serve a more diverse Commonwealth, a more divided Commonwealth.

Since mid-century, the Commonwealth has grown significantly—but that growth has been highly concentrated. Over the past decade, 90 percent of Virginia's population growth has occurred in a corridor called the 'Golden Crescent,' which extends from Northern Virginia through Richmond to the Hampton Roads. Even within this corridor, growth has been concentrated, with over two-thirds of it taking place in six localities.

Other growth has centered along I-66 between Washington and the Northern Shenandoah Valley, along I-81 from Winchester to Augusta County, along Route 29 from Fauquier to Albemarle, along I-64 from Charlottesville to Richmond, in the Radford-Montgomery and Bedford areas, and in the counties fringing the corridor.

As parts of Virginia become an unbroken megalopolis, localities in those areas are confronted on an accelerating scale with the problems arising from rapid growth and suburban sprawl: choked transportation arteries, crowded schools, brimming landfills, and polluted air and water.

In contrast, many localities outside these growth centers have either come to a standstill or begun slowly to decline. During the 1980s, almost half of the 104 localities outside the corridor lost population. Over this period, Fairfax County alone added three times more population than all of non-corridor Virginia. Many of these localities outside the corridor are beset by fiscal stress, finding it hard to retain jobs, keep their young people, deliver needed public services, and even sustain community.

Most of Virginia's older central cities are among those localities suffering slow declines. Richmond, for example, has declined from a peak of 249,000 in 1970 to an estimated 201,000 in 1990. As businesses and the middle class locate in the suburbs, central cities are left with stagnant or declining tax bases to provide expensive services for their own residents and the suburbanites who use their amenities.

Because of population shifts, many central cities have also become home to a disproportionate share of the state's elderly, poor, and other groups with special needs. Central cities are hard pressed to extend expensive services to these citizens while maintaining and replacing aging infrastructure and restoring blighted neighborhoods and decaying business districts. The fiscal stress of Virginia's central cities is well documented, and the gap between them and their surrounding counties is widening.

These challenges are exacerbated by the withdrawal of federal aid and, at the time of this Assembly, the Commonwealth's tenuous fiscal condition.

A system that is so vital to the daily life of the Commonwealth should be reviewed periodically to see whether it meets contemporary needs. As Virginia enters the 21st century, do we need to undertake a comprehensive restructuring of our present system? Or can that system continue to serve us well with only modest changes in its basic elements?

Do we still need city, county, and town governments, or should we rely on regional governments or state administrative divisions?
How many local government units do we need? Of what kind, size, and jurisdiction? What minimum population standards, if any, should be set for local governments?

What powers and responsibilities do local governments need? What services do they need to provide? What resources should they command? What powers of spending, taxing, and borrowing should they have?

What government structures do we need to employ? Should we change the organization of our executive and legislative functions? Or the way our leaders are selected?

How much sovereignty should our local governments have? How much flexibility do they need to be given to alter their policies and institutions? To tax their citizens and incur debt?

How should we divide responsibilities and authority between the state government and localities? What should be the financial relationship between the state and localities?

How do we reconcile situations where local sovereignty conflicts with regional or statewide interests, or with the efficient, effective delivery of services? How should we arrange the relationships among and between localities, and incorporate regional perspectives in matters of regional concern? How should we address the issues and problems that do not respect boundaries — problems like transportation, air and water pollution, wastes?

What mechanisms, if any, should be used to adjust boundaries? How do we achieve an equitable sharing of resources among localities — a distribution of resources that takes into account differences in burdens, capacity, and effort?

These questions encompass the most searching issues of democratic theory and at the same time involve the most practical, immediate problems of politics and government administration. These are just some of the issues that occupied the participants at the 1990 Assembly.

As they worked to chart future directions for Virginia's local governments, participants identified a number of current and potential challenges. During their debates and discussions, they devoted special attention to eight areas (which are not listed in any priority):

A. Definition of Roles and Responsibilities
B. Local Empowerment
C. State Aid/Fiscal Disparities
D. State Mandates
E. Boundary Adjustments
F. Regional Cooperation
G. Long-Range Planning
H. Citizenship Education and Leadership Training

The Assembly made recommendations to Virginia's citizens and public officials within each of these areas.

### A. Definition of Roles and Responsibilities

The past half-century has seen major changes in the roles and responsibilities of Virginia's local governments. Old distinctions between cities, counties, and towns have become blurred. Urban counties and large cities in metropolitan areas bear many resemblances, while smaller cities outside growth areas are not dissimilar from their county neighbors. Similarly, the relationship between the state and its localities has become more complex and less clear-cut.

Nevertheless, old distinctions underlie major portions of law and public policy regarding local government and the relationship between the Commonwealth and its localities. These distinctions are anachronisms, and they have become increasingly dysfunctional, detracting from the effectiveness of the state's intergovernmental system.

The 1990 Virginia Assembly therefore recommends that:

- A blue-ribbon task force should (a) define the institutional and legal structure of local government and the relationship between state and local governments; (b) define service needs; and (c) assign responsibility for the performance of major governmental functions.

- With respect to the units of local government, the legal differences between cities, counties, and towns should be reexamined and redefined. Cities and counties should be granted uniform powers. In particular, counties and cities should be granted equal taxing and borrowing powers.

- Title 15.1 of the Code of Virginia should be recodified.

### B. Local Empowerment

As citizens have looked to local governments for a wider array of services, a growing gulf has emerged between the responsibilities of cities, counties, and towns and their legal authority, including the power to tap new sources of tax revenue to carry out these responsibilities. Because Virginia operates in the Dillon's rule tradition, local governments can exercise only those powers that have been granted unambiguously to them by the state constitution, state statutes, and charters. Limitations on local authority — particularly in the realm of taxing powers, growth management, and human service delivery — have become burdensome to local governments as they seek to carry out their responsibilities and make...
needed capital improvements in the face of diminished federal and state financial aid.

The General Assembly might be more willing to accede to the needs of local governments for greater authority if there were better lines of communication between the legislature and localities.

The 1990 Virginia Assembly therefore recommends that:

- The General Assembly should grant to local governments greater flexibility in carrying out local responsibilities.
- The General Assembly should expand the range of revenue-raising options now available to local governments.
- The Commonwealth should develop programs to foster communication and heighten mutual understanding and trust among the General Assembly, various executive agencies, and local governments.

C. State Aid /Fiscal Disparities

Substantial disparities exist in the fiscal capabilities of Virginia’s local governments to meet the service needs of their citizens. Defying simple description, these disparities fall into several categories—urban/rural, central city/suburban, high-growth localities/low-growth communities. While the state must be concerned that its local governments have the financial wherewithal to meet their service responsibilities, the Commonwealth also must be concerned that its citizens are served adequately in such critical areas as public education, housing, health care, and basic subsistence.

Thus, the problem of local fiscal disparities is both a problem of inequality among governments and a problem of inequality among citizens. Inequality among governments can be seen in the inability of some localities to raise funds for essential infra-structure expansion and replacement and to meet the costs of implementing federal and state mandates. Inequality among governments, however, can also be tied to variations among the state’s localities in the quality of public schooling—and thus the access of children to equal educational opportunity.

The 1990 Virginia Assembly therefore recommends that:

- The Commonwealth should recognize resource disparities among local governments and acknowledge an overall state interest in distributing revenues equitably. In this context, the state should define and fund a minimum set of basic services for all citizens in such areas as public health, education, welfare, and public safety.
- The General Assembly should undertake a systematic examination of state aid formulas and modify such formulas to give stronger recognition to varying local fiscal conditions and to provide for greater equalization of local fiscal capacity.
- The Commonwealth should raise additional revenue to help pay for essential services in localities with the fewest revenue resources.

D. State Mandates

The Commonwealth’s fiscal troubles mean that local governments are getting inadequate state aid to support essential services, including many that have been mandated by state legislation and administrative regulations. Even so, the state continues to impose new obligations on local governments—especially in the areas of environmental protection, public education, and human services—without clearly defined state policy objectives and without appropriate concern for whether local governments have the money to carry out these mandates. As a result, our localities are being strained by a situation in which “the revenues stay at the top while responsibilities fall to the bottom.”

The 1990 Virginia Assembly therefore recommends that:

- This Assembly recognizes the appropriateness and desirability of state mandates to address statewide and fundamental social and environmental concerns. This Assembly also recognizes that local governments, as the administrative arms of the Commonwealth, are the most appropriate entities to implement those mandates. However, the General Assembly should recognize the costs imposed on local governments in implementing state mandates. The General Assembly, therefore, should link substantial mandates to new or additional revenue sources to ensure that the burdens imposed are shared appropriately between the Commonwealth and the implementing localities.
- Before enacting any proposed legislation requiring localities to spend additional funds, the General Assembly should analyze the fiscal impact of that proposed legislation as well as the fiscal impact of all existing state mandates.
- All current state mandates should be reassessed to see if they meet clearly articulated state objectives and goals. Mandated objectives should reflect (a) desired outcomes and (b) only those goals that are of greatest
importance to state priorities; they should be accompanied by state fiscal assistance to the localities. Localities should be given flexibility in how to achieve those outcomes.

E. Boundary Adjustments

Few problems involving local governments have been more heated than those surrounding boundary adjustments. The persistent controversies over annexation, however, are only one aspect of the general problems surrounding boundaries. Many local boundaries were fixed well over a century ago so that no citizen would be more than a day’s horseback ride from the county courthouse. It is not unreasonable to ask whether a pattern rooted in colonial times can meet the needs of a 21st-century, global society.

The 1990 Virginia Assembly therefore recommends that:

• Local governments should be given additional options to restructure their governmental relationships and structure new and innovative partnerships with state and federal agencies, the private sector, and not-for-profit organizations.

• The boundary adjustment process should be simplified and improved.

• The Commission on Local Government should provide technical assistance and information to local governments in addition to its current responsibilities.

F. Regional Cooperation

As the Commonwealth has become a shifting mosaic of growth and decline, the relevance of local boundaries to either the origin or solution of many public problems has become increasingly questionable. The logic of political economy increasingly suggests the advisability of using regional approaches to solve problems that transcend the resources and boundaries of individual localities.

The 1990 Virginia Assembly therefore recommends that:

• The state should develop strong legislative, political, and financial incentives to foster regional programmatic and operational cooperation. Funding mechanisms should foster cooperative and regional projects. The state should pay a higher share of the costs and offer greater flexibility when localities employ regional approaches in meeting their needs.

• The tools and processes for regional cooperation should be strengthened.

• The role of the planning district commissions in assisting localities to devise and implement regional solutions should be reviewed in light of changing circumstances, recognizing the fact that regional problems and solutions do not always follow planning district boundaries.

