ANNEXATION AND CONSOLIDATION

REPORT OF
THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL
to
THE GOVERNOR
and
THE GENERAL ASSEMBLY OF VIRGINIA

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ANNEXATION AND CONSOLIDATION

REPORT OF
THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia, January 15, 1964

To:

HONORABLE A. S. HARRISON, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

In 1915 the principal governmental subdivisions in Virginia consisted of 100 counties and 20 independent cities. In 1964, there are 96 counties and 34 cities. In addition, the number of towns has increased from 171 to 197; there are other types of governmental districts, commissions and authorities with varying degrees of autonomy. In contrast to this proliferation of governmental agencies, there has also developed some tendency toward consolidation. At the same time numerous suits have taken place whereby municipalities have sought to expand their boundaries.

The General Assembly, concerned about the effect of some of the annexations and consolidations on both the areas concerned and adjacent political subdivisions, and recognizing the tendency in the operation of governments to increase the number of organized units of governmental character, and recognizing also that such increases in the number of governmental units, particularly those of an independent character, may adversely affect the economy of the State, adopted chapter 265, 1962, Acts of Assembly directing the Virginia Advisory Legislative Council to make a comprehensive study of the laws of the Commonwealth dealing with annexation and consolidation, and to examine the structure of local government in Virginia in view of the rapid development of the State and to determine the need for revision of the laws dealing with urban expansion; and postponing until after the 1964 Session initiation of new proceedings for annexation or consolidation.

The text of chapter 265 of the 1962 Acts of Assembly is as follows:

CHAPTER 265

AN ACT to prohibit the institution of annexation proceedings, by cities and towns, and consolidation of counties, cities and towns, from the effective date of this act until ninety days after the adjournment of the regular session of the General Assembly of Virginia of 1964; and to provide for a study and recommendations by the Virginia Advisory Legislative Council concerning the laws relating to annexation and consolidation.

Be it enacted by the General Assembly of Virginia:

1. Notwithstanding any other provision of the laws of the Commonwealth, until the expiration of ninety days following the adjournment of the regular session of the General Assembly of Virginia of 1964: (a) no city or town shall institute any proceedings for the annexation of

territory of any county; and (b) no county, city or town which has not heretofore held a consolidation referendum shall consolidate with any other county, city or town; provided, however, that this act shall not apply (i) to any annexation suit or suits instituted by a city or town against a county or counties prior to the effective date hereof; OR (ii) to any suit or suits seeking the annexation of all or any part of the same territory which was the subject matter of annexation proceedings terminated as a result of a decision of the Supreme Court of Appeals in proceedings invoking its original jurisdiction, but the foregoing shall not be construed to affect the applicability or non-applicability of § 15-152.25 of the Code of Virginia, as amended, as to such suit or suits; or (iii) to the prosecution of any valid annexation proceedings against any county, notice of which was given to the Commonwealth's Attorney and to each member of the governing body of said county prior to the date the consolidation agreement was approved by the governing bodies of said county and such other county, city or town seeking to consolidate and the right is hereby expressly granted to any such city seeking to annex to proceed with any such valid annexation suit against such county, pending as aforesaid, as if consolidation had not taken place and the consolidated city may be substituted as party defendant.

Nothing herein shall prohibit the institution of any annexation proceeding with the consent of the governing body of the annexing city or town and of the governing body of the county whose territory is sought to be annexed, when the population of the territory sought to be annexed does not exceed twenty-five hundred persons.

2. The Virginia Advisory Legislative Council is hereby directed to make a comprehensive study of the laws of the Commonwealth which deal with annexation and consolidation, and their proper relation to each other, and to examine the structure of local government in Virginia in view of the rapid development of the State, and any needed revisions of the laws dealing with urban expansion into suburban and rural areas, and to make such recommendations to the nineteen hundred sixty-four Session of the General Assembly as it deems necessary or advisable to accomplish these purposes.

Pursuant to the above act the Council designated Edward M. Hudgins and Lewis A. McMurran, Jr., members of the House of Delegates and of the Council, as Cochairmen of a Committee to make the preliminary study and report. The following persons were selected as members of the Committee: Earl L. Abbott, Judge, Circuit Court, Clifton Forge; John Alexander, Attorney and member of the Senate of Virginia, Warrenton; R. William Arthur, Attorney at Law and Town Attorney, Wytheville, and President of The Virginia Municipal League; Dr. Weldon Cooper, Director, Bureau of Public Administration, University of Virginia, Charlottesville; Richard C. Holmquist, Executive Director, Virginia Industrialization Group, Richmond; J. Clifford Hutt, Attorney at Law member, Board of Supervisors, Westmoreland County, Montross, and president of the League of Virginia Counties; Carlton C. Massey, County Executive, Fairfax County; A. L. Philpott, Attorney at Law and member of the House of Delegates, Bassett; duVal Radford, Attorney at Law and former member of the House of Delegates, Bedford; Jas. W. Roberts, Businessman and member of the House of Delegates, Norfolk; Lewis H. Vaden, Treasurer of Virginia, Richmond; and Landon R. Wyatt, Businessman and member of the Senate of Virginia, Danville. John B. Boatwright, Jr. and G. M. Lapsley served as Secretary and Recording Secretary, respectively, to the Committee. Dr. George W. Jennings, Professor of Economics, University of Richmond, served as Consultant to the Committee.

The Committee made an examination of the Constitution and statutes of Virginia as they relate to the various types of governmental subdivisions and of the statutes relating to annexation and consolidation of these political subdivisions. It gave consideration to practices and procedures of other states relating to the creation and functioning of similar agencies of government. The Committee also sought the views of judges, attorneys, certified public accountants, and engineers throughout the State who have been involved in annexation and consolidation proceedings. The Committee held public hearings in and toured various rapidly developing areas of the State and sought the views of the governmental officials and of the public in those areas.

Based on its study the Committee submitted its report to the Council. The Council has carefully reviewed the report of the Committee and submits the following report consisting of its recommendations, the reasons therefor, and legislation to carry the recommendations into effect.

RECOMMENDATIONS

1. Incorporation of towns by court action

(a) That the number of petitioners required for the incorporation of a thickly settled community as a town be increased from 20 to 100. (§ 15.1-966)

(b) That the county at its option may become a party to proceedings for the incorporation of a town. (§ 15.1-966)

(c) That the requisite number of inhabitants for a proposed town be increased from 300 to 1000. (§ 15.1-967)

(d) That the incorporation of towns in counties having a population density in excess of 125 per square mile be prohibited. (§ 15.1-967)

(e) That court incorporation of a town be allowed only if the court finds that the services sought by incorporation cannot be supplied by the establishment of a sanitary district or through the extension of services provided by the county. (§ 15.1-967)

2. Annexation

(a) That the composition of the annexation court may include a judge of city court of record remote from the area affected.

(b) That the proceedings in annexation cases be simplified to conserve time and prevent excessive expense and harrassment to the parties involved, by the following changes in the annexation procedure:

(1) That the party moving for annexation be required to appear before the court in an initial pretrial conference and present facts or information on the necessity and expediency of annexation before the party against whom annexation is sought is required to file any responsive pleadings. After such conference the municipality may be permitted to amend its pleadings and another pretrial conference may be set. If the court is satisfied that the municipality cannot establish a prima facie case for annexation, it may dismiss the case. If, on the other hand, the court believes a prima facie case for annexation can be made, the court must require the county to file its answer, not sooner than six months thereafter, and must set another pretrial conference not less than thirty days after the county is required to file.

(2) The court may, in its discretion, receive evidence only as to the issue of necessity and expediency and render a decision on this issue before receiving evidence on the financial situation or any other pertinent issue. If the court determines to follow this procedure, it shall notify the parties at the pretrial conference.

(3) If the court elects to try first the issue of necessity and expediency, and a majority of the court finds for the moving party it shall then receive evidence on all other issues. If not, the case will be dismissed. If the court finds for the moving party on the issue of necessity and expediency, it may, after a review of all the evidence presented in the case, alter or reverse its initial decision on this issue as the equities of the case dictate. In either case the court's decision will be appealable.

(4) At the time when the court orders the county to file its answer, it shall fix a time when any person desiring to intervene must file his pleading; and no person will be permitted to intervene after that time.

(5) The exception to the five year period during which annexation suits against the same county are barred which permits a city to sue the county if it has not done so in eight years, is increased to ten years.

(c) Provide that if a city or town which has annexed territory fails to comply with orders of the court within the prescribed time, the territory may be restored to its former status.

4. Consolidation of political subdivisions

That consolidation between counties and cities and towns as well as portions of counties and cities be encouraged as follows:

(a) Simplify the consolidation procedures by combining the substance of Articles 1, 2, and 3 with Article 4 of chapter 26 in Title 15.1 of the Code of Virginia.

(b) Provide that all or any part of the general consolidation charter contained in chapter 522 of the 1956 Acts of Assembly may be used as the consolidation agreement or any part thereof.

(c) Provide for impanelling a three-judge court prior to the referendum on the proposed consolidation agreement if the agreement involves (1) consolidation of a city or cities and one or more counties or (2) the invalidation of the charter of a town, and if objections to the proposed agreement are filed. Such court shall balance the equities of all interested parties and may adjust the terms of the agreement accordingly. Then a referendum will be held on the agreement modified by the court. If no objections are filed to the consolidation agreement it will be presented for referendum without consideration by a court.