G. Long-Range Planning

The rapid changes that are affecting the environment in which local government operates make it all the more important that policies and programs are based on thorough, sound, long-range planning. A failure to give adequate attention to long-range thinking will ensure that the future takes us by surprise and perpetuates the ad hoc manner in which we lead our lives, manage our affairs, and govern our society.

The 1990 Virginia Assembly therefore recommends that:

• The General Assembly should improve and increase the use of strategic planning by state government. State strategic planning should be used to coordinate actions among state agencies that affect local governments.

• A fully staffed, fully funded state planning office, separate from the budget process, should be established to assist the governor and the General Assembly. This office should be a source of long-range forecasts, research, and information for use by state and local decision-makers.

• Localities need to place greater emphasis on long-range planning.

H. Citizenship Education and Leadership Training

Responsible and responsive local government requires a vigilant citizenry and an effective, well-trained leadership. Low voter turnout in local elections and the low level of public knowledge about local government are cause for concern. Moreover, the growing legal and technical complexity of modern governments raises the question of how well prepared local officials are for the challenges of contemporary leadership. In a rapidly changing world, the skills of our local officials are sometimes inadequate for dealing with complex new challenges and pressing local problems.

The 1990 Virginia Assembly therefore recommends that:

• Public understanding of and citizen participation in local government should be increased by
a. undertaking a strong statewide program effort to inform citizens about how local government works; corporations, academic institutions, and volunteer organizations should be asked to share in this effort.
b. keeping government simple.
c. having localities consider alternative forms of governing, such as a strong mayor system for large urban areas, or forms that recognize a sense of community and offer fuller citizen participation.
d. strictly adhering to the Freedom of Information Act.
e. strengthening and expanding the current statewide program to introduce and instruct students continuously, elementary through higher education, in local government and community citizenship and responsibilities.

- Leadership in local government should be strengthened by
  a. asking corporations, academic institutions, and volunteer organizations to lend experts to local governments. This program would increase governmental resources, broaden opportunities for those experts, and increase public knowledge of how local government operates.
  b. encouraging training programs for all newly elected officials.
  c. broadening opportunities for local government internships among high school and college students.

- Public regard for government officials should be enhanced by enacting strict controls and limitations on campaign contributions for state and local elections.

THE FUTURE OF LOCAL GOVERNMENT IN VIRGINIA
Overview and Context

By Bruce D. McDowell

Dr. McDowell is the director of government policy research at the U.S. Advisory Commission on Intergovernmental Relations. This paper was presented at the opening session of the 1990 Virginia Assembly.

There could be no more timely and vital topic this year than "The Future of Local Governments in Virginia." Local governments all across the nation face major challenges now, and the local governments in Virginia are no exception.

I would like to do three things in this brief presentation:

1. List eight distinctive features of local government in Virginia, and compare them with national norms.
2. Briefly describe the five major challenges that I believe local governments will face in the 1990s.
3. Review six basic options for meeting these local challenges.

Distinctive Features of Virginia's System

Because the states are responsible for establishing their own local governments, America has 50 different systems of local government. Here are eight of the distinctive features that set the Virginia local government system apart from others.

1. Virginia has a relatively simple system of local governments. It consists largely of cities and counties, although there are 190 small towns as well. Only seven other states have fewer local governments than Virginia.

2. One feature that keeps the Virginia system of local government simple is the unique separation of cities from counties. This reduces the overlapping of jurisdictions, but it often creates high tensions when annexation is attempted. Annexation in Virginia is not just an issue for landowners seeking public services, but is a major competition between governments for territory and wealth. It is handled as a court proceeding with very high stakes. This situation is quite different from that in other states.

3. Virginia is a Dillon's Rule state. This means that, more than in many other states, local governments in Virginia must go to the state legislature to seek special authorization for new activities that they wish to engage in. And the Virginia legislature sometimes has been hard to convince about authorizing innovative urban activities. Growth management activities, for example, have been accepted slowly.

4. Virginia has a pay-as-you-go tradition in its public finances. This tradition is beginning to
loosen, but with some difficulty. Unless this tradition does loosen significantly, it will be very hard for rapidly growing parts of the state to provide the services they need in a timely fashion.

5. Virginia is one of only five states where 85 percent or more of the highway, street, and road mileage is under the control of the state. The national average is 24 percent. For most of their surface transportation needs, therefore, local governments in Virginia must wait until state priorities catch up with their needs.

6. Virginia, along with most other states, has an Intergovernmental Cooperation Act that allows local governments to enter into agreements with one another for service provision. However, most other states have more flexibility in using this technique. Virginia’s act does not provide for intergovernmental cooperation with state or federal agencies. In addition, all parties to the agreements must have their own powers to perform the service, rather than relying on the powers of others. This may require an extra trip to the legislature.

7. Virginia has a statewide system of regional planning district commissions (PDCs) that are supported by the state better than the regions in all but three other states. Virginia is virtually unique in authorizing these regional districts to take on service functions. An example is the regional solid waste operation in Bristol.

8. The Commonwealth of Virginia is a strong fiscal partner with its local governments. Thirty percent of the state budget is devoted to local assistance, and 33 percent of local budgets consists of state aid. In addition, certain direct state expenditures, such as those for local roads, relieve local budgets of burdens they must carry in most other states. This state partnership is stronger than in many other states—although it is not as dominant as in a few other states.

There is much more that I could say about the present local government system in Virginia. But this is enough to illustrate the point that the system encompasses some strong points as well as some characteristics that need attention. And in fact, some are receiving attention. The annexation situation, in particular, has been a ‘hot’ topic for many years, and will come before the legislature again in 1991 for further consideration.

Although the specifics differ from state-to-state, Virginia is certainly not alone in facing a number of critical local government issues as the decade of the 1990s begins.

Local Government Challenges in the 1990s

Nationwide, many local governments are facing five major challenges:

1. Local fiscal stress.
2. The need to manage growth and development more effectively.
3. The rapid creation of special benefit areas that supply vital needs but complicate intergovernmental relationships.
4. Continuing mismatches between the boundaries of local jurisdictions and the logical extent of public services.
5. Continuing mismatches between the financial capacities of local jurisdictions and the public service needs for which these jurisdictions are responsible.

Let’s examine each of these challenges.

Local Fiscal Stress

The fiscal stress of local governments is the central theme of the Virginia Municipal League’s 1991 legislative package, and many others in the state agree that this is one of the state’s top issues.

As the League points out, there are several reasons for local fiscal stress. These include:
- growing appetites of citizens for services;
- the escalating costs of providing such services to higher and higher standards;
- the increased costs added by state and federal mandates;
- the drop in federal aid;
- increases in state aid (especially for education) that must be matched by localities; and
- restricted local tax bases.

These all are important factors, but I will take time to elaborate on only one of them—federal mandates.

A new ACIR study has found that over half of all federal preemption statutes passed since the adoption of the U.S. Constitution have been enacted since 1970. It appears, now that, as federal finances get tighter, the national government is stepping up the pace of regulatory requirements that induce greater spending by state and local governments.

For example, the federal wastewater treatment program now has transferred financial responsibility to the state and local governments without reducing the water quality standards that must be met; to the contrary, costly new nonpoint source water quality standards have been added.

Three very costly types of federal mandates seem likely to continue, and perhaps even increase, through the 1990s: environmental protection, reduction of overcrowding in jails and other public institutions, and Medicaid. The state can either shield its local governments from the costs of these federal mandates or pass these costs through to local officials. Whichever way it is done, financial consequences should be considered.
The federal government still wants to accomplish more than it can pay for, and the states do also. In the end, federal and state mandates fall on the shoulders of local governments regardless of their ability to pay.

Growth Management

Traditionally, local planning processes have not been very successful at regulating the pace of private development in step with the provision of public facilities. This has resulted, most noticeably, in massive traffic congestion. But overcrowded schools, overflowing sewers, and other lapses in the provision of public facilities also occur frequently.

Now, however, much better techniques are available to manage growth by requiring 'concurrence' between public and private development activities. A local 'adequate public facilities ordinance' can tie the pace of private development quite precisely to the availability of public facilities by regulating the pace of subdivision approval and building permit processes—while, at the same time, giving private developers incentives to help speed up the provision of public facilities and services through impact fees and a variety of other techniques.

Without such precise techniques, local governments experiencing rapid urbanization are usually unable to keep up with the pace of private development. A lack of concurrence is not only a fiscal problem, but also an environmental problem. When public works are neglected, the environment suffers.

Special Benefit Areas

Rapid development and local fiscal stress often combine to push public responsibilities into the private sector or to special districts or special taxing areas. For example, in many metropolitan areas almost all new residential construction is now in communities where the roads, public open spaces, recreation facilities, and many other community features are governed by a residential community association—essentially a private local government. People buying property in such communities become citizens of them when they sign their deeds, and they must pay the fees associated with the services provided—just as surely as through these fees were public taxes.

In 22 states, developers have found that they can establish special districts for their communities and deed the public works and other common properties to those districts, to be administered by the development's residents. The growth in residential community associations has skyrocketed from less than 5,000 in 1960 to an estimated 130,000 today.

A recent ACIR report has found that residential community associations frequently need relationships with local governments that are beginning to look increasingly like intergovernmental relationships. Of course, special districts also develop such relationships. Thus, the creation of all of these new special benefit areas greatly expands the need for effective intergovernmental coordination and cooperation. Issues such as double taxation and unequal protection of the laws grow out of these situations.

Mismatches Between Boundaries and Public Service Needs

No matter how local government boundaries are drawn, public service needs of one sort or another are bound to spill over them. Most notoriously, watershed boundaries cross political jurisdictions. Likewise, air pollution and commuting patterns cannot be held within individual localities.

In fact, growth itself spills beyond individual localities. Even where city-county consolidations have occurred, it is common for the consolidated government to again become just the central city as urbanization continues. Therefore, means must be found to cooperate across local boundaries.

Options for Meeting Local Government Challenges

The challenges facing local governments in the 1990s have no simple or easy solutions. Nevertheless, a wide range of options are available for consideration in Virginia, as well as in other states.

It would be presumptuous for me to prescribe solutions to problems with which you are much more familiar than I am. So let me just list some of the options that you might want to consider in Virginia for the challenges I have outlined.

Local Home Rule

Local government home rule has at least four aspects:
Most states allow different amounts of local discretion in each of these four fields, and Virginia is no exception. In general, Virginia cities have more discretion than counties, but a similar pattern prevails for both; there is more functional and personnel discretion than structural and financial discretion.

It is difficult to innovate and meet the special needs of localities without a substantial degree of discretion. For example, local revenue diversification, including local option taxes, is part of what may be needed by the local governments in the state’s burgeoning metropolitan corridor extending from Northern Virginia through Tidewater. A reluctant state legislature has held up many innovations by localities within this corridor.

After the 1990 Census is fully tabulated and reapportionment has occurred, it might be beneficial to establish a coalition of metropolitan-corridor governments to seek greater discretionary power from the legislature for this so-called ‘golden crescent.’

Regional and Intergovernmental Cooperation

Even though Virginia established one of the nation’s best systems of planning district commissions many years ago, it probably needs to be realigned and refurbished from time-to-time. The recent consolidation of planning district commissions in the Tidewater area illustrates this point. Statutory authorization for interstate cooperation in the Washington, DC and Bristol areas also may be desirable. Furthermore, greater use of the service district option should be considered.

State Aid Reform

Because of the mismatches between boundaries, financial capacities, and public service needs inherent in any local government system, state aid programs are needed as fiscal balance wheels in the system. ACIR has done a lot of work over the years in developing methods to measure relative revenue-raising capacities and relative expenditure needs of different jurisdictions. Virginia’s Commission on Local Government annually prepares a comparative report on the fiscal conditions of local governments in the state, following the ACIR concepts.

These factors are important considerations in designing state aid formulas that are sensitive to the diverse financial and servicing situations of local governments. As state aid programs, which often return funds to the localities where they were collected, increasingly replace federal aid programs, which have tended to be based more on measures of program need, it is appropriate to reevaluate the relative fiscal impacts of state aid programs on localities.

State aid formulas may need to be reworked if they are to be fair and adequately related to local needs. Several Virginia agencies do use the local fiscal conditions report of the Commission on Local Government in allocating state aid.

Boundary Commission

Virginia is one of 11 states that has established a unit to help deal with local government boundary issues. The Virginia Commission on Local Government performs this function within Virginia’s unique setting. Its responsibilities are quite broad, and its work is comprehensive.

Nevertheless, the Commission on Local Government may find the experiences of the other 10 boundary commissions helpful, especially if the legislature makes some of the changes suggested by the Grayson Commission that would make the Virginia local government system more like other states.

State Policy Leadership

Local governments, themselves, are too numerous and too insular to always do what they should for the good of the regions in which they are located. Therefore, simple state acquiescence to local actions, or even enabling laws allowing innovative local activities, may not be enough.

In states like Oregon and Florida, where strong growth-management programs are being pursued, much of their success rests on state leadership. The Commonwealth of Virginia also should consider taking a strong leadership role on certain local issues.

For example, Virginia might exercise such leadership in evaluating the effects on local governments of federal and state mandates, and in helping to reimburse the costs of these mandates when necessary or appropriate. A new ACIR report describes how seven different states approach this issue.

Strong state leadership might also be valuable in establishing relationships between local governments and residential community associations, authorizing local home rule, making greater use of the planning district commissions to help achieve state purposes, and establishing constructive relationships between special districts and the cities and counties where they are located.

Local Government Advisory Council

The ACIR recognizes the Virginia Local Government Advisory Council (LGAC) as its state counterpart in Virginia. Twenty-five other states have such organizations, and the Virginia Council
is active in the national network of these state agencies. 

The reconstitution of LGAC this year gives it an appropriate membership and charter to consider the local government challenges and state-local relations issues outlined here within the specific context of the Commonwealth of Virginia. Nevertheless, LGAC lacks an independent staff and budget adequate to deal with such a large agenda. 

The LGAC is now developing its own agenda in cooperation with Virginia’s local government associations and a number of state agencies. I hope that it will gather strength in the years ahead and become an important forum within which to hammer out solutions to the many problems that Virginia local governments will face during the 1990s and beyond.

Conclusion
Virginia’s local governments face many mighty challenges, but challenges create opportunities. I am sure that an increasingly productive state-local dialogue pursued through the LGAC will find solutions to all of these problems.

As I toured Poland last week, listening to local officials in Warsaw, Poznan, Lodz, and Gdansk describe their problems, it made our problems seem insignificant. They have no land records, virtually no local revenues, inadequate funding from the state, no experience with democracy for the past 50 years, and a bureaucracy still loaded with officials used to doing business the communist way. They are starting from scratch. We are starting with a wealth of resources and experience. We have no excuse for failure.

THE FUTURE OF LOCAL GOVERNMENT IN VIRGINIA: Local Leadership and the Catalyst for Change

By Gerald L. Baliles

The Honorable Gerald L. Baliles is former governor of Virginia and partner and head of the International Law Group of the Hunton & Williams law firm. These remarks were presented as the keynote address at the 1990 Virginia Assembly.

All of us are here because of our concern and hope for that future, especially as it relates to government that is generally said to be closest to the people. And because we know that only through the quality of our investments now—financial, intellectual, and creative investments—will we direct the course for that destination.

In considering the topic of this Assembly, I found that the quality of time must also be factored into our equation for the future—the kind of time needed for communication and understanding of ideas and attitudes. Let me explain.

I.

"Perhaps some of you know of my interest in and concern over the problem of communications in this country, a place where people of accomplishment, education, and maturity seemingly cannot convey concepts and information in clear, concise terms...."

"It is important, therefore, for government officials to recognize the value of simple terms, of plain English, in communicating with the public and with each other.

"That is not always easy to do, for even simple terms change or acquire new meaning over time. Let me cite two examples: city and county.

"All of us live in either a city or a county. The structure and power of that local government depends upon whether it is a city or a county. The flow of state funds to localities is affected by whether the local unit of government is a city or county. The level of taxes required to support certain services often depends upon whether the local government is a city or a county.

"And, until recently, whether a local government was the annexor or the annexee depended upon whether it was a city or a county.

"We live with the terms city and county, yet I submit that we do so without comprehending that time and events have blurred the definitions that city and county once had.

"There are some questions, I submit, that we should ask of ourselves. How is it that in many areas of Virginia, an urban city and an urban county adjoin each other, each one providing essentially the same level of services, yet one operates with a charter and the other does not?

"Indeed, the charter is required because the local government is a city; but does it guarantee any better level of service than the adjacent urban county that operates
without a charter, pursuant to
general law?

"Have we become so ac-
customized to city-county forms that we
have failed to see or resolve
the separate and distinct needs of
rural areas and metropolitan
centers? Could it be that we have
been so overwhelmed by problems
of government policies and services
in recent years that we have for-
gotten to reexamine—as Jefferson
once urged—some of the funda-
mental reasons underlying our
structures created to carry out those
policies and services?

"Could we devise a better system of allocating state aid to
local governments, for example, if we came to terms with city-
county definitions? Indeed, it is
unlikely that the alleged inequi-
ties in the various funding formulas
ever will be corrected until we
address the city-county definitional
problems.

"Traditionally, city-county
separation has been based on an
urban-rural division. Virginia’s
system of local government once
assumed that urban areas should
be within the boundaries of a
municipal corporation and that rural
areas should be under the juris-
diction of a county government.

"Since World War II, how-
ever, the rise of the ‘urban county’
has blurred and confused the
earlier clear lines between coun-
ties and incorporated municipali-
ties. The General Assembly itself
has added to the blurring by
conferring upon counties many of
the powers of cities.

"What is a city and how does
it differ from a county? The Con-
stitution of Virginia defines a city
as an independent incorporated
community which became a city
before July 1, 1970, and which has
a population of more than 5,000
persons. ... A county is defined
as any existing county or any such
unit thereafter created.

"The General Assembly is
authorized by the constitution to
provide for the organization,
powers, creation, consolidation,
and dissolution of counties, cities,
towns, and regional government;
but there is no statutory defini-
tion of what constitutes a city or
county in the Code of Virginia.
Two of the most basic units of
government in the Commonwealth
charged with duties and respon-
sibilities under law are not really
defined. It should be changed.

"Historically, cities provided
urban services not needed or
wanted in rural areas. Cities were
manufacturing centers and com-
mercial districts. Cities had tax
bases not found in counties and,
thus, possessed sufficient revenues
to provide urban services without
large infusions of state aid.

"Counties, on the other
hand, were administrative districts
of the state, created to perform
basically state functions, such as
tax collection, the operation of
highways and a system of courts.
Because counties lacked the tax
bases of cities, state aid flowed to
counties. But since World War II,
counties have changed. While they
continue to serve as a political
subdivision of state government,
many provide most of the urban
services provided by cities.

"Indeed, the situation has
become such that some observers
have argued that in Virginia we
have, in addition to rural coun-
ties and urban cities, some rural
cities and urban counties. Yet, in
many sections of the Code and in
our funding formulas, we speak,
of and rely upon without distinc-
tion, the terms city and county.

"The question should be
asked, it seems to me, whether the
time hasn’t come to reexamine the
nomenclature of local govern-
ments. Cities and counties—what
are they now, and what do we want
them to be? Should the historical
and traditional distinctions be
restored to city-county terms? But
would that approach really resolve
the separate and distinctive
problems in an urban area con-
taining a suburban county and
central city?

"Probably not. Yet if we are
to succeed in finding solutions to
problems that are linked to one’s
status as a city or county, can we
afford to wait?"

II.

Ladies and gentlemen, what you
have just heard was an excerpt
from a speech given ten years ago
to the Virginia Municipal League
at its annual meeting in 1980, by
a young delegate named Gerald
L. Baliles.

Ten years ago, there were
no video rental stores or family
VCRs; no Virginia lottery; no
Chesapeake Bay Preservation Act.
Liquor-by-the-drink was still new.
There were phosphates in our
detergents, fewer cars on our
highways, land was cheap in
Northern Virginia, and America
was in an arms race with the So-
viet Union. We all know how much
has changed.

And I must say that ques-
tions about local government
structures, raised by myself and
others, have not been ignored
during that time. The Commission
on the Future of Virginia, directed
by Governor Robb and led by The
Honorable Bill Spong; the Local
Government Attorneys’ Associa-
tion report, titled The Need To
Review Virginia’s Local Government
Structure; and the Grayson Com-
mission have all lent credibility
to the issue during the past decade.

The question now is, have
we developed the information, the
confidence, the attitudes, and the
political environment necessary
to address this issue now? What
else is needed? What will be the
catalyst for action?

I am reminded of a recent
article about urban infrastructure
in World Link magazine. That ar-
ticle notes:
As the economy slows temporarily, as projected state revenues shrink and policies change, and as city and county governments struggle with priorities, they are beginning to embrace regional views, and to respond to an international economy.

History has shown...that it tends to take about 25 years for innovative ideas to get translated into urban policy. We urgently need to accelerate this process. If cities do not become more creative in how they move people, goods, power and water, they risk becoming social and environmental nightmares.

I don’t believe that we need to talk about city and county definitions for another ten years. As a former public official who knows the value of a decade and the wisdom of waiting for the right moment, I am confident that ideas and actions are ready to converge in Virginia on this issue.

And what is even better, this occurs at a time when public opinion and fiscal realities set the stage for issues of regional cooperation.

More and more business leaders and elected officials at the local level are recognizing the advantages of a regional approach to common problems and opportunities.

There are other forces at work to favor this kind of approach.