(d) If the consolidation agreement so provides, any constitutional officer, in office on the effective date of consolidation, of the county or city which is abolished by the consolidation, not chosen or elected to be such officer for the consolidated political subdivision, shall be a deputy to the appropriate constitutional officer of the consolidated political subdivision until removed according to law, retirement or death, at such compensation as shall be set forth in the consolidation agreement, but vacancy in the office of such deputy shall not be filled.

5. Creation of industrial districts

That chapter 31 of Title 15.1 of the Code of Virginia be amended to allow the creation of industrial authorities by adjacent political subdivisions.

6. Constitutional Amendments

That the Constitution of Virginia be amended so as to increase the population requirements for cities of the second class from 5,000 to 10,000 and the requirements for cities of the first class from 10,000 to 25,000.

DISCUSSION OF RECOMMENDATIONS

A. Annexation

We have studied the feasibility of alternative methods of annexation and have concluded the Virginia system of judicial determination is far superior to others. We unanimously agree that the basic structure of the State's annexation law is sound in principle. The interests of the Commonwealth in general, the orderly growth of urban areas, and the stability of counties are best served by the long standing procedure of annexation based on judicial decision. Instead of depending on purely political consideration, annexation in Virginia depends on judicial determination of necessity and expediency after full consideration of the best interests of the relevant localities.

Under present law a single city cannot file suit for annexation of a portion of a county more often than once every five years. We favor the retention of the present five-year period of time during which a county is protected from annexation by a single city. Without this protection counties would not be able to make long-range plans. Also, without it, conceivably many counties could be in court practically all the time, the result of which would be great expense to already heavily burdened localities. At the present time a city has the right to file and maintain an annexation proceeding against any county against which it has not filed such a proceeding during the preceding eight years even though a county has been subjected to a suit by another city within five years. In order to promote stability and to save needless expense, we believe this time period should be extended to ten years. While this will affect few localities at the present time, it will become more and more helpful to counties as the number of cities increases in the State.

While there is no reason for change in the basic philosophy of Virginia's annexation laws, this change of the time when a city has the right to file and maintain an annexation proceeding and other changes are in order. New conditions within the Commonwealth have given rise to new needs. In some instances, especially those hotly contested, annexation proceedings in Virginia are very costly and complex. Furthermore, in such instances, the rigidity of the law necessitates a lengthy and complex procedure which can be simplified with benefit to all parties concerned. Specific proposals to eliminate many of the disadvantages of present annexation law but at the same time to retain its positive attributes are explained in the following paragraphs.

Use of pre-trial conferences to reduce costs, simplify procedure, and streamline annexation procedure—

At the present time in annexation proceedings where the initiative is taken by a city or town, the council of the city or town desiring to annex adjacent territory, after adopting an ordinance, petitions the circuit court of the territory it desires to annex for the annexation of such territory. Prior to hearing such a case a special three-man court must direct the attorneys to appear before it or, in its discretion, before the local judge, for a conference. At this conference the ground rules for the case are agreed upon; but even more important, information relating to the locali-

ties involved is presented. Counties, to defend themselves, and cities and towns, to present as good a case as possible, now go before the court with all possible facts and figures, many of which may be, in fact, unnecessary. The court or the local judge, as the case may be, after studying documents, records and other material, makes appropriate rulings which control the subsequent conduct of the case.

Presently, the county must come to the pretrial conference with its case fully developed. We feel that it would be more just, and less expensive to the county, if the court were to hear, first, facts and information as to what the city or town is contending for and what it expects to prove. If the city or town cannot, in the opinion of the court, by evidence to be submitted at the trial make its case on necessity and expediency the court can dismiss the proceeding. Otherwise, it would order the county to file a responsive answer, after at least six months, after which a second pretrial conference, and if necessary others, would be held.

At the time of these pretrial conferences, the court should also be empowered to decide, and to inform the litigants, whether it desires to conduct the trial in two phases: to hear first, evidence on the necessity and expediency of annexation and decide what, if any, territory will be included in its decree, and then to limit subsequent evidence to that directly bearing on annexation of that territory; and second, to hear financial and economic facts relative to the first phase and such other evidence as may be relevant.

At the trial, under present procedure, the court hears the whole case upon the evidence introduced as in civil cases. The rigidity of the present law—and a source of considerable expense—requires that the court hear evidence to support annexation of all the territory described in the ordinance of the city or town, even though information and evidence presented in the pretrial conference is such that the court believes that while annexation of some of the proposed territory being sought may be necessary and expedient, annexation of all the territory proposed to be annexed should not be decreed. Thus, in such cases, the court, while realizing that annexation of only a limited portion of hte territory proposed to be annexed is necessary and expedient, now must hear evidence in support of or against annexation of all territory described in the ordinance, as well as the economic and financial issues related thereto. Frequently the court must hear masses of information that is, in fact, irrelevant. Because present law does not empower the court to place a limit on the amount of territory upon which it will hear evidence, both litigants bring forth all possible data produced by attorneys, engineers and other expert witnesses. If the court were empowered to hear first the question of necessity for and expediency of annexation by conducting the trial in two parts, then the litigants could not do as they do now use, in desperation, the "shotgun" approach which causes much waste of time and money.

During the second phase of the trial the court would hear testimony based solely on the portion of the territory to be annexed which it had previously decreed in the first phase of the trial as being subject to annexation. This evidence would relate to the economic or financial phase of the trial, the issue of necessity and expediency of annexation having been previously decided and determined. After hearing this relevant testimony the court could then review its previous findings on the necessity and expediency of annexation of the territory and either reverse or modify its decision. This proposed procedure would be a substantial improvement over present practice, and it would not in any way work to the detriment of either counties or municipal corporations; but instead it would solve a primary difficulty in annexation proceedings—that is, long and costly

annexation suits frequently dragging on and on while extraneous information and testimony is given.

In order to carry out the second phase of the trial the court, to justify the purposes intended, would in all probability, grant a recess in order for both litigants to obtain or readjust their evidence to the decision of the court under the first phase. If the suit is dismissed the expense of obtaining this evidence would be saved. There should be a saving in either event.

Intervenors—

The right of interested parties to be heard has rightly been interwoven into the annexation laws of Virginia. We are in complete agreement that any citizen having an interest in an annexation proceeding should be allowed to file his petition or responsive answer. To deny this right would be in violation of democratic principles for which the State has so long stood. On the other hand, present law does not limit the time during which intervenors may be heard. Consequently, there is a tendency for proceedings, especially bitterly contested ones, to be interrupted and unduly prolonged. We believe that the interest of the State and its political subdivisions would be better served if the court were enabled to fix a definite time by which intervenors would be required to come in. The streamlining of the annexation statute would eliminate some of the cumbersomeness of annexation suits and save the litigants considerable expense. We favor, therefore, legislation providing for the fixing by the court a time by which intervenors may be heard.

Equities—

Present law provides that the court, in making its decision in favor of annexation, balance the equities in each annexation case and enter an order setting forth what it deems fair and equitable and reasonable terms and conditions. In the majority of cases this provision protects citizens in both the annexing area and the area sought to be annexed. However, it is possible for persons living in a thickly settled area of a county to have incurred considerable expense to build public improvements and, upon annexation of the area by a city, to share with other citizens of the city the burden of paying the county for the improvements. This means that in some instances citizens of annexed areas pay twice for public improvements. To alleviate this problem, we recommend an amendment to present law specifically providing that in balancing equities, the court consider the interests of the inhabitants of the area being annexed.

B. Consolidation

While we believe the proposals submitted herewith to simplify the annexation laws will be advantageous to both counties and municipal corporations, we do not believe annexation is the final answer to problems of Virginia's metropolitan areas. Consolidation, where feasible, accomplishes the same purpose at but a fraction of the cost and with less, if no, bitterness. Furthermore, consolidation can be employed as a device whereby adjacent cities, towns, counties, or cities and counties may join together to form more economical and efficient governmental organizations.

One fact that emphasizes the importance of consolidation is the growth in the number of cities in recent years relative to the decline in the number of counties. In 1950, according to the United States census, there were 28 cities and 100 counties in the State, but by 1964 the number of cities has increased to 34 while the number of counties has decreased to 96. Con-

tinued urbanization of the State in the absence of consolidation may result in a multiplicity of cities, many of which could be far below the optimum size.

A final reason why consolidation offers much hope and a solution to many local problems is that many rural counties are far below optimum size. Most counties in the State were formed before the era of super highways and aircraft. Today it is easier to get to Richmond from many distant counties than it was to get from remote sections of those counties to their respective county seats fifty or sixty years ago. Technological developments have resulted in an increase in the number of inhabitants for which a county governmental organization can provide a high level of service. The General Assembly has long recognized this and has provided means whereby rural counties may consolidate. However, these efforts have not been successful and to date no rural counties of Virginia have ever consolidated with each other. We are convinced that county consolidation is desirable in many instances and believe the following recommendations will promote such consolidation.

As a means of promoting consolidation, we favor permitting a life guarantee of tenure of office for constitutional officers in localities entering into consolidation arrangements. Constitutional officers, many of whom are highly influential, cannot be expected to favor consolidation arrangements if their careers are threatened thereby. Temporary retention of these officers in newly consolidated cities or counties would not impose an additional burden on the localities. When the positions become vacant due to retirement, death, or any other cause, the consolidated government can determine what positions should be continued. Thus, even though not immediately, eventually the advantages of consolidation will be fully realized.

We further recommend that in instances where the proposed consolidation is of a city or cities and one or more counties or in case any town would lose its charter thereby, a three man court, similar to an Annexation Court, be impanelled to weigh the equities of all the political subdivisions affected thereby, and issue orders providing equitable treatment of all parties.

Danger of fragmentation of local governmental bodies—

Several Virginia counties are growing at a fantastically rapid rate. Even the most conservative population forecasts indicate that most of these will grow even faster in the next decade, and also, in that time, many counties that are now largely rural will become urban or suburban. The situation that will eventually confront Virginia counties along the urban corridor in the vicinity of Interstate 95 from Washington to North Carolina and along other arterial highways is exemplified by conditions in Fairfax County. Entire communities are planned and developed by large business enterprises. Other areas are spawned as improved transportation facilities permit citizens to reside in bedroom communities but work in central cities. At the present time there are about one-half dozen thickly settled communities in Fairfax County eligible to become cities. That the trend toward urbanization of heretofore rural areas is not confined to Fairfax County is indicated by the population growth of Prince William County from 22,612 in 1950, to 50,164 inhabitants in 1960. Since, under present law, any thickly settled community with a population of only 5,000 inhabitants is eligible for incorporation as a city, it is apparent many counties now rural but destined to become urban face virtual dismemberment by fragmentation. Obviously, this is not to the advantage of either the State or existing local governmental organizations.

Virginia's relatively simple and highly efficient governmental pattern could be seriously damaged if the rapidly approaching urbanization of the State results in a multiplicity of local governmental units. In this connection, it is well to reflect upon the fact that though Virginia faces many problems due to rapid urban growth, these are not nearly so great as they would be in the absence of the historic system of separation of counties and cities. Witnesses appearing before us and presenting argument they believed in the best interest of their particular viewpoints were lavish in their tribute to the simplicity of Virginia's local government structure. We concur in this and consider it significant that no witness appeared in favor of abolition of the present system.

We have studied and considered many alternative actions designed to prevent fragmentation of existing localities, the creation of a multiplicity of local governmental organizations, and the splintering of local jurisdictions. The ones we recommend were selected because they would, we believe, provide a solution to a pressing problem without disrupting the orderly growth of localities. We recommend legislation providing that, by judicial action, (1) no new towns may be created in counties having a population density greater than 125 inhabitants per square mile; (2) no community may become a town unless the services required by the community cannot be provided by the establishment of a sanitary district or under other arrangements provided by law or through extension of existing services provided by the county in which such community is located; (3) no community may become a town unless the number of inhabitants thereof exceeds one thousand. The power of the General Assembly to issue municipal charters would not be affected. We also propose constitutional amendments providing that (1) no town or unincorporated community may become a city of the second class unless the number of inhabitants thereof is ten thousand or more; and (2) no city of the second class may become a city of the first class unless the number of inhabitants thereof is twenty-five thousand or more. We further recommend that it be made clear that the consolidation statute pertains to portions of localities as well as to entire political subdivisions.

Unique Problems Facing Certain Localities—

We have made special studies of unique problems facing several localities. One of these involved Arlington County which has enjoyed advantages such as private and governmental planning, financing improvements, and a high degree of community spirit as a result of being free from annexation by neighboring localities. The county is very definitely oriented toward Washington, D. C., rather than any Virginia city. We are of the opinion that it would not be to the advantage of the Commonwealth to extend the laws allowing immunity from annexation to other counties. Any unforeseen problems that arise in any other counties under present laws can be approached on an individual basis.

Another subject of special study is Norfolk's problem of being surrounded by cities. We believe that the answers to this problem will come about through evolution—not through an attempt on the part of the General Assembly to force annexation or consolidation. In time, the areas in the Norfolk region will see a common need and will be able to solve their unique problem in their own way, as took place when the city of Newport News was in a similar situation.

Combining and clarification of consolidation statutes—

Articles 2, 3 and 4 of Chapter 26, Title 15.1 of the Code of Virginia were enacted to meet specific consolidation problems as they arose. On the

other hand, Article 1 of the same title was enacted to encourage small rural counties to consolidate. It is our belief that if Articles 1, 2, 3 and 4 of Chapter 26 were combined into a single article, the resulting statute would be clearer and more simple than the present law. Therefore, we recommend that the substance of Articles 1, 2, 3 and 4 of Chapter 26 (relating to consolidation of governmental units) of Title 15.1 be combined into one article; and that the General Consolidation Charter (Chapter 552, Acts of 1956) be permitted to be used, if desired, as the consolidation agreement.

Industrial development districts—

Industries seeking new locations are attracted to areas that can, in addition to other advantages, provide stability of governmental costs and services. We recommend, in order that areas within Virginia may be able to compete on equal footing with others throughout the nation, that Chapter 31 of Title 15.1 of the Code of Virginia be revised so as to provide for the development of industrial areas. We further recommend that the provisions of the revised Chapter 31 be State-wide in application and that the concept of Chapter 30 (Metropolitan Commissions) of Title 15.1 be incorporated into this revision.

ACKNOWLEDGEMENTS

We express our appreciation to the members of the Committee for their generous contribution of their time and for the benefit of their informed judgment and to all those who assisted the Committee in its work by furnishing information and by attendance on the public hearings and discussion of the peculiar problems which exist in different areas of the State; and especially to those with special experience in the field who presented to the Committee valuable suggestions for its consideration.

Respectfully submitted,

CHARLES K. HUTCHENS, Chairman
EDWARD E. WILLEY, Vice-Chairman
C. W. CLEATON
JOHN WARREN COOKE
JOHN H. DANIEL
CHARLES R. FENWICK
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LEWIS A. McMURRAN, JR.
ARTHUR H. RICHARDSON

Baldwin G. Locher and Mosby G. Perrow, Jr. were not present when final action was taken on this report.

A BILL to amend and reenact §§ 15.1-966 and 15.1-967 of the Code of Virginia, relating to the incorporation of towns.

Be it enacted by the General Assembly of Virginia:

That §§ 15.1-966 and 15.1-967 of the Code of Virginia be amended and reenacted as follows:

§ 15.1-966. Whenever it is desired to incorporate any unincorporated town or thickly settled community, a petition signed by **one hundred* duly qualified voters of such unincorporated town or thickly settled community shall be presented to the circuit court of the county in which such town or community, or the greater part thereof, is situated, or to the judge thereof in vacation, setting forth the metes and bounds of such town or community and praying that such town or community may be incorporated as a town. *A copy of such petition shall be served upon the Commonwealth's Attorney and each member of the governing body of the county or counties wherein the area sought to be incorporated lies, and the governing body at its option may become a party to the proceedings.* Such petition shall be accompanied by satisfactory proof that it, along with notice attached of the time and place that the petition would be presented, has been published in full in some newspaper published in the county, if any, once a week for four successive weeks and posted at the front door of the courthouse of the county for four weeks; if no newspaper be published in the county in which the town, or the greater part thereof, is located, then five copies of the petition and notice shall be posted within the limits of the town or community to be incorporated for four weeks and a copy posted at the front door of the courthouse of the county.

§ 15.1-967. The court shall be satisfied that:

(1) It will be to the interest of the inhabitants *within* * the *proposed* town;

(2) The prayer of the petition is reasonable;

(3) The general good of the community will be promoted;

(4) The number of inhabitants of the *proposed* town exceeds * *one thousand;*

(5) The area of land designated to be embraced within the town is not excessive;

(6) The population density of the county in which such community is located does not exceed one hundred and twenty-five persons per square mile according to the last preceding United States Census, or other census directed by the Court; and

(7) That the services required by the community cannot be provided by the establishment of a sanitary district, or under other arrangements provided by law, or through extension of existing services provided by the county in which such community is located.

Such court, or the judge thereof in vacation shall by an order reciting the substance of the petition and the due publication thereof, that it is to the best interest of the inhabitants of the locality, that the general good of the community will be promoted by the incorporation of the town, *that the services sought by incorporation cannot be provided by the establishment of a sanitary district or other arrangements provided by law, or through extension of existing services provided by the county* and that the number of inhabitants exceeds * *one thousand, and that the county does not have a population density in excess of 125 persons per square*

mile, order and decree and enter upon its common law order book that such town be, and the same is hereby, incorporated as a town by the name and style of "The town of ..... (naming it)", and designating in such order the metes and bounds thereof. Thereafter the inhabitants within such bounds shall be a body, politic and corporate, with all the powers, privileges and duties conferred upon and appertaining to towns under the general law. A copy of such order shall be certified by the court or judge to the Secretary of the Commonwealth by whom it shall be certified to all proper officers of the State. No town shall be incorporated * *pursuant to this section hereafter* unless it contains at least the population required by this section as amended.

A BILL to amend and reenact §§ 15.1-1038, 15.1-1040 through 15.1-1042, 15.1-1047, and 15.1-1055 of the Code of Virginia, relating to annexation of territory by cities and towns.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-1038, 15.1-1040 through 15.1-1042, 15.1-1047 and 15.1-1055 of the Code of Virginia be amended and reenacted as follows:

§ 15.1-1038. The court, without a jury, shall be held by three judges, as follows: The judge of the circuit court of the county in which the territory sought to be annexed lies or any judge designated as provided by law to sit in his stead (hereinafter in this article designated as "local judge"), and two judges of * courts *of record* remote from the territory to be annexed, *one of whom may be the judge of a city court,* to be designated by the Chief Justice of the Supreme Court of Appeals or by any judge, or committee of judges, of the court, designated by him for such purpose; provided, however, that if the local judge disqualifies himself, * *a* judge of *a* circuit court remote from such territory shall be designated to * *sit on* such court; provided that when the governing body of the city or the town and the county by ordinance or resolution declares that the necessity for and expediency of the annexation of the territory exists and that such annexation should be decreed, and with the consent of all intervenors in such proceedings, such court may be composed of the local judge only.