Some of these forces are at the international level. A recent cover story in the *Economist* poses the question, “Is this the end of the nation state?” Promising that the next century may be a flagmaker’s delight, this story forecasts a continuing palate of new national boundaries—both through the emerging strength of international organizations such as the European Community, the ASEAN nations, and the reconfiguration of the 15 Soviet republics within the Soviet Union and the continuing ‘spin-off struggles’ of areas like Canada’s Quebec and the several republics of Yugoslavia.

At the same time, a recent story in *Virginia Business* magazine features the comments of Dr. James Crupi, who advances the prospect of power shifting fundamentally from nations to regional cities, with a not-so-long-term result of a world economy dominated by a system of what he calls “city states.” This shift of power is further driven by the cutoff of federal funds for social programs and building projects. Now that they can no longer count on funds from the federal level, it is Crupi’s view that cities are looking inward to public/private partnerships, as well as abroad, to find the resources to finance continued growth and quality. Indeed, he believes regional cities will become the magnets for regional growth in a high-tech, service oriented economy.

In Hampton Roads, in Northern Virginia, in the Roanoke Valley, in the Richmond Metropolitan area, and in other regions throughout Virginia, there is evidence—and potential—to support this theory.

Business leaders and local public officials are looking at water supplies, at waste management, at transportation, at regional jails and law enforcement, and even, tentatively, at education systems to see how looking beyond local boundaries for solutions could improve the quality of life within those boundaries in the future.

As the economy slows temporarily, as projected state revenues shrink and policies change, and as city and county governments struggle with priorities, they are beginning to embrace regional views, and to respond to an international economy.

To me, evidence of these ‘local leadership factors’ indicates the kind of political environment that will support changes in the definitions of local government, and changes in funding formulas and policies that could follow those definitions.

I have spoken before of the possibility of state funds, over time, being used as an incentive for localities to tackle regional problems on a regional basis.

The work of the Grayson Commission addresses these kinds of issues in some detail. Its work will be used, I believe, in developing many of the new approaches we will need in this state.

III.

But if a local message is to be heard at the state level, regional priorities must be made clear. Because resources are limited, a locality cannot afford confusion about where those resources should go.

I would think that flexibility for innovative financing tools at the local level would be a legitimate subject for the legislature in the coming months. This is not to say that standards of quality or certain state mandates should become the first victims of compromise.

The commitment to statewide standards in areas such as education, the environment, and transportation will remain our best defense against the ravages of the economy at all times.

But I do think that the time is right for the responsibilities and requirements of state and local governments to be reexamined in light of defined priorities and the current economy, to determine how each is best managed and paid for.

This reexamination may be especially appropriate in light of the recent federal budget agonies. The information that is still coming out of Washington is far from reassuring.

In fact, the only reassuring thing that I can take from the events related to the federal budget in recent months is that, ironically, it may have the effect of empowering those in Congress who are ready to serve as agents of change at the federal level.

One of these individuals is Senator Robb, who, in a speech earlier this year, proposed an approach that has become entirely appropriate. He said:
I happen to believe that there are too many tasks today that Washington has taken upon itself which could be much better managed by states or local government—if, indeed, there is still any real legitimate need for government in some of the programs which may have completely outlived their usefulness, particularly in a time of limited resources.

It seems to me that there is no reason for us to consider the current division of responsibilities among the various levels of government as being immutable. ... I would like us to begin a serious debate and a fundamental reexamination of traditional policies and programs with a truly open mind and not simply a commitment to a continuation of the status quo.

I think Senator Robb is right. And his view for change at the federal level reinforces what we discuss here today. If we are to do more than posture and blame, we must refuse to accept conventional wisdom and avoid assuming that we cannot change, dramatically, the process by which our public policies are determined.

Change does require time, and evolution of ideas requires time, yes. My speech of ten years ago certainly illustrates that. I also know how long it took to get passed a little bill of mine known as 'right turn on red,' along with the matter of developing support for environmental protection, if other examples are needed.

And, contrary to what some editorial writers seem to believe, not all Republicans are conservative, and not all Democrats are compassionate. Not all taxes are bad, not all government programs are ineffective, and not all private services are superior to public programs. Let's face it: without taxes of some kind, who would build our roads, educate our citizens, care for the elderly, house the mentally ill, defend our nation, and jail the law breakers?

Just as any road will do if you don't know where you are going, cutting budgets is easy if you don't care what that budget will produce down the road.

When clear objectives are set before the public, and the results are clearly in the public interest, I believe you will get consensus, and a mandate for action.

I found this to be the case in 1986, when the legislature, the business community, public opinion polls, and local government officials responded to recommendations of the Commission on Transportation in the 21st Century and supported a package of new fees and taxes to change the way Virginia built and maintained its roads, its ports, airports, and public transportation system.

Did it solve all our transportation problems? Of course not. Did it provide a direction for change and improvements in every region of the state? Absolutely.

New taxes or funding will not be the answer every time. Far from it. In some cases, privatization may be the right way to go, or decentralizing administrative authority.

But in the case of the transportation package, there was no substitute for more money for more projects, and people were willing to pay more if all the revenues from those taxes were dedicated to building a better transportation system.

IV.

Defining local issues in a persuasive and compelling manner is where leadership enters the picture. Taking the message to the people, clearly, constantly, and persuasively is also required of leaders. Occasional speeches at ribbon-cutting ceremonies will not be enough.

Let's put it in perspective.

This is a time when local government must be seen in the context of global change and economic impact. I think all of you here have become more aware of how those changes—some of them half a world away—can bring new jobs to your area, or take them away; how they can create opportunity, or threaten the comfortable status quo.

The growth in international trade suggests that we are at a crossroads in history—where leading roles will be played by organizations and individuals that understand the meshing of economics, domestic policy, and foreign policy.

The new international economy respects national, state, or local boundaries. And consumers are increasingly looking at a 'borderless' world as they search for products and services at the best price, the most convenience and the best quality—whether in the world they may be sold.

In Washington, our federal government is reeling from the budget deficit, and new leadership is likely to emerge among those who lived through the intensity of multiple budget bills.

States are trying to run with the freedoms of new federalism, but are burdened with changes in federal programs and funding, especially during fluctuations in the economy. And the results of the 1990 census will provide further evidence of change in our demographics and economic trends.

With this perspective and context in mind, a case can be made for local leadership. In fact, after a decade of raising questions about the structures and definitions of local government, I believe we could look for the 90's to be the 'Decade For Local Leadership.'
When you are caught in the crossfire of shortfalls and deficits, political uncertainty and institutional inertia, with nowhere to hide—the call to action is made for that leadership.

I believe that local government structures must be redefined now, not later. I believe that this will promote regional cooperation, if not regional consolidation, and more efficient use of public money. This process would also help local government officials to decide on local priorities and work with their legislators to make sure those priorities are understood when decisions are made on funding.

And if local governments will develop proposals for more flexibility in managing and funding public services at acceptable levels, I think the General Assembly will respond. Maybe not right away...change comes slowly on the Hill, too, remember.

V.

But, as I said earlier, I think there are forces at work in your favor. Only you can decide, through your deliberations here, what represents our best route to the future.

As you determine the recommendations in the report of this Assembly, I suggest to you this: Consider the common sense revealed through the work of the Commission on Virginia's Future, the Local Government Attorneys, and the Grayson Commission.

Allow for the time needed to change attitudes and develop consensus, but assign a role to those in public offices to champion those changes. There are election cycles and fears about job security upon which opinions are formed, and recognizing those factors is called political realism.

Then, in the clearest, most realistic possible terms, tell people why those changes are needed, and what is likely to happen if things stay the same.

It took the Emperor Charlemagne 30 years to defeat the Saxons and build the legacy for an empire. Fortunately, things happen more quickly now. And the ideas from your time here these next few days could hold promise for our citizens before the next generation.

Good luck, and thank you.

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To Be or Not to Be: Municipal Reversion & the Future of Virginia’s Cities

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To Be or Not to Be

Municipal Reversion & the Future of Virginia's Cities

By E. H. Monday

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Virginia's unique system of local government is stumbling into the 21st century. The Commonwealth's distinct and independent cities and counties are experiencing increasing difficulty coping with modern local governance. Faced with escalating demands for services and declining revenues, these jurisdictions have fallen to squabbling over their respective shares of a stagnant or diminishing tax base. The result is a local polity that leaves its officials frustrated, its citizens dissatisfied, and its desirability dubious.

In 1988 the General Assembly of Virginia passed legislation designed to solve the problem. The result—the Reversion Statute—permits an independent city to revert to town status, thereby integrating the former city into a surrounding or neighboring county. While the new town could continue to function as a distinct entity, it would be subordinate to the county government. Most notably, the city would be relieved of its sole responsibility for public safety, health, welfare, and education. With reversion, a voluntary surrendering of municipal independence, city and county both would pool services and burdens and enlarge their revenue bases.

Municipal reversion would appear to be the triumph of the county as the preeminent unit of local government. The cities seem to have little choice: either continue to struggle alone or give up independence. As the Reversion Statute comes to be implemented, however, it will be seen that the cities have—inadvertently—been given a strong card to play, one that will permit them to set the agenda for change in Virginia's local government structure and may not necessarily spell their demise.
RISE OF INDEPENDENT CITIES

Counties were originally Virginia’s only unit of local governance. From the Colonial era until the Civil War, county government was largely the basis for local rule. From the Commonwealth’s beginning, however, cities acquired a distinct and separate status. Virginia was predominantly rural, its people highly individualistic; the county provided few services and levied few taxes. By the era of Reconstruction, however, the Commonwealth had begun to experience the dramatic population shifts that were being felt throughout the country. Established cities and towns grew larger and new ones emerged almost overnight. Increasingly, urban populations came to demand more services from their government—public safety, transportation, utilities, and, foremost, education. County government remained tied to its rural origins and, as such, proved increasingly inadequate in attempting to address the issues and demands of urbanization.

In the late 19th century the state legislature attempted to solve the problem. Virginia joined the growing list of “Dillon Rule” states. The Dillon Rule, named for a 19th century judge who expressed the concept most coherently, asserts that all local governing authority is granted to a municipality at the pleasure of the state legislature. Localities are essentially tenants at will upon what is ultimately the property of the state.

Virginia sporadically implemented a subtle and largely informal evolving effort to provide more effective government for the urban areas of the state. The ultimate result was the institutionalization of the concept of the independent city. Urbanized areas could be divorced from the surrounding county, incorporated as an independent unit, and given a legislative charter as a city. County government would remain a largely laissez-faire entity, providing comparatively few services to its citizenry and levying few taxes in return. City government, freed from the restrictions of passive county ordinances, would have greater discretion actively to establish municipal services and consequently impose higher taxes.

The stage was thus set for a parallel development of Virginia local government. Cities and counties entered the 20th century supposedly well suited to fulfill their respective urban and rural governing roles. As Virginia moved from the bucolic days of the pre-Depression era to the baby-boom- ing post-war years, however, counties faced increasing public demands to provide services comparable to those found in the cities. The result was that by the end of the 1950s the roles of city and county government had become practically indistinguishable. Both operated police, fire, utility, sanitation, and highly expensive education systems.

URBANIZATION & HOSTILE ANNEXATION

Increasing demand for services, while fundamentally altering the scope of county government, weighed heavily upon the cities. Counties had a relatively untapped tax base upon which to draw, but cities found themselves financially restricted by their populations and territorial boundaries. As the need for revenues increased, cities sought to increase their size and expand their tax base by annexing land from the surrounding county or counties.

The General Assembly first codified the annexation process in 1904; it survives in Chapter 25 of Title 15.1 of the Virginia Code of 1950 and has been frequently amended. Recourse to the courts has been a feature of the process from its inception.

While annexation was never viewed benignly by the counties, there were few strident objections to city-initiated annexation as long as counties remained in their traditionally passive, rural role. As counties faced the rising clamor for services, however, they began to view their tax base more protectively, and opposition to annexation intensified. The result was that by the close of the 1950s the court battles of the preceding decades had attained a highly vitriolic level; hotly contested litigation was an expected adjunct to any attempted annexation.

The General Assembly, reacting to the unabated animosity characterizing annexation, sought solutions in the 1970s and 1980s. In 1986 it created the Commission on Local Government Structures and Relationships, popularly called the Grayson Commission, and charged it with making recommendations to soothe annexation difficulties and improve local government. The Commission’s most drastic, and most bluntly effective, suggestion was a ban on all annexation attempts by the cities.

The Grayson Commission recognized the problems facing these smaller cities, and stated that perhaps the time had arrived to eliminate them as independent entities, thus favoring the county form of government. Since smaller cities were finding it more difficult to provide efficient services with their restricted tax base, the Commission recommended that they could revert to dependent entities—towns—within their respective counties. No bill was enacted from the work of the Commission, but its ideas colored subsequent developments.

Foremost among the recommendations of the Commission were suggestions that the annexation process be largely denied to independent cities, and that cities with populations of less than 125,000 be not only permitted but actively encouraged to revert to town status. The Commission went on to describe the primary “inducement” for reversion that could be offered these smaller cities: only those devolving into
towns would be permitted to expand territorially. Further, the town annexation process would be simplified.

The Grayson Commission recognized the historical trends that were placing enormous financial strain upon small cities, stating in its final report that:

Conflict over annexation has intensified for counties surrounding medium- and small-size cities. Annexation by towns has not created the ill will not been as hotly contested as those by independent cities . . . because town annexations do not remove real property from the tax base.

Such was not entirely the case. Town annexations have been—and continue to be—opposed, primarily by counties fearing that a town may eventually seek city status and the town's annexed land would be irretrievably lost. Reversion of a city charter, however, prevents this contingency. A reverted city is prohibited from seeking its former independent status.

The Commission was irrevocably committed to replacing the historical annexation process with an entirely new program. Small cities, the de facto villains of the state's annexation dilemma, would be driven to seek town status if they were to expand; if not, they could make do with what they had. "Making do" was hardly an option if such cities no longer had the tax base to support their budgets. Virginia's local hostilities would be solved by eliminating one of the adversarial parties, the city. Thus the inducement to become a town would theoretically be too attractive to ignore.

By 1988 the General Assembly had decided to act by passing Chapter 20.2 of Title 15.1 of the Code of Virginia, the Reversion Statute. It provides for a mechanism by which a city can return the municipal charter granted it by the state. It would cease to be an independent city and would revert to town status, integrating with the county from whence it came. The city tax base would join that of the county, although the new town could continue to impose additional taxes to provide any services beyond those delivered by the county. The constitutional officers of the city would be eliminated. Judges would retain their positions but the city courts would be merged with those of the county. Other officers and departments may be eliminated, as circumstances might require.

Under the reversion process, a city with a population under 50,000 that seeks to end its independent status issues a petition for reversion. This results in the appointment of a special three-judge court, selected from the pool of circuit court judges and charged with entertaining the petition. The Commission on Local Government conducts a formal study and issues its recommendations. Litigation before the special court is permissible. The court may impose additional conditions to address difficulties or inequities arising from the reversion. Any party objecting to the decision has an opportunity to appeal. There is no provision for a voter referendum.

Explicit subscription to the Grayson Commission's "inducement" theory is not evident in the Reversion Statute. Nonetheless, the legislature did synthesize that theory into the statute. This is apparent in other acts passed while the Commission was in existence. Disapproval of the hostile annexation process is reflected in the 1987 moratorium on city-initiated annexation, since extended three times, and now in effect until July 1, 1997. Incentive theory was openly incorporated into a five-year prohibition against any loss of state funds if local governments consolidate.

Further evidence of the legislature's intent to encourage reversion through the lure of town annexation lies in the fact that, since 1980, the General Assembly has made no substantive amendments to the Code sections establishing town annexation procedures. It is apparent in other acts passed while the Commission was in existence. Disapproval of the hostile annexation process is reflected in the 1987 moratorium on city-initiated annexation, since extended three times, and now in effect until July 1, 1997. Incentive theory was openly incorporated into a five-year prohibition against any loss of state funds if local governments consolidate.

Further evidence of the legislature's intent to encourage reversion through the lure of town annexation lies in the fact that, since 1980, the General Assembly has made no substantive amendments to the Code sections establishing town annexation procedures. If the General Assembly had not intended annexation to be an inducement for cities to revert to towns, it would have altered the relevant Code sections and made town annexation equally difficult or impermissible.

Arguments Against Reversion

The systemic obstacles to reversion may be grouped into four broad categories: pride, purse, politics, and prejudice.

Pride comes from the long civic history and innate conservatism of Virginians. Perhaps the foremost attribute of the current system of local government is that it is "time-honored." City residents are accustomed to being distinct from county residents and their councils and to acting independently of county concerns, budgets, and goals. It would be a difficult emotional step to become, overnight, merely a part of something, rather than the thing itself.

Second is the power of the purse. Many city residents would balk at the prospect of "double taxation." While a city may give up its exclusive control, this does not mean it surrenders the power to tax; indeed, the contrary is the norm. Towns routinely levy taxes in addition to those of the county
to which they belong. The specter of double taxation, while in practice amounting to a slight increase above current levels, may in theory paint vivid mental pictures of precisely what the term implies—doubled tax rates.

A companion of the finance issue is the level of service provision. The new town might seek dramatic reductions in the variety or extent of its services, citing its diminished status. The county might compel the town to limit services due to financial constraints. Dual possibilities of increased taxes or diminished services would hold little attraction for a city resident. Further, the county would likely object to the price it must pay for reversion, which by definition requires the county to pay the bills. The very reasons leading a city to seek reversion—the need for more revenue, area, and services, and the prospect of having to make painful spending cuts—are precisely the reasons pushing a county to oppose a reversion.

Hand-in-hand with civic pride and tight purse strings goes politics. Faced with the psychological dislocation of sudden political dependence, city voters could revolt and express their disapproval at the ballot box. The council members who took their city down the path to town status might find themselves thrown out at the first election of the new town council. The looming prospect of a personal reversion from council member to private citizen could keep many city leaders from pursuing the course they know to be best.

Additionally, cities pursuing reversion should be prepared to be carved into multiple supervisory districts once they become towns. It is doubtful that a county so recently forced to swallow a city it neither ordered nor wanted would permit it to be a potent voting block within the county. Anomosity within a county forced to accept a reverted city could be considerable. For its part, the county should expect Justice Department scrutiny of such redistricting if the political dissection dilutes minority voting strength.

Such concerns lead inevitably to the issue of prejudice. Cities in this century have become the historical centers of Virginia’s black population; the counties are largely the domain of whites. While city status certainly is no visible wall, it nonetheless maintains a level of interracial comfort, a de minimis segregation replacing the de facto and de jure segregation of the past. Although it would never be expressly mentioned in opposition to a reversion, a county would nevertheless hear a faint undercurrent saying this racial wall is best left standing. The reality is that reversion, or the cooperation that the threat of it would foster, permits a pooling of resources, efforts, and attitudes that benefit the entire region, both black and white.

**FIRST REVERSION**

The City of South Boston was the first small city to attempt a reversion. In December 1990 it filed the necessary petition. *City of South Boston v. Halifax County* thus initiated the first reversion case in Virginia’s long line of municipal litigation. South Boston sought to revert to town status within Halifax County. South Boston is located at the center of Halifax County. The city found the costs of continuing its level of municipal services excessive, and a contracting tax base due to population loss aggravated the situation. Foremost of its problems, almost half of the city’s water and sewer capacity was consumed by the county, primarily by an industrial park at the city’s edge. Rebuffed on cooperative proposals and barred from annexation, South Boston turned to reversion as a final option.

South Boston expected that territorial expansion would accompany its reversion as a matter of course. The most notable population and economic growth in the 1980s had occurred in the county along the periphery of South Boston’s borders. As a new town, South Boston could extend its boundary lines to encompass this area, especially the industrial park already served. The Commission on Local Government, discharging its duty under the Reversion Statute, addressed South Boston’s hopes—and more importantly, the legislative intent underlying the statute. In its official report to the special reversion court the Commission stated:

The reversion of the City of South Boston to town status should remove sources of potential conflict between the municipality and Halifax County. . . . One of the major consequences of the reversion of cities to town status should be the facilitation of municipal growth. Since the expansion of the boundaries of a town, unlike that of a city, does not serve to diminish a county . . . the opportunity for towns and counties to reach agreements encompassing the extension of municipal boundaries is enhanced.

South Boston thus seemed to be pursuing precisely the course envisioned by the Grayson Commission and General Assembly. It was hoped that in South Boston the Reversion Statute would succeed in improving the historically hostile city-county system. Such was, literally, not to be the case.

The city’s petition set the process in motion. The Commission on Local Government conducted an exhaustive review of the advantages and disadvantages of the proposed reversion and in January 1992 issued its report. It recommended that the reversion be permitted, with few conditions. In December 1992 the special court issued its
decision, which permitted the reversion but imposed, under its assumed statutory authority to correct perceived inequities, a number of additional provisions. Chief among these was a prohibition on any annexation attempt by the projected Town of South Boston for fifteen years. In addition, the special court required the would-be town to continue to provide essentially the same municipal services that it provided as a city, and that the indebtedness of the city school facilities be completely paid for from city coffers prior to the consolidation of the two educational systems.

Faced with the elimination of nearly all incentives to pursue reversion, the City of South Boston appealed to the Virginia Supreme Court, asserting that the special reversion court contradicted the legislative policy underlying the Reversion Statute and exceeded its statutory power by imposing the annexation ban. South Boston v. Halifax County thus offered a case of first impression on the legislative intent behind the Reversion Statute and the authority to impose conditions upon reversion granted to the special courts. The city won an overwhelming victory on all fronts.