§ 15.1-1040. The court shall, prior to hearing any case under this chapter, direct the attorneys for the parties to appear before it, or in its discretion before the local judge (as defined in § 15.1-1038) for * *an initial pretrial conference at which the city or town moving for annexation shall present facts or information on the issue of necessity and expediency of such annexation. The court may permit the city or town to amend its pleadings and set a date for another pretrial conference. If the court is satisfied that the city or town cannot by evidence establish a prima facie case on such issue, the case shall be dismissed. If, however, the court is of opinion that a prima facie case can be established by evidence, the court shall require the county to file a responsive answer not less than six months thereafter. The county shall not be required to file an answer to the pleadings until so ordered by the court. The court shall also determine a date for another pretrial conference to be held not less than thirty days after the county has filed its answer as directed by the court* to consider:

(a) The simplification of the issues;

(b) Amendment of pleadings and filing of additional pleadings;

(c) Stipulations as to facts, documents, records, photographs, plans and like matters, which will dispense with formal proof thereof; including:

(1) Assessed values and the ratio of assessed values to true values as determined by the State Department of Taxation in the area sought to be annexed, city or town and county, including real property, personal property, machinery and tools, merchants' capital and public utility assessment for each year of the five years immediately preceding;

(2) Tax rate for the five years next preceding in the area sought, including any sanitary district therein, and in the city or town;

(3) The school population and school enrollment in the county, in the area sought, and in the city or town, as shown, respectively, by the quinquennial census of school population and by the records in the office of the division superintendent of schools; and the cost of education per pupil in average daily attendance as shown by the last preceding report of the Superintendent of Public Instruction;

(4) The estimated population of the county, the area sought, and of the city or town;

(d) Limitation on the number of expert witnesses, as well as requiring each expert witness who will testify to file a statement of his qualifications;

(e) Such other matters as may aid in the disposition of the case.

The court may require the disclosure of all relevant facts by each party at the pretrial conference held after the county has been required to file its answer. The court, or the local judge as the case may be, shall make an appropriate order which will control the subsequent conduct of the case unless modified before or at the trial or hearing to prevent manifest injustice.

At the time when the court orders the county to file its answer it shall fix a time by which any person desiring to intervene in the proceeding shall be required to file his petition or responsive answer, and shall enter an order of publication to this effect, in the manner provided by § 8-72. No person shall be allowed to intervene after such date.

§ 15.1-1041. (a) The court shall hear the case upon the evidence introduced as evidence is introduced in civil cases.

(b) The court shall determine the necessity for and expediency of annexation, considering the best interests of the county and the city or town, the best interests, services to be rendered and needs of the area proposed to be annexed, and the best interests of the remaining portion of the county.

(c) *The court, in its discretion, may proceed first to determine the question of necessity and expediency of annexation before receiving evidence on any other issue involved. If the court determines to so proceed it shall notify the parties involved at the initial or a subsequent pretrial conference, and shall conduct the pretrial conferences provided for in § 15.1-1040 and the trial accordingly.* If a majority of the court is of opinion that annexation is not necessary or expedient, the petition for annexation shall be dismissed. If a majority of the court is satisfied of the necessity for and expediency of annexation, *it shall then proceed to hear evidence on all other pertinent issues. After hearing all the evidence, the court may review its initial determination as to the issue of necessity and expediency and may alter or reverse its decision on such issue if a*

consideration of all the evidence presented in the case so requires. After its decision under the first part of the trial on the necessity for and expediency of annexation the court may order a recess before hearing evidence on all other pertinent issues in order to give the litigants time to obtain evidence in support of such issues.

The court shall determine the terms and conditions upon which annexation is to be had, and shall enter an order granting the petition. In all contested cases, the court shall render a written opinion.

(d) The order granting the petition shall set forth in detail all such terms and conditions upon which the petition is granted. Every annexation order shall be effective at midnight on December thirty-one of the year in which issued; or, in the discretion of the court, at midnight on December thirty-one of the year following the year in which issued. All taxes assessed in the territory annexed for the year at the end of which annexation becomes effective and for all prior years shall be paid to the county.

(e) In any proceedings instituted by a city or town, no annexation shall be decreed unless the court is satisfied that the city or town has substantially complied with the conditions of the last preceding annexation by such city or town, or that compliance therewith was impossible, or that sufficient time for compliance has not elapsed.

§ 15.1-1042. The court, in making its decision, shall balance the equities in the case, *and in so doing shall consider the interests of the inhabitants of the area being annexed, including, but not limited to their share of the assets and liabilities of the county,* and shall enter an order setting forth what it deems fair and reasonable terms and conditions, and shall direct the annexation in conformity therewith. It shall have power:

(a) To determine the metes and bounds of the territory to be annexed, and may include a greater or smaller area than that described in the ordinance or petition. The court shall so draw the lines of annexation as to have a reasonably compact body of land, and so that no land shall be taken into the city *or town* which is not adapted to * *its* improvements, or which the city *or town* will not need in the reasonably near future for development, unless necessarily embraced in such compact body of land;

(b) To require the assumption by the city or town *constituting a separate school district* of a just proportion of any existing debt of the county or any district * *within or partly within the area annexed.*

(c) To require the payment by the city *or a town which is a separate school district* of a sum to be determined by the court, payable on the effective date of annexation, to compensate the county for *a just proportion of* the value of public improvements, including but not limited to the paving of public roads and streets, the construction of sidewalks thereon, the installation of water mains, or sewers, garbage disposal systems, fire protection facilities, bridges, public schools and equipment thereof, or any other permanent public improvements owned and maintained by the county at the time of annexation; and further to compensate the county in not more than five annual installments for *a just proportion of* prospective loss of net tax revenues during the next five years, to such extent as the court in its discretion may determine, because of annexation of taxable values to the city *or such town;*

(d) To require the payment by a town of a sum to be determined by the court, payable on the effective date of annexation to compensate the county for any such public improvement which becomes the property of

the town by annexation; provided, that the order may provide that if, within five years after the order, such town becomes a city, it shall, from and after it becomes a city, make such payments as are provided for in paragraph (c) for a period not to exceed five years from the date of such order;

(e) In lieu of providing for compensation of the county for any public improvement, to provide that any such improvement shall remain the property of the county, or to provide for joint use thereof by the county and city or town under such conditions as the court may prescribe with consent of the governing bodies affected;

(f) To prescribe what capital outlays shall be made by the city *or town* in the area after annexation; provided, that the court shall require of the city *or town* the provision of any capital improvements which in its judgment are essential to meet the needs of the annexed area and to bring the same up to a standard equal to that of the remainder of the city *or town;* and provided further, that the court may, in its discretion, require as a condition of annexation the provision of capital improvements in addition to those specified in the annexation ordinance when the same are required to meet the needs of the area annexed;

(g) To require the payment by the city or town to any common carrier of passengers by motor bus, who may become a party to said annexation proceeding, of a sum to be determined by the court to compensate such carrier for any loss or damage such carrier may suffer from the effects of the annexation order upon the operations of such carrier; provided, however, the said city or town may elect to permit such carrier to continue to operate within the annexed area for such period of time to be determined by the court, as will permit such carrier to liquidate and recover its investment through depreciation.

§ 15.1-1047. (a) The court created by § 15.1-1038 shall not be dissolved after rendering a decision granting any motion or petition for annexation, but shall remain in existence for a period of five years from the effective date of any annexation order entered, or from the date of any decision of the Supreme Court of Appeals affirming such an order. Vacancies occurring in the court during such five-year period shall be filled as provided in § 15.1-1039.

(b) The court may be reconvened at any time during the five-year period on its own motion, or on motion of the governing body of the county, or of the city or town, or on petition of not less than fifty freeholders in the area annexed.

(c) The court shall have power and it shall be its duty, at any time during such period, to enforce the performance of the terms and conditions under which annexation was granted, and to issue appropriate process to compel such performance. *If any city or town which has annexed territory from any county fails to comply or is unable to comply with the orders of the court pursuant to the provisions of this title, the court may rescind its previous order allowing annexation and make such orders in relation thereto as may be necessary.*

(d) Any such action of the court shall be subject to review by the Supreme Court of Appeals in the same manner as is provided with respect to the original decision of the court.

§ 15.1-1049. An appeal may be granted by the Supreme Court of Appeals, or any judge thereof, to any party from * *any final* judgment of the court *under the provisions of this Article* and the appeal shall be heard

and determined without reference to the principles of demurrer to evidence. The trial court shall certify the facts in the case to the Supreme Court and the evidence shall be considered as on appeal in proceedings under chapter 1.1 of Title 25 of the Code of Virginia. In any case, by consent of all parties of record, the motion to annex may be dismissed at any time before final judgment on appeal.

§ 15.1-1055. No city or town, having instituted proceedings to annex territory of a county, shall again seek territory of such county within the five years next succeeding the entry of the final order in any annexation proceedings under this article or previous acts except by mutual agreement of the governing bodies affected, in which case the city or town moving to dismiss the proceedings before a hearing on its merits may file a new petition *within* five years after the filing of the petition in the prior suit. Nor shall any county be made defendant in any annexation proceeding brought by any city, except by consent of the county governing body, more frequently than once in any five-year period following the conclusion of any annexation proceedings instituted against it by any city; provided, however, that this provision shall not apply to any suits brought by consent of the county governing body.