South Boston won each of the points argued on appeal. In a unanimous decision handed down on February 25, 1994, the Virginia Supreme Court announced that the new town could not be barred from initiating annexation proceedings. Nor could the town be required to provide any specified range of services. Finally, the county could not expect the town to fully fund the indebtedness of its school facilities out of its own coffers only to turn them over to county control, since from the moment of reversion, the city’s financial burdens become the county’s. Thoroughly rebuffing the special court, the Supreme Court merely left it to set the date for South Boston’s reversion to town status.

South Boston v. Halifax County was a characteristically conservative decision for the Supreme Court. It declined to delve into the realm of legislative history and intent, preferring to remain strictly with statutory construction. Looking to the Reversion Statute, it found no ground upon which the special court could base its ruling. The Court expressly limited the special courts to the powers granted them in the Reversion Statute. By implication, this sets the parameters of the special courts’ powers to “address inequities” and ensure a smooth transition from city to town status. While the special court, and Halifax County, took that clause of the statute to imply broad authority to craft a specialized reversion “package,” the Supreme Court apparently viewed the clause quite narrowly. As a result, special courts can do very little tinkering with the reversion process. Put simply, when a city chooses to revert, there are few conditions that may be imposed upon it; a county must, on the whole, accept the new town “as is.”

A DOOR OPENED WIDE

The ultimate impact of South Boston v. Halifax County is to open the door for future reversions across Virginia. The Court has given a final and most effective expression to the inducement theory of the Reversion Statute. In return for surrendering its independence, the city is given almost complete authority to select the timing and circumstances for its reversion to town status. Put bluntly, if the city elects to proceed with its reversion, a county has little choice but to consent. This situation gives cities the luxury of having reversion as a final option and, in the meantime, using its threat as a tool with which to extract concessions from a county.

A few caveats do remain, however. Implicit in the Court’s decision is a respect for the evaluations of the Commission on Local Government. If the Commission thought a reversion was ill-advised, it probably would not proceed. Alternatively, if the Commission recommended a specific program for the reversion of a particular city, the special court would be completely justified in endorsing it. Such power is granted to the courts in the reversion statute itself. The Commission is charged with reviewing the reversion petition and issuing recommendations to the special court. The court is charged with reviewing these recommendations. Thus as long as the court endorses the report and its recommended course of action, it may be relatively well assured of having discharged its duties properly. Only by deviating from the Commission’s conclusions, as did the special court in South Boston, does the court open itself to reversal in the Supreme Court. The real arbiter of the reversion process may be said to be the Commission on Local Government.

Here arises a fundamental paradox surrounding the entire issue: the Commission will likely differ from the counties on what constitutes an undesirable reversion. The most heavily burdened, indebted, and problem-laden cities are those in which counties would most vehemently oppose a reversion. Yet it is precisely these cities which the Reversion Statue most seeks to address as the prime candidates for reversion.

Additionally, it cannot be foreseen how politics will affect the ultimate utility of reversion. The Virginia Association of Counties is seeking to redress the unintentionally inordinate leverage given to cities by the Reversion Statute and the South Boston ruling by seeking legislation that would place a 10 year post-reversion moratorium on annexations by a reverted city. Further, there
are indications that town annexations may become increasingly hostile, particularly if animosity remains strong in a county that unwillingly accepts a city’s reversion.

UNTENABLE ALTERNATIVES
The alternatives to reversion are the tier city, consolidation, and “shire” approaches. All are touted as being the preferred alternative to reversion, by maximizing cooperation and minimizing acrimony.

The tier city concept is similar to the structure of local government in North Carolina, where a city, while subordinate to the county, retains its municipal identity. Services and revenue are divided between the county and tier city on a continuously negotiated, cooperative basis.

In consolidation, city and county meld into one massive entity, essentially inverting the result of the Reversion Statute. The huge Tidewater cities surrounding Hampton Roads (Suffolk, Newport News, Hampton, Virginia Beach, and Chesapeake) are the result of the union in the 1960s and 1970s of several counties with much smaller namesake cities. The process for consolidation differs dramatically from that for reversion. Extensive negotiations between city and county are aimed at attaining equitable satisfaction of both entities’ concerns. Unlike tier cities, these negotiations result in a finite plan and are not subject to continual revision after initial implementation.

Notably, the consolidation plan must be confirmed by the General Assembly—a largely pro-forma hurdle—and approved by a referendum of the affected populations. This latter requirement has defeated all recent attempted consolidations, the most spectacular failure being the late 1980s rejection of a much-touted merger of Roanoke City and County by the voters of the county. The merger plan for Staunton and Augusta county addressed the possibility of voter disapproval by including a default provision. In the face of a referendum defeat, the plan directed that heightened cooperation be nonetheless pursued and established a revenue-sharing program for the two localities.

Bedford City and County have introduced the “shire” concept to Virginia, an idea blending the tier city and consolidation. The present City of Bedford would become a shire of the new “city,” which would follow the borders of the old county. The shire would retain a partially independent identity. A system of shared responsibilities of city and shire has been negotiated. The plan, which has drawn much comment and praise, has yet to be submitted to the voters.

The consensus and rationality implied by the tier city, consolidation, and the novel shire concepts are presumed to be preferable to the blunt solution of reversion. These alternatives offer the opportunity to realign service provision and revenue distribution between the two entities—city or county—best able to maximize their value. Theoretically, this would mark a welcome return to the happy “division of labor” that underlay the separation, into two distinct camps, of Virginia’s urban-activist cities and rural-passive counties over a century ago.

This presumption fails to address the fundamental flaws of these alternatives—the difficulties achieving intergovernmental cooperation and the unpredictable outcome of the referendum process. The alternatives to reversion require a cooperative atmosphere between city and county, which is hardly a given. Even the best laid plans for consolidation may founder upon the requirement of referendum endorsement, as did the proposed merger of Roanoke City and County. If consensus is reached between the local government parties, the same systemic obstacles to reversion exist for consolidation, with the added factor that the voting populace will voice its dissatisfaction before, rather than after, the plan is executed. The failure of consolidation is one of the reasons underlying the advent of reversion. Reversion does not require a referendum; it is precisely because the alternatives come with unattainable prerequisites that reversion becomes the most tenable option.

Perhaps the greatest potential for a solution to Virginia’s problem of local government lies not in reversion, tier cities, consolidation, or the shire, but in a synthesis of the four.
TALE OF TWO CITIES

What constitutes a prime candidate for municipal reversion? A review of contrasting cities can provide an approximation of the two fundamental variations.

CHARLOTTESVILLE: MARRIAGE OF CONVENIENCE

The central Piedmont City of Charlottesville lies at the center of Albemarle County. Its economy is largely driven by the University of Virginia, whose academic calendar causes the local population to fluctuate between 40,000 and 60,000. Charlottesville enjoys a high standard of living and numerous cultural opportunities, and it serves as the economic and entertainment hub for surrounding Albemarle County. Compared to Virginia localities as a whole, Charlottesville provides a high level of services, funded through somewhat high tax rates based on a stable population, a sufficiently diversified economy, and the omnipresent University. Nevertheless, Charlottesville is one of Virginia’s financially stressed cities.

The city enjoys a highly cooperative relationship with Albemarle County. A microcosm of the natural synthesis of city and county to create an attractive whole, Charlottesville and Albemarle operate a joint security complex; joint water, sewer and solid waste authorities; and a regional airport. They also cooperate in promoting the attractions of their common region and maintaining several recreational facilities. As a further symbol of the importance Charlottesville has for the county, the city remains the county seat; the county government and administrative offices still reside there. In 1982 the city and county entered into a unique agreement under which each year Albemarle County transfers a percentage of its property tax collections to Charlottesville in return for the city relinquishing its ability to annex county territory. The 1994 payment was approximately $4.5 million.

Reversion would mean the integration of the few remaining—though most important—services: education, public health, and safety. Admittedly, these remain the salient functions and features of both the city and county, but this does not alter the essential spirit of cooperation existing between the two jurisdictions.

Albemarle County would likely balk at the idea of reversion for a number of reasons: Charlottesville has the higher percentage of lower income families, a higher crime rate, and a greater appetite for services. There would likely be a degree of subsidization of the city by the wealthier tax base of the county. Reversion could bring higher taxes to the county. Last is the great, if hidden, reservation: Charlottesville’s black population. Racial tension would be a silent enemy of reversion.

For Charlottesville, reversion would mean the surrender of a long and proud history of independence and the prospect of potentially greater tax burdens on a populace that already issues the occasional groan of dissatisfaction. It also could lead to a loss of revenue-sharing funds.

Yet what reversion ultimately means is merely the culmination of a trend both Charlottesville and Albemarle have pursued effectively and with considerable success. The two have already pooled resources and efforts on a variety of projects and both have reaped the benefits. By reverting, Charlottesville ultimately opens the door for both city and county to literally double their potential. Resistance, while certainly present, should be both token and halfhearted. An even more likely scenario would be the formation of an arrangement very near that of a tier city. The essentially cordial relations between city and county set the stage for increased joint ventures, building upon the cooperation already present. In the face of the tacit—and tactfully—understood possibility of reversion, the incentives to pursue increased cooperative ventures would be high. The formal structure of this cooperation should stop short of a nominal tiering or consolidation, thus avoiding the need for a politically risky referendum. In sum, the trump card of reversion would permit Charlottesville to ensure further evolution of the intergovernmental relations already in place. Greater cooperation could be developed if the alternative is a reversion unwanted by Albemarle County.

 MARTINSVILLE: SHOTGUN WEDDING

This Southside Virginia city of 16,500 presents a decidedly different picture. Long home to a proud entrepreneurial spirit, Martinsville has recently been dealt a series of blows. The industries forming its economic base—furniture and textiles—are not the ones of the 21st century. Diversification and development have been fitful and have been coupled with a steady decline in city population. Yet with this diminishing revenue base Martinsville faces the same demand for services it did in the comparatively prosperous 1980s. Having long prided itself on a high quality of life and a good school system, the city has struggled to maintain its character.

In contrast to the cooperative atmosphere of Charlottesville-Albemarle, little cooperation exists between Martinsville and surrounding Henry County. The county moved its administrative offices from the city in the 1970s. In an era when all of the Southside region increasingly feels the need to aggressively pursue economic development,
few joint efforts are contemplated or undertaken by city and county. Even mingling the refuse of the two localities seems impossible—a proposal for a joint landfill to replace the rapidly filling sites of both localities has been met with reluctance and suspicion.

Perhaps the greatest symbolic act occurred in 1993, when county voters chose to relocate their courts facility next to the solitary county administration building, stripping uptown Martinsville of a sorely needed attribute. Having rejected a proposal for a joint courthouse and jail, the offer of a free site within the city, and, finally, an incentive package to remain in the economically hard-pressed uptown, the county preferred instead to abandon its home of 160 years and build on a site immediately in front of an abandoned landfill.

What area residents have not widely realized is the importance of Martinsville to Henry County. It remains at the county’s heart; it serves as the job site for most of its citizens, and it offers them the bulk of their local shopping and dining.

The reasons for opposing a reversion are similar to those of Albemarle County. In the short term, Henry County would see little attraction in accepting what it perceives to be a declining city, full of unwanted burdens, bankruptcies, and a large black population. If Martinsville should choose to revert—or use the threat of reversion—to persuade the county to come to terms, it could force, in the long term, the very solution required to bring both city and county into the 21st century: the integration of effort—and people of both races—needed to revitalize an ailing region.

**Back to the Future**

Reversion does indeed offer a solution for the problems facing Virginia’s small cities. Faced with constant or growing demand for services and expenditures, yet frozen at their current size, the cities are strapped to a stagnant or decreasing revenue base. The result is an inability to adapt to the realities of a modernizing Commonwealth. Whether used as the last resort of an exasperated city seeking to force a solution upon a recalcitrant county or deftly wielded as a bargaining chip to press for increased intergovernmental cooperation, reversion will be a term heard with increasing frequency among the localities of the Commonwealth.

As with all best laid plans, the Reversion Statute will be implemented and have consequences in ways not contemplated by its drafters. A new form of local governance is required in Virginia. It will be found amidst much-needed discussion between Virginia cities and counties. The cities currently have the ability to set the agenda. The search must begin now.

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**University of Virginia News Letter**

**Weldon Cooper Center for Public Service**

University of Virginia

918 Emmet Street North, Suite 300
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Virginia’s Never-ending Moratorium on City-County Annexations

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Introduction
Annexation has been one of the most contentious issues facing local government in Virginia in the last 100 years. Few controversies stoke the passions of its citizens more, with the possible exception of the building of a new road. For much of the 20th century, cities grew at the expense of counties. City-county cooperation was non-existent and mistrust was high because of the looming threat of annexation. As the civil rights era dawned, many annexation battles were tainted with racial undertones.

As described by local government scholar Jack D. Edwards, “Annexation is the process by which a city extends its boundaries to include unincorporated land lying outside the city.” In Virginia, cities are independent municipalities not part of any adjacent county while towns are smaller incorporated governmental bodies that are located within a county. This article will provide a brief background on the legacy of municipal boundary changes in Virginia and how such history has shaped current annexation law for cities and towns. We will describe the effects of annexation today and consider what would happen if the state’s current annexation moratorium were lifted.

Background and History
Virginia has two basic forms of independent local government: counties and cities. As stated in the Encyclopedia of Virginia web site, “Virginia's 39 incorporated cities are politically and administratively independent of the counties with which they share borders, just as counties are politically and administratively independent of each other.” Virginia is atypical in the way it separates cities and counties. In fact, there are only three other independent cities in the United States—Baltimore, Maryland; St. Louis, Missouri; and Carson City, Nevada. Though independent cities were implied in the Virginia Constitution of 1869 and again recognized in the Constitution of 1902, Virginia did not officially codify the independent status of Virginia cities until the current constitution, the Constitution of 1971.

Prior to 1902, municipal boundary changes occurred through special acts of the General Assembly. The Constitution of 1902 banned boundary changes by these special acts, and in 1904 the General Assembly adopted the procedural requirements for annexation that are the basis for what is still in place today. In comparison to other states, Virginia’s annexation process is unique with its reliance on a special three-judge panel. Other states, where the stakes are not generally as high for cities and counties because an annexation would not remove a portion of a county’s tax base, use a variety of methods, such as special legislative act, ordinance, popular determination, judicial process and administrative agency. Virginia’s use of a judiciary-led process can take on political and legislative roles at times. In
the past, most annexations occurred by a city filing suit in the annexation court to annex a stretch of land in a neighboring county. While annexations can also be citizen-initiated, that type occurs rarely. After the annexation court hears from lawyers representing each side, a decision is made by the three-judge panel. Annexation cases were almost always expensive endeavors for both parties involved. In addition, the prevailing city was typically required to compensate the neighboring county for the annexed land.

When established, Virginia’s system of city-county separation was meant to allow for increased political accountability and was a way to avoid duplicative municipal services since cities had historically provided municipal services and counties did not. However, over time, urbanizing counties began providing municipal services much like those provided by cities.

Why do cities annex land from neighboring counties? Most cases can be traced to economic development or to relieve fiscal strains on part of the city. However, from a county’s perspective, it is a “taking” of land, resources, people and taxable revenue. Some counties feared that excessive annexation would lead to their extinction. Scholar Chester Bain put it this way in his authoritative book, *Annexation in Virginia*, “As annexation peels off parts of the county, leaf by leaf like an artichoke, a major dislocation of the county’s governmental activities results.”

Since 1904 there have been 160 city-county annexation proceedings in Virginia of which 128 (80 percent) were approved (Figure 1). Since 1965 (the earliest data available for town-county annexation information), there have been 203 town-county annexation proceedings of which 201 (99 percent) were approved (Figure 2). As can be seen in Figure 1, the 1987 annexation moratorium ended the majority of the city-county annexation proceedings. The few city-county annexation proceedings in the 1990s were voluntary settlements. However as can be seen in Figure 2, town-county annexation proceedings continue to occur at regular intervals. In addition as David Roberts states, “[city-county separation]…produced divergent political economies between city- and town-initiated annexation proceedings against counties. Since a county lost land—and the accompanying residents and tax base—to an annexing city but not to an annexing town, counties had a much stronger interest in fighting city-initiated annexation.”

By the 1960s traditional municipal functions of Virginia cities and counties began to blur as the commonwealth urbanized, particularly in the Northern Virginia, Hampton Roads and Richmond regions. Why do cities annex land from neighboring counties? Most cases can be traced to economic development or to relieve fiscal strains on part of the city. However, from a county’s perspective, it is a “taking” of land, resources, people and taxable revenue. Some counties feared that excessive annexation would lead to their extinction. Scholar Chester Bain put it this way in his authoritative book, *Annexation in Virginia*, “As annexation peels off parts of the county, leaf by leaf like an artichoke, a major dislocation of the county’s governmental activities results.”

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By the 1960s traditional municipal functions of Virginia cities and counties began to blur as the commonwealth urbanized, particularly in the Northern Virginia, Hampton Roads and Richmond regions. With increased influence, counties began to find ways to successfully contest annexation proceedings. Additionally, these urbanized counties began providing services on par with nearby cities. With counties providing municipal services to the areas around cities, city residents often relocated to the outlying counties where taxes were generally lower and land was cheaper. The development of highways in Virginia also aided in this flight to the suburbs. Employment and businesses followed and over time cities

**Figure 1: City-County Annexation Activity Since 1904**

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<thead>
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<th>Year Range</th>
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<th>Denied/Dismissed/Withdrawn</th>
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<tr>
<td>2009-Current</td>
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*Excludes boundary line adjustments permitted by the Code of Virginia, § 15.2-3106
in 1980, allowed counties based on population size and density to request total immunity from annexation. The counties of Chesterfield, Henrico, Henry, Prince William, Roanoke and York quickly requested this immunity thereby effectively quashing future annexation threats. Partial immunity was also permitted for counties that provided urban-type services. The 1979 legislation also created the Commission on Local Government, which in effect became the annexation policy advisor for the commonwealth of Virginia.

Because annexation immunity was based upon population size and density, not all counties impacted by the threat of annexation were eligible for immunity. When annexation resumed in 1980, it continued to be a divisive issue. By 1986 the General Assembly again felt it appropriate to apply a “temporary” moratorium on annexation with the intent to study the issue and determine methods for improving the process. The moratorium went into effect in 1987 and continues to this day, having been extended multiple times, the last in 2009. The annexation moratorium is now in place through 2018 unless changed by the General Assembly.

Since 1980, Virginia law authorizes a local circuit court to grant a county total immunity from annexation by a city based solely on population size and population density (i.e., a population of 50,000 persons and a density of 140 persons per square mile or a population of 20,000 persons and a density of 300 persons per square mile) as determined by the U.S. Census, official state population estimates or a special census. Other counties may seek immunity for a portion of their territory based on the level of urban-type services in those areas and additional factors.

The General Assembly decided that alternatives to the time-consuming and expensive annexation process needed to be explored. As the political power of counties grew, state legislators also felt it necessary to end the possibility of annexation in parts of the state where it was no longer feasible. To halt new annexation suits while the issue was being studied, the 1971 General Assembly imposed a moratorium on new annexation proceedings for cities larger than 125,000 people, which was soon followed by a general moratorium on any new annexations proceedings. To study the perceived increasing ineffectiveness and disruption annexation was instigating in urban areas, two commissions appointed by the General Assembly studied annexation for nearly a decade between 1971 and 1979. The recommendations of these two commissions, the Commission on City–County Relationships (also known as the Stuart Commission, 1971-1977) and the Commission on State Aid to Localities/Joint Subcommittee on Annexation (also known as the Michie Commission, 1977-1979), were the basis for the annexation compromise of 1979 that resulted in House Bill 603 which significantly altered all future annexation proceedings.

The 1979 annexation regulations, which became effective in 1980, allowed counties based on population size and density to request total immunity from annexation. The counties of Chesterfield, Henrico, Henry, Prince William, Roanoke and York quickly requested this immunity thereby effectively quashing future annexation threats. Partial immunity was also permitted for counties that provided urban-type services. The 1979 legislation also created the Commission on Local Government, which in effect became the annexation policy advisor for the commonwealth of Virginia.

Politics and Race
For many decades in the early part of the last century, the Byrd Organization, a political machine
While nearly all annexations were about economic gain for an independent city, race was a factor in some cases.

By the 1970s, political power in the General Assembly had shifted to the suburbs. Today, it can be argued that the suburban voice of Virginia’s counties has the greatest political influence in Richmond, while cities find themselves with less political power than they once had. In a sense, the cities’ political voice has been passed over. Today many cities have little leverage in the General Assembly and in working with urbanized counties.

While nearly all annexations were about economic gain for an independent city, race was a factor in some cases. In the city of Richmond during the late 1960s, African Americans were making in-roads into city politics through adept organizing. With “white flight” to the nearby suburban counties, the African American population remained and grew. City leaders at the time feared a majority-black city council and therefore sought to dilute black voting power. After many legal battles, a 1970 court-negotiated agreement settled with Chesterfield County granting land that included nearly 44,000 white citizens to the city of Richmond. Records show that while city officials repeatedly asked about people in the negotiations, they rarely asked about land, businesses or other resources. After protracted legal battles including lawsuits filed under the Voting Rights Act of 1965, the case was finally settled with the creation of a ward-based council system in Richmond. Racial undertones were present with the city of Petersburg as well, another annexation case that reached the U.S. Supreme Court in the early 1970s.