This section shall not apply if the city or town seeking annexation take a nonsuit at or prior to the first pretrial conference under § 15.1-1041, in which case the party taking such nonsuit shall be assessed the reasonable cost incurred by the defending parties.

Notwithstanding the foregoing provisions, a city shall have the right to file and maintain an annexation proceeding against any county against which it has not filed such a proceeding during the preceding * *ten* years.

In any annexation proceeding pending on June * *thirtieth* nineteen hundred and * *sixty-four,* the party seeking annexation may proceed therein, in which event the proceedings thereafter to be taken shall conform, so far as practicable, to those herein prescribed, provided, that any such proceeding in which there shall not have been a hearing on the merits shall, on motion of the city or town, or the county involved, be dismissed at the cost of the moving party, including such reasonable attorney fees, engineering fees, witness fees, and other costs as the court may determine and allow, in which event the party seeking annexation may, notwithstanding any other provision of this article, institute new proceedings hereunder for the annexation of any territory included in the proceeding so dismissed.

This section shall apply to any city which was a town at the time of the filing of such petition.

A BILL to amend and reenact §§ 15.1-1130 through 15.1-1132, 15.1-1134, 15.1-1140 through 15.1-1142 of the Code of Virginia relating to the consolidation of political subdivisions; and to amend the Code of Virginia by adding §§ 15.1-1131.1, 15.1-1132.1, 15.1-1132.2, 15.1-1132.3, 15.1-1135.1, 15.1-1135.2, 15.1-1135.3, 15.1-1135.4, 15.1-1135.5, 15.1-1138.1, 15.1-1140.1, 15.1-1140.2, 15.1-1141.1, 15.1-1142.1, 15.1-1142.2, 15.1-1142.3, 15.1-1142.4 and 15.1-1142.5 relating to the same subject.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-1130 through 15.1-1132, 15.1-1134, 15.1-1140 through 15.1-1142 of the Code of Virginia be amended and reenacted and that the Code of Virginia be amended by adding §§ 15.1-1131.1, 15.1-1132.1, 15.1-1132.2, 15.1-1132.3, 15.1-1135.1, 15.1-1135.2, 15.1-1135.3, 15.1-1135.4,

15.1-1135.5, 15.1-1138.1, 15.1-1140.1, 15.1-1140.2, 15.1-1141.1, 15.1-1142.1, 15.1-1142.2, 15.1-1142.3, 15.1-1142.4 and 15.1-1142.5 as follows:

§ 15.1-1130. By complying with the requirements and procedure hereinafter specified in this article: * *any one or more adjoining or adjacent counties may consolidate into a single county; or any one or more adjoining or adjacent cities may consolidate into a single city; or any one or more adjoining or adjacent towns may consolidate into a single town; or any one or more adjoining or adjacent counties, cities or towns may consolidate into a single city or county; or a portion of any county or counties may consolidate with an adjoining city;* and the remaining portions of such counties not so consolidated with such city may be consolidated with each other or with adjoining or adjacent counties into one or more counties, or any such counties and cities may be consolidated into a single county or more than one county; *or a portion of a city may consolidate with an adjoining city; provided, however, any one or more adjoining or adjacent counties may not consolidate into a single city, nor consolidate with towns, within or without any such counties, into a single city.*

§ 15.1-1131. The board of supervisors or council or other governing body of such county, city or town desiring to consolidate with another city into a single city or into a single city and one or more counties or into a single county, may enter into a joint agreement for such consolidation, setting forth in such consolidation agreement the following, *where applicable:*

(1) The names of the several counties, cities and towns, *or portions thereof* which it is proposed to consolidate;

(2) The name of the *town or* city and/or county or counties into which it is proposed to consolidate; or shall provide for a subsequent referendum to be voted on by the people of * *any such* consolidated city or county *or town* prior to the effective date of the consolidation to select the name for said consolidated city or county *or town;* provided, however, the name chosen shall not otherwise be one that has been restricted or prohibited by law;

(3) The property, real or personal, belonging to each such county, city or town, and the fair value thereof in current money of the United States;

(4) The indebtedness, bonded and otherwise, of each such county, city or town;

(5) The day upon which the consolidation agreement shall become effective; *

(6) Whether it is desired that the proposed municipality, of any, shall be governed by the general laws or by the charter of one of the municipalities interested in the proposed consolidation, naming the municipality, if any, whose charter it is proposed to adopt;

(7) If the counties have different forms of county organization and government, the proposed form of county organization and government of the consolidated county, if any;

(8) Designation of the county seat of any county into which two or more counties or parts thereof are proposed to be consolidated;

(9) The disposition of all property, real or personal, of any county,

city, or town affected by the proposed consolidation, including any and all debts due to any such county, city or town;

(10) Reimbursement for, or assumption of a just proportion of any existing debt of any county, city or town, all or a portion of territory of which is proposed to be consolidated with a single city or one or more counties by the consolidated city or the appropriate county or counties existing or proposed to be created by the consolidation.

(11) The particular inducements to consolidation, if any such there be, over and above the incidental or ordinary benefits of citizenship in the proposed political subdivision, such as the erection of schoolhouses or other public buildings or the devotion of a named sum to street, sewer or other public improvements for a stated period or to be expended within a stated time;

(12) Any other provisions which may be properly embodied in such agreement.

* * *

The original of the consolidation agreement, together with a petition on behalf of the several governing bodies, signed by the chairman and the clerk of each of such bodies, asking that a referendum on the question of consolidation of the counties, cities and towns, shall be filed with the judge of * *a circuit court having jurisdiction in a town proposed to be consolidated with another town, or the circuit or* corporation court of * *a county or* city with which * other cities *or* counties *or portions thereof or* towns propose to consolidate. A copy of the agreement shall be filed with the judge of each circuit court and the judge of each of the corporation courts having jurisdiction in the counties, cities and towns parties to the agreement. *The court in which the original of the agreement is filed shall have original jurisdiction in any subsequent proceedings provided for in this Article.*

Where a regional planning commission has been established in accordance with the provisions of §§ 15.1-1271 to 15.1-1280 and such commission develops a plan for consolidation of the area or a portion thereof into a single city or a single city and one or more counties, or a single county, then such plan may be used as the basis for such a consolidation agreement as is contemplated in this article.

The provisions of all or any part of the General Consolidation Charter contained in chapter 552 of the Acts of Assembly of 1956 and any amendments thereof may be used as the consolidation agreement or an appropriate part thereof.

§ 15.1-1131.1. Each such governing body may appoint an advisory committee composed of three persons to assist it in the preparation of such agreement, and may pay the members of such advisory committee reasonable compensation approved, as to a county by the judge of the circuit court thereof, as to a town by the judge of the circuit court of the county in which such town is situated, and as to a city by the judge of the corporation court thereof, or circuit court if there is no corporation court.

It shall be the duty of the committee to present a copy of the proposed agreement to the governing body of the county, city or town with which consolidation is proposed and to confer with a similar committee therefrom, if such committee be appointed, and in conjunction with such committee to adjust and settle the terms and conditions of consolidation and to prepare and perfect an ordinance designed to effect the desired consolidation.

§ 15.1-1132. (a) The qualified voters of any county, city or town whose governing body has not taken the initiative under § 15.1-1131 may, by filing with the governing body of such county, city or town a petition signed by not less than ten per centum of the qualified voters of the county, city or town voting in the last preceding presidential election, which number in no case shall be less than fifty, asking the governing body to effect in accordance with * § 15.1-1131, a consolidation agreement with the counties, cities * *or* towns named in the petition and to petition the judge for a referendum on the question, require the governing body so to proceed. A copy of the petition of the voters shall also be filed with the judge of each circuit court having jurisdiction in the county or town or the judge of the corporation court in the city. If the governing body is able within six months thereafter to effect such consolidation agreement, the procedure shall be the same as hereinbefore set forth. If the governing body within such period of time is unable, or for any reason fails, to perfect such consolidation agreement then the judge of the circuit court having jurisdiction in the county or town or the judge of the corporation court of the city shall appoint a committee of five representative citizens of the county, city or town to act for and in lieu of the governing body in perfecting the consolidation agreement and in petitioning for a referendum.

(b) If a regional planning commission established in accordance with article 1 (§ 15.1-427 et seq.) of chapter 11 of this title has presented a plan for consolidation of the area into a single city or a single city and one or more counties or a single county and no agreement has within six months thereafter been reached by the governing body of any such county, city or town, then upon a petition signed by not less than ten per centum of the qualified voters of the county, city or town voting in the last preceding general election but in no case less than fifty, the circuit court having jurisdiction in the county or town or the corporation court of the city or circuit court of the city if there be no corporation court shall order an election to be held as provided in § 15.1-1138.

(c) The qualified voters of a portion of a county or city may, by filing a petition signed by ten per centum of the registered qualified voters residing within metes and bounds set forth in such petition, which in no case shall be less than fifty, require the governing body to effect an agreement with a city adjacent to such portion of the county or city, for the consolidation of such described portion with the adjacent city, and to petition the judge for a referendum on the subject. A copy of the petition shall be filed with the judge of the circuit court having jurisdiction in the described area, or if none, then with the corporation court having such jurisdiction. If the governing body is able within six months to effect such consolidation agreement, the procedure shall be the same as hereinabove set forth. If the governing body is unable or for any reason fails within six months to perfect such consolidation agreement then such judge shall appoint a committee of five representative citizens resident within the described area to act for and in lieu of the governing body in perfecting such an agreement and in petitioning for a referendum.

§ 15.1-1132.1. If the governing body of the county, city or town with which consolidation is proposed does not agree to a conference upon the subject, it shall adopt a resolution declaring it inexpedient to do so. If it does agree thereto, it shall cause such fact to be recorded in its minutes and shall appoint a committee of the same number as that appointed by the governing body of the other county, city or town and charged with similar duties.

§ 15.1-1132.2. (a) The two committees thus appointed shall meet in joint session as soon as may be and, a majority of each committee being present and acting as separate units, shall proceed, with such adjournments from time to time as may be desirable, to prepare and perfect an agreement to be adopted by the governing bodies of their respective political subdivision, providing for the consolidation proposed upon such terms and conditions as the committee may agree and may set forth therein. Such agreement may provide, among other things, for the surrender upon such consolidation of the charter of one or more of the municipalities, if any, and the continuance of the charter of another in effect for a consolidated municipality. And such agreement shall be reported by each committee to the governing body by which it was appointed and shall thereafter be designated as the consolidation agreement.

(b) Before the proposed consolidation agreement is filed with the court, the governing bodies of the political subdivisions which are parties to the proposed consolidation agreement shall cause a copy of the consolidation agreement to be published at least once a week for four successive weeks in some newspaper published or having a general circulation in such political subdivisions.

§ 15.1-1132.3. If (1) the committee of the political subdivision first proposing such consolidation, appointed under the provisions of § 15.1-1131.1 shall, by resolution, determine that it is impossible to agree upon the proposed consolidation with the committee or committees of the other political subdivisions receiving the overtures, or (2) the committees from the political subdivisions fail to agree on a plan of consolidation within sixty days after the resolution proposing consolidation is presented to the governing body or governing bodies to which overtures are made, or (3) any governing body of a political subdivision with which consolidation is proposed does not, within thirty days from the receipt of the certified copy of the resolution proposing consolidation, appoint a committee as herein provided, the governing body making the overtures of consolidation may, and shall, in the case mentioned in clause (2) of this sentence, pass an ordinance providing for the consolidation of the political subdivisions, and petitioning the circuit or corporation court, or the judge thereof in vacation, of the political subdivision or political subdivisions receiving the overtures, to call a special election. The election shall be held as provided in § 15.1-1138; provided that the provisions of § 15.1-1135.1 shall apply to any consolidation proposed as provided in this section.

§ 15.1-1134. If the proposed consolidation is approved by a majority vote of the voters of each county, city or town included therein, voting in the election hereinafter provided for, then the title to all property shall be vested in and the indebtedness become a debt of, the respective counties, cities and towns according to the plan or agreement, without any further act or deed; *provided that if only a portion of the territory of any county or city is to be consolidated with another county or city, and a court is impaneled pursuant to § 15.1-1135.1 such title shall vest in and indebtedness become a debt of the respective political subdivision only as determined by such court.*

§ 15.1-1135.1. (a) If a petition to intervene is filed with the court within the time prescribed in § 15.1-1135.2 of the Code, the judge of the circuit or corporation court in which the original of the consolidation agreement and petition for referendum is filed pursuant to the provisions of this article shall, if such consolidation agreement or petition involves (1) the consolidation of a city or cities and one or more counties or (2)

the invalidation of a charter of a town, immediately notify the Chief Justice of the Supreme Court of Appeals who shall cause to be designated a judge of a circuit court having jurisdiction in the county or one of them and two judges of courts of record remote from the area to be consolidated, one of whom may be judge of a city court, to consider such consolidation agreement and any controversies pertaining thereto. If no petitions to intervene are received by the court, it shall order a referendum to be held on the proposed consolidation agreement as presented in the petition for referendum.

(b) The court, without a jury, shall, prior to the granting of the referendum requested in such petition, review the agreement and shall consider the equities of all the political subdivisions which are parties to such consolidation agreement.

§ 15.1-1135.2. In any proceedings under this article any qualified voter or freeholder in the territory proposed to be consolidated or any adjoining political subdivision may, by petition, become parties defendant to such proceedings.

Such petition to intervene shall be filed with the court within thirty days from the date the original of such consolidation agreement is filed with the court. A copy of such petition shall be mailed to each member of the governing body of each political subdivision which is a party to the consolidation agreement, and shall clearly set forth the reasons for the objections to the consolidation which shall be set forth therein.

§ 15.1-1135.3. When a petition is filed with the court contesting the consolidation agreement, or any part thereof, the court shall set the case down for a hearing.

The court shall hear the case upon the evidence introduced as in civil cases. No proceedings brought under this article shall fail because of a defect, imperfection or omission in the pleadings which does not affect the substantial rights of the parties or any other technical or procedural defects, imperfection or error, but the court shall at any time allow amendments of the pleadings or made any other order necessary to ensure the hearing of the case on its merits.

The court, after considering all the provisions of the proposed consolidation agreement, and all the evidence presented in any hearing contesting the consolidation agreement, or any part thereof, shall make such order as it deems necessary to protect the interests of the citizens of the political subdivisions involved.

§ 15.1-1135.4. The court, in making its decision, shall balance the equities of the several political subdivisions involved and shall enter an order setting forth what it deems fair and reasonable terms and conditions, and shall direct a referendum to be held thereon.

The court may, when weighing the equities of the political subdivisions parties to the proposed consolidation, modify the provisions of such agreement and incorporate any or all of the applicable provisions of § 15.1-1135 of this Code.

In the determination of the value of any public improvement for the purposes set forth in this chapter the court shall take into consideration the original cost thereof less depreciation, reproduction cost at time of consolidation less depreciation, as well as the present value.

§ 15.1-1135.5. The cost of any proceeding contesting the consolidation agreement shall be paid by the political subdivision instituting such proceedings or otherwise as the court directs. The cost shall include the per diem and expenses of the court reporter, if any, and, in the discretion of the court a reasonable allowance to the court for secretarial services in connection with the preparation of the written opinion.

§ 15.1-1135.6. If a vacancy occurs on such court at any time prior to the final disposition of the proceedings and the completion of all duties required to be performed by it, the court shall not be dissolved and the proceedings shall not fail; but the vacancy shall be filled by designation of another judge, possessing the qualifications prescribed in § 15.1-1135.1. Such substitute judge shall have all the power and authority of his predecessor and the court shall proceed as so constituted to hear and determine the case and do all things necessary to accomplish its final disposition and the completion of all the duties of the court, including such matters as the certification of evidence and exceptions; provided, that no decision shall be rendered or action taken after such designation with respect to any question previously submitted to but not decided by the court except after full hearing in open court by the court as reconstituted of all the evidence heretofore introduced before the court and a hearing of all arguments that were made with reference to such question.

§ 15.1-1138.1. In the event that the consolidation agreement provides for the consolidation of only a portion of a county or city with an entire adjacent city, the election provided for in § 15.1-1138 shall be held only in the territory proposed to be so consolidated.

§ 15.1-1140. The ballots shall be counted and returns made and canvassed as in other elections, and the results certified by the commissioners of election to each of the judges of the circuit courts having jurisdiction in the counties and towns and to each of the judges of the corporation courts having jurisdiction in the cities proposed to be consolidated. If it shall appear by the report of the commissioners of election that a majority of the qualified voters of each county, city and town voting on the question submitted are in favor of the consolidation of the counties, cities * *or* towns *or in the event that only a portion of a county or city is proposed to be consolidated with an adjacent city, that a majority of the qualified voters of the territory proposed to be consolidated have voted in favor of such consolidation* the judge or judges shall enter such fact of record in each such county and city; and upon the day prescribed in the order for the consolidation agreement or the plan of consolidation to become effective the counties, cities * *or* towns shall be consolidated into a town, or a city or into a city and one or more counties or into a single county *or the portion of the county or city shall be consolidated with such adjacent city* as proposed in the consolidation agreement or plan.

§ 15.1-1140.1. Upon the adoption of such consolidation agreement at an election as herein provided, a copy thereof duly attested by the clerk of the governing body of each political subdivision resulting from the consolidation shall be certified to the Secretary of the Commonwealth, by whom it shall be certified to all departments of the State government.

§ 15.1-1140.2. Contests of such elections shall be held in the manner provided by law for determining contested elections, conforming therewith as nearly as may be practicable.

§ 15.1-1141. *(a)* Upon the day that the consolidation agreement or plan takes effect the continuance of the counties, cities * *or* towns named in such agreement or plan other than the consolidated *town, consolidated* city and any other county or counties provided for therein and any county only a portion of which is to be included within the consolidated city or any county or counties provided for in the agreement or plan shall terminate, as shall the terms of office and the rights, powers, duties and compensation of the officers, agents and employees of each such county, city or town other than the consolidated city specified in such agreement or plan. In case such agreement or plan provides for consolidation of the area into one or more new counties, then the judge or judges of the court or courts having jurisdiction within the area comprised by the consolidated county or counties shall order an election to be held not less than thirty nor more than ninety days after the date upon which the referendum provided for in §§ 15.1-1138 to 15.1-1140 was held, but at least thirty days before the effective date of such consolidation agreement or plan, at which election officers for * *any* new county or counties shall be elected.

(b) In the event that the consolidation agreement so provides, any constitutional officer, in office on the effective date of consolidation, of a county or city which is abolished by the consolidation, not chosen or elected to be such officer for the consolidated political subdivision, shall be deputies to the respective constitutional officers of the consolidated political subdivision until removed according to law, retirement or death, at such compensation as shall be set forth in the consolidation agreement. A vacancy in the office of such deputy shall not be filled.

§ 15.1-1141.1. The ordinances in force in the counties, cities and towns at the time of consolidation, in so far as they are not in conflict with the fact and the consolidation agreement, shall be continued in force and effect within the former limits of the counties and cities, subject to repeal or amendment by the governing body of the consolidated political subdivision; provided, however, that in the case of conflict between the ordinances of any of the consolidated political subdivisions, when the charter of one of them has been retained the ordinances of any whose charter has been surrendered shall to the extent of such conflict be void and of no effect.

§ 15.1-1142. Any action or proceeding pending by or against any counties, cities or towns so consolidated may be perfected to judgment *without further notice* as if such consolidation had not taken place, or the consolidated *town,* city or county or counties if any may be substituted according to where the cause of action arose.

§ 15.1-1142.1. From and after the date when consolidation shall become effective, all indictments and prosecutions for crimes committed or ordinances violated and all suits or causes of action arising within the territory of any consolidated political subdivision may be instituted therein with the same force and effect as if consolidation had always been effective. But in the case the corporation or other courts of any city whose charter is surrendered are retained as courts of concurrent jurisdiction with any of the courts of the consolidated political subdivision, prosecutions for crimes committed or ordinances violated and suits or causes of action arising within the territory of the city shall be apportioned, as far as possible, to the corporation or other courts so retained, for trial, and all cases arising therein which are properly triable by a municipal court shall be tried in the appropriate county or municipal court unless otherwise provided by the consolidation agreement.

§ 15.1-1142.2. When the consolidation agreement provides for the abolition of the corporation or other courts of a city, all criminal prosecutions then pending therein, whether by indictment, warrant or other complaint, and all suits, actions, motions, warrants and other proceedings of a civil nature, at law or in chancery, with all the records of the courts of such city, shall stand ipso facto removed to the court or courts of concurrent or like jurisdiction of the consolidated political subdivision. The corporation and other courts having courthouses and records in and jurisdiction over the city absorbed shall, at some convenient time, as closely preceding the period of removal as practicable, by formal orders entered of record, direct the removal of all such causes and proceedings, civil and criminal, at law and in chancery, to the court or courts of concurrent or like jurisdiction of the consolidated political subdivision, and, when there are two or more such courts, shall apportion such matters fairly and equally between them. The clerk of the court or courts to which the same have been removed shall thereupon proceed as in other cases of removal or changes of venue, and such matters shall be docketed and proceeded in with the same force and effect as they might have been in the court or courts from which removed. At the same time such clerk or clerks shall also deliver to the proper clerk or clerks of the consolidated political subdivision wherein the like records are required by law to be kept, all the deed books, order or minute books, execution dockets, judgment dockets and other records of his office, of whatever kind or nature; and the clerk or clerks of the court or courts to which the same are removed shall forthwith take charge of and preserve the same for reference and use in the same manner and with the same effect as though they were original records of his office. In case there shall be two or more courts of like jurisdiction, to either or which such records or portions of them may be properly removed, either of the courts may designate and prescribe the particular court to which such records or portions of them shall be removed.

§ 15.1-1142.3. If any right, title, interest, claim or case arise out of such consolidation or by reason thereof which is not determinable by reference to the provisions of this chapter or by the Constitution and other laws of the Commonwealth, the governing body of the consolidated county or municipality may by ordinance make provision therefor in such manner as may not be in contravention of law.

§ 15.1-1142.4. The magisterial districts, school districts, election districts and voting places in any consolidated county shall continue as in the several counties prior to consolidation, unless and until changed in accordance with law.

§ 15.1-1142.5. No new registration shall be necessary in case of such consolidation, but all electors shall be entitled to transfers to the proper registration books of the appropriate consolidated political subdivisions and the circuit or corporation court of the county or city shall direct the making of such transfers as may be necessary by reason of the rearrangement of wards and election precincts. Any person residing in an area which is consolidated who shall not have registered shall be entitled to register at such time as he would have been entitled to do so if no consolidation had taken place.

2. That §§ 15.1-1071 through 15.1-1129 of the Code of Virginia are repealed.

A BILL to amend and reenact §§ 15.1-1321 through 15.1-1324 and 15.1-1329 of the Code of Virginia, relating to the creation and powers of area development authorities; and to repeal § 15.1-1320 of the Code of Virginia relating to the same matters.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-1321 through 15.1-1324 and 15.1-1329 of the Code of Virginia be amended and reenacted as follows:

§ 15.1-1321. As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms have the meaning herein ascribed to them, respectively:

(a) "Authority" means any political subdivision created by § 15.1-1322 hereof. The terms "an authority" or "the authority" refer to each such authority.

(b) "City" means any city in the Commonwealth. "Town" means any town in the Commonwealth. "County" means any county in the Commonwealth.

(c) "Public body of the Commonwealth" means any city, town, county, municipal corporation, commission, district, authority, other political subdivision or public body of this Commonwealth.

(d)
council (including both branches where there are two), and in the case of a county, the board of supervisors or other governing body.

*

(f) "Area of operation" means * *the area within which an authority is authorized to exercise its powers under the ordinance or contract by which it is created.*

*

(h) "Bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this chapter.

(i) "Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise and the indebtedness secured by such liens.

(j) "Obligee of the authority" or "obligee" includes any bondholder, trustee or trustees for any bondholders, and the federal government when it is a party to any contract with the authority.

(k) "Adjacent to such authority" includes real or personal property which is contiguous, neighboring, or within reasonable proximity of an authority.

*

(m) "Commissioners" means the members of the board of commissioners of an authority.

(n) "Project" means any specific enterprise undertaken by an authority, including the facilities as hereinafter defined, and all other property, real or personal or any interest therein, necessary or appropriate for the operation of such property.

(o) "Facility" means a particular building or structure or particular

buildings or structures, including all equipment, appurtenances and accessories necessary or appropriate for the operation of such facility.

*

§ 15.1-1322 *(a)* * *The governing body of any county, city or town in this State, by ordinance, or the governing bodies of two or more such adjacent or adjoining political subdivisions, by contract, are authorized to create* a political subdivision of the Commonwealth, with such public and corporate powers as are set forth in this chapter. * *Any* such authority shall be designated as the . . . . . *Industrial* Development Authority (with a name * *set forth in the ordinance or contract by which the same is created). Such ordinance or contract shall also set forth the territorial limits of the area, within the boundaries of the political subdivision or subdivisions creating the authority, within which the authority is authorized to exercise its powers.*

(b) In the event an authority is created by two or more political subdivisions, the contract creating it shall also set forth:

(1) The respective contributions, by way of financial aid for capital outlay or operating expenses, or the provision of utility or other services, which will be made by each participating political subdivision;

(2) In the event that the area of operation of the authority is located wholly in one of the participating political subdivisions, and another participating political subdivision is required by the contract to furnish or install public utility services or facilities, such contract may provide that the political subdivision in which the area of operation is located may pay over to the political subdivision installing or furnishing such facilities or services a portion of any taxes or payments in lieu of taxes on property within the area of operation for such period of time as may be required to repay the investment necessary in connection with such public utilities.

(c) In the event an authority is created by a city or cities and an adjoining county or counties, the contract creating the authority may contain a provision by which such city or cities and county or counties agree that, for a fixed period of time mutually agreed to by all governing bodies concerned, such city or cities will not seek to annex all, or any part, of the territory embraced within the area of operation of the authority.

§ 15.1-1323. At least once a year, each authority shall file with the * *governing body of the political subdivision or subdivisions creating it* a report of its activities for the preceding year.

§ 15.1-1324. All powers, rights and duties conferred by this chapter, or other provisions of law, upon an authority created hereunder shall be exercised by a board of commissioners of that authority, hereinafter referred to as board or board of commissioners. The board shall consist of seven members to be appointed * *as provided in the ordinance or contract creating the authority.* The members shall serve for terms of six years each, the initial appointments to be two members for terms of six years, two members for terms of five years, two members for terms of four years and one member for a term of three years, and subsequent appointments to be made for terms of six years, except appointments to fill vacancies which shall be made for the unexpired term. Members shall receive from the authority their expenses and per diem of fifteen dollars for each day spent on business of the board. Each commissioner shall, before entering on his duties, take and subscribe the oath prescribed by § 49-1 of the Code of Virginia.

The board shall appoint the chief executive officer of the authority, who shall not be a member thereof, to be known as the director of that authority, hereinafter referred to as director, and whose compensation shall be paid by the authority in the amount determined by the board. The board shall employ or retain such other agents or employees subordinate to the director as may be necessary, including persons with special qualifications, and shall determine which such agents or employees shall be bonded and the amount of such bonds. The director and other agents and employees so appointed shall serve at the pleasure of the board, which shall fix their compensation and prescribe their duties.

The board shall elect from its membership a chairman, vice-chairman, a secretary and a treasurer, or secretary-treasurer, and shall prescribe their powers and duties. Four members shall constitute a quorum of the board for the purpose of conducting its business and exercising its powers and for all other purposes. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection. It shall keep suitable records of all its financial transactions and shall arrange to have the same audited annually.

§ 15.1-1329. An authority shall have the following powers:

(a) To sue and to be sued; to adopt and use a common seal and to alter the same as may be deemed expedient; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal by-laws, rules and regulations, not inconsistent with law, to carry into effect the powers and purposes of the authority.

(b) To foster and stimulate the industrial development of its area of operation; to prepare and carry out plans and projects to accomplish such objectives; to provide for the construction, reconstruction, improvement, alteration, maintenance, equipping or repair of any buildings or structures of any kind; to sell, lease or rent to others on such terms as it may deem proper and which are consistent with the provisions of § 15.1-1338 hereinafter set forth any of its lands, dwellings, houses, accommodations, structures, buildings, facilities, or appurtenances embraced within its area of operations; to establish and revise the rents charged and terms and conditions of occupancy thereof; to arrange or contract for the furnishing by any person or agency, public or private, of works, services, privileges or facilities in connection with any activity in which the authority may engage; to acquire, own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, easement, dedication or otherwise any real or personal property or any interest therein; to sell, lease, exchange, transfer, assign, or pledge any real or personal property or any interest therein; to dedicate, make a gift of, or lease for a nominal amount, any real or personal property or any interest therein to the Commonwealth, or the counties, cities and towns within the area of operation or adjacent to such authority, jointly or severally, for public use or benefit, such as, but not limited to, game preserves, playgrounds, park and recreational areas and facilities, hospitals, clinics, schools and airports; to acquire, lease, construct, maintain and operate and dispose of tracks, spurs, crossings, terminals, warehouses and terminal facilities of every kind and description necessary or useful in the transportation and storage of goods, wares and merchandise; to insure or provide for the insurance of any real or personal property or operation of the authority against any risks or hazards.

(c) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursements, in property or security in which fiduciaries may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be cancelled.

(d) To undertake and carry out examinations, investigations, studies and analyses of the business, industrial and agricultural needs, requirements and potentialities of its area of operation and the manner in which such needs and requirements and potentialities are being met, or should be met, in order to accomplish the purposes for which it is created; to make use of the facts determined in such research and analyses in its own operation; and to make the results of such studies and analyses available to public bodies and to private individuals, groups and businesses.

(e) In the discharge of its enumerated powers, to cooperate with the federal government, the Commonwealth and the counties, cities and towns within its area of operation or adjacent to such authority.

(f) To appoint an authority advisory committee to advise it, consisting of such number of persons as it may deem proper. Such persons so appointed shall be residents of the * *political subdivisions by* which the authority * *was created.* They shall not receive any compensation for their services but may be reimbursed for their necessary traveling and other expenses incurred while on business of the authority.

(g) To exercise all or any part or combination of powers herein granted.

(h) To do any and all other acts and things which may be reasonably necessary and convenient to carry out its purposes and powers.

No provision of law with respect to the acquisition, operation or disposition of property by other political subdivisions or public bodies shall be applicable to an authority unless specifically stated therein.

2. § 15.1-1320 of the Code of Virginia is repealed.

HOUSE JOINT RESOLUTION NO. ....

Proposing amendments to Sections 98, 99, 103 and 116 of the Constitution of Virginia.

Resolved by the House of Delegates of Virginia, the Senate concurring, a majority of the members elected to each House agreeing, that the following amendments to the Constitution of Virginia be, and the same are, hereby proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of section one hundred ninety-six of the Constitution, namely:

Strike from the Constitution of Virginia section ninety-eight, which is as follows:

Sec. 98. Division of cities into classes; courts of each class, additional courts of cities, how provided; abolition and cessation of corporation or city court. For the purpose of a judicial system, the cities of the State shall be divided into two classes.

Cities having a population of ten thousand or more, as shown by the last United States census, or other census provided by law, shall be cities

of the first class and those having a population of less than ten thousand, as thus shown, shall be cities of the second class.

In each city of the first class, there may be, in addition to the circuit court, a corporation court. In any city containing thirty thousand inhabitants or more, the General Assembly may provide for a court or courts with such number of judges for each court as the public interest may require, and in every such city the city courts, as they now exist, shall continue until otherwise provided by law.

In every city of the second class the corporation or hustings court now existing shall continue under the name of the corporation court of such city; but it may be abolished by a vote of a majority of the qualified voters of such city at an election held for the purpose. And whenever the office of judge of a corporation or hustings court of a city of the second class, whose annual salary is less than eight hundred dollars, shall become and remain vacant for ninety days consecutively, such court shall thereby cease to exist. In case of the abolition of the corporation or hustings court of any city of the second class, such city shall thereupon come in every respect within the jurisdiction of the circuit court of the county wherein it is situated, until otherwise provided by law; and the records of such corporation or hustings court shall thereupon become a part of the records of such circuit court, and be transferred thereto, and remain therein until otherwise provided by law. During the existence of the corporation or hustings court, the circuit court of the county in which such city is situated shall have concurrent jurisdiction with said corporation or hustings court, in actions at law and suits in equity, unless otherwise provided by law.

And insert in lieu thereof the following:

Sec. 98. For the purpose of a judicial system, the cities of the State shall be divided into two classes.

Cities having a population of twenty-five thousand or more, as shown by the last United States census, or other census provided by law, shall be cities of the first class and those having a population of less than twenty-five thousand, as thus shown, shall be cities of the second class; provided that any city which has become a city of the first class or a city of the second class prior to the effective date of this amendment shall continue as a city of the first class or as a city of the second class notwithstanding the previous provisions of this section.

In each city of the first class, there may be, in addition to the circuit court, a corporation court. In any city containing thirty thousand inhabitants or more, the General Assembly may provide for a court or courts with such number of judges for each court as the public interest may require, and in every such city the city courts, as they now exist shall continue until otherwise provided by law.

In every city of the second class the corporation or hustings court now existing shall continue under the name of the corporation court of such city; but it may be abolished by a vote of a majority of the qualified voters of such city at an election held for the purpose. And whenever the office of judge of a corporation or hustings court of a city of the second class, whose annual salary is less than eight hundred dollars, shall become and remain vacant for ninety days consecutively, such court shall thereby cease to exist. In case of the abolition of the corporation or hustings court of any city of the second class, such city shall thereupon come in every respect within the jurisdiction of the circuit court of the county wherein it is situated, until otherwise provided by law; and the records of such cor-

poration or hustings court shall thereupon become a part of the records of such circuit court, and be transferred thereto, and remain therein until otherwise provided by law. During the existence of the corporation or hustings court, the circuit court of the county in which such city is situated shall have concurrent jurisdiction with said corporation or hustings court, in actions at law and suits in equity, unless otherwise provided by law.

Strike from the Constitution of Virginia section ninety-nine, which is as follows:

Sec. 99. Judges of city courts; qualifications, term of office and residence; holding court in other circuits. For each city court of record a judge shall be chosen for a term of eight years by a joint vote of the two houses of the General Assembly. He shall, when chosen, possess the same qualifications as judges of the Supreme Court of Appeals, and during his continuance in office, shall reside within the jurisdiction of the court over which he presides; but the judge of the corporation court of any corporation having a city charter, and less than ten thousand inhabitants, may reside outside of the city limits; and such judge may be judge of such corporation court and judge of the corporation court of some other city having less than ten thousand inhabitants. The judges of city courts may be required or authorized to hold the circuit or city courts of any county or city.

And insert in lieu thereof the following:

Sec. 99. For each city court of record a judge shall be chosen for a term of eight years by a joint vote of the two houses of the General Assembly. He shall, when chosen, possess the same qualifications as judges of the Supreme Court of Appeals, and during its continuance in office, shall reside within the jurisdiction of the court over which he presides; but the judge of the corporation court of any city of the second class may reside outside of the city limits; and such judge may be judge of such corporation court and judge of the corporation court of some other city of the second class. The judges of city courts may be required or authorized to hold the circuit or city courts of any county or city.

Strike from the Constitution of Virginia section one hundred three, which is as follows:

Sec. 103. Salaries of judges.—The salaries of judges shall be paid out of the State treasury, but the State shall be reimbursed for one-half of the salaries of each of the circuit judges by the counties and cities composing the circuit, according to their respective populations, and of each of the judges of a city of the first class by the city in which such judge presides; except that the entire salary of the judge of the circuit court of the city of Richmond shall be paid by the State. A city may increase the salary of its circuits or city judge, or any one or more of them, such increase to be paid wholly by such city and not to be diminished during the term of office of such judge. A city containing less than ten thousand inhabitants shall pay the salary of its city judge.

And insert in lieu thereof the following:

Sec. 103. The salaries of judges shall be paid out of the State treasury, but the State shall be reimbursed for one-half of the salaries of each of the circuit judges by the counties and cities composing the circuit, according to their respective populations, and of each of the judges of a city of the first class by the city in which such judge presides; except that the entire salary of the judge of the circuit court of the city of Richmond shall be paid by the State. A city may increase the salary of its cir-

cuit or city judge, or any one or more of them, such increase to be paid wholly by such city and not to be diminished during the term of office of such judge. A city of the second class shall pay the salary of its city judge.

Strike out from the Constitution of Virginia section one hundred sixteen, which is as follows:

Sec. 116. Definitions of "cities" and "towns".—As used in this article words "incorporated communities" shall be construed to relate only to cities and towns. All incorporated communities, having within definied boundaries a population of five thousand or more, shall be known as cities;

and all incorporated communities, having within defined boundaries a population of less than five thousand, shall be known as towns. In determining the population of such cities and towns the General Assembly shall be governed by the last United States census, or such other enumeration as may be made by authority of the General Assembly; but nothing in this section shall be construed to repeal