Annexation Peculiarities
The south Hampton Roads area has many interesting cases of “ghost counties.” Such names as Elizabeth City County, Princess Anne County, Warwick County and Nansemond County are now relics of a past era. Formerly counties, they converted into cities or merged with neighboring cities as a method of defense against annexation threats. The three cities of Virginia Beach, Chesapeake and Suffolk form three parallel strips all the way to the North Carolina border.

Interestingly, many parts of these cities are still somewhat rural in nature.

In decades past, small, suburban cities sprung up throughout the commonwealth. Traditional definitions of what encompassed a municipality did not always apply. The city of Salem was created to prevent annexation by neighboring Roanoke City. Another example of a newer independent city was the former town of Colonial Heights in Chesterfield County, which became an independent city in an effort to avoid annexation from neighboring Petersburg. Conversely some counties such as Arlington are very urban in appearance and in the services provided.

Including Williamsburg, which was incorporated in 1722, forty-five cities have been incorporated. Seventeen cities were incorporated prior to the 1902 Constitution of Virginia, which changed the process for city incorporation. As shown in Figure 4, a large number of cities in Virginia were created between 1950 and 1969. City incorporation all but ceased in the 1970s and since 1976 there have been no new cities. In fact, over the years, six cities have been eliminated—the cities of Manchester (that existed from 1769 to 1910), Warwick (1952 to 1958), South Norfolk (1921 to 1963), Nansemond (1972 to 1974), South Boston (1960 to 1995), and Clifton Forge (1906 to 2001). The cities of Bedford, Charlottesville, Franklin, Lexington and Radford have voluntarily surrendered their authority to annex as part of revenue-sharing agreements. As one of the most significant revenue-sharing agreements, the Charlottesville–Albemarle County agreement has been in effect since 1982. This perpetual agreement established a joint “revenue and growth sharing fund” and a cap on the total amount that could be transferred from it.

Current Status and Trends
With the few exceptions of smaller negotiated boundary settlements between cities and counties, boundaries for Virginia cities have been frozen in time since 1987. The moratorium has also prevented any new independent cities from
being created. Contested annexation proceedings have ceased, forcing localities to work together to solve their boundary and economic issues. It could be argued that the moratorium has allowed for greater stability in county and city planning.

Due to adjacent counties being granted annexation immunity, the cities of Hampton, Manassas, Manassas Park, Martinsville, Poquoson, Richmond, Roanoke, and Salem have lost their ability to initiate annexation proceedings, though the current annexation moratorium restricts additional counties from requesting immunity. It should be noted that though the current annexation ban also restricts any additional counties from requesting annexation immunity, expiration of the moratorium would permit this of counties that, due to population growth, now meet the population and density standards to request immunity. This could impact the cities of Alexandria, Falls Church, Fairfax, Fredericksburg, Newport News, Radford, Winchester, and Williamsburg.

The partial immunity that some counties have been granted has generally ended the opportunity for annexation for some cities such as Hopewell and Petersburg (with respect to Prince George County). Staunton and Waynesboro (with respect to Augusta County) are only left with the possibility to annex county land that is limited by environmental or other barriers to development.

Other cities are unable to annex due to factors such as constraints of adjacent county land, geographic size or other physical barriers. For example, rivers prevent the cities of Lynchburg and Colonial Heights from annexing nearby county land.

However, if the moratorium were to be lifted, it would have only limited impact. Since the legislation of the late 1970s annexation in Virginia has become much more complicated and even diluted. Without a moratorium, there would be only 13 cities that could actually file suit to annex land from a county and 3 of those cities (Suffolk, Colonial Heights and Lynchburg) would have a hard time arguing in certain cases due to barriers such as a river or geographic size. The remaining ten cities of Bristol, Buena Vista, Covington, Danville, Emporia, Galax, Harrisonburg, Lynchburg (with respect to Bedford and Campbell Counties only), Norton and Petersburg (with respect to Dinwiddie County only) are smaller and generally located in rural or not heavily urbanized parts of the state (with the exception of Lynchburg, Harrisonburg and Petersburg). If annexation were to commence in Virginia again, it would have a very narrow impact due to the various immunities and limited scope under law.

Virginia cities in some regions have suffered under the moratorium. For example, if one follows the economic development of Richmond and Charlotte, North Carolina, the differences are striking. Decades ago the two cities were on par with one another economically. While Richmond has struggled to grow economically, Charlotte has flourished in recent decades. One factor contributing to this contrast is North Carolina’s looser annexation laws.

Today, many Virginia cities continue to have a larger tax burden, more fiscal stress and less ability to develop than before the moratorium. In a way, the annexation moratorium is negatively affecting older cities’ economic growth, and many counties are growing faster than the cities that they surround. Some have described the effect as a doughnut hole. However, there is a small glimmer of hope for older core cities—the rise of “New Urbanism,” which attracts young professionals to

Figure 4: New Virginia Cities Created Since 1904*

Source: Rootsweb web page, ‘History of County Formations in Virginia 1617-1995.’
live, shop and recreate in the city where they work. Cities offer the compact urban living that many in the mid-20th century rejected. Today, a younger generation is finding cities have a lot to offer. Benefits such as reduced transportation costs (both in time and expense) and mixed-use developments are just a few features that are beginning to attract people back to the city.

**Effects of the Moratorium**

With the annexation moratorium in place, there are several effects that can be seen in the commonwealth. In some ways, the moratorium has been a catalyst for more regional cooperation. In the past, localities with potential annexation suits did not trust one another enough to enter into agreements. Today given the moratorium, cooperation is often the only option for cities to maintain their status. Also, without the threat of annexation more and more metropolitan areas are entering multi-jurisdictional agreements for utility services or economic development. For example, in recent years, the ten cities, six counties and one town that make up the Hampton Roads region recently announced a joint effort to attract businesses to the region. This spirit of regionalism is a necessity for cities, but it makes sense for neighboring counties as well. The Hampton Roads localities are facing potential cutbacks in defense spending which could negatively affect the entire region.

The 1979 legislation included HB 599, which sought to increase state aid to localities to ease the need for annexation through funding for sheriffs, commonwealth’s attorneys and judges. This funding continued through the moratoriums. However, in recent years state budgets have become tighter, and in 2008 the “599 funding” was frozen by the General Assembly. In October of that year, then-Governor Kaine reduced the funding again. Cities have argued that their police funding has been cut proportionately more than the counties.

Many small cities facing mounting fiscal constraints are looking seriously at reversion to town status. Cities with populations of 50,000 people or less may petition for reversion to town status. Though additional provisions apply for cities of a population between 5,000 and 5,900, no cities met this population criterion based on the 2010 census. In 1995 South Boston and in 2001 Clifton Forge reverted from cities to towns. Bedford City is working towards becoming the third city to revert to a town and become part of Bedford County. Besides alleviating fiscal difficulties, Bedford City hopes to improve its education funding through reversion. With local governments facing increased fiscal pressures, Virginia could see more city to town reversions in the future. However, this will happen only if the neighboring county residents desire to take on additional citizens and potential expense.

City-county mergers or consolidations have occurred in recent decades, but they have usually failed. A recent referendum to merge the city of Covington with Alleghany County to become the new city of Alleghany Highlands was rejected by voters in November 2011. If the referendum had been successful, the new city would have taken a hybrid form of local government with an elected sheriff and a seven-member governing body.

**Limited Annexation Still Occurs**

There has been a ban on city-initiated annexation proceedings since 1987. The ban impacts the adversarial annexation requests that pit a city against a county where the city gains territory at the expense of the county. The ban on city-initiated annexations does not impact a town’s ability to request such an annexation nor does the moratorium stop citizens from initiating an annexation request. An agreement is expected to be reached between the town of Culpeper and Culpeper County in which the town will annex half a mile of land. The two localities’ 30-year agreement will include equal access to the town’s utilities.

Since 1983, cities and counties have been permitted to enter voluntary agreements with another locality to adjust their boundary lines. Since 1979, towns have been permitted to enter into agreements with counties whereby a town may periodically annex county land by ordinance in return for giving up its right to become a city.

**Looking Ahead**

The annexation moratorium was supposed to give the General Assembly time to work out the structural problems of local government in Virginia, but that has yet to happen. While the moratorium is set to expire in 2018, the General Assembly could very well extend it again. If recent General Assembly sessions are any indication, the state budget will take center stage for some time to come. These constrained state budgets have led the General Assembly to further cut local aid and continue to devolve responsibilities to cities and counties (such as the responsibility for counties to maintain their own public roads). From the local perspective, state-imposed mandates coupled with declining property tax revenue have made things worse for cities and counties in recent years. Additionally, with the limited impact that lifting the moratorium would have, it just is not a priority for the legislature.
Virginia’s adversarial annexation process was halted because it pitted cities against counties, with cities gaining land, people and tax revenue at the expense of counties. Other states have continued to use annexation as a tool for municipal growth. They key is that, in other states, cities are not independent and separate from counties; they are similar to how Virginia classifies towns. While many attempts have been made to lessen the impact of annexation, problems will persist with Virginia’s continued city-county separation. The commonwealth prides itself on some of its unusual qualities, such as a one-term governor and its independent cities. However, its embrace of independent cities may be at the root of the problem with local government disputes. Unnecessary adversity between localities created a poisonous environment in years past, and now a never-ending moratorium continues to stunt the growth of the commonwealth’s cities. A new system needs to be formulated to encourage equitable growth among all localities.

It is unlikely that a Virginia governor will take up the issue with only four years to accomplish an agenda. It is also unlikely the General Assembly will address the root problems of annexation in Virginia. It may take the bankruptcy of a major city to get lawmakers to pay attention to annexation and the larger issue of independent cities. The commonwealth is often lauded for its simple form of local government, which lacks the duplicative taxing structures of other states. Although not officially codified until the 19th century, independent cities are a part of Virginia’s genetic code, dating back to its colonial beginnings. Nevertheless, Virginia lawmakers should devise a plan that can accommodate adequate municipal growth that is not at the expense of other localities. Virginia should consider a hybrid solution: one that allows for a less adversarial annexation process, more incentives for cooperation between localities and population thresholds for obtaining independent city status. A never-ending moratorium will only delay the issue and result in quick fixes that are a disservice to the citizens of the commonwealth. Perhaps the best time to address such an issue would be the next time the Constitution of Virginia is set to be rewritten. Only a fresh look could address the unusual structural issues that make the Virginia annexation process unique.

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Endnotes
Note: When available, web links for sources have been shown. At the time of publication all of the links worked. However, some links are unstable and may not work with certain browsers or they may be modified or withdrawn.
5. Encyclopedia of Virginia web site.
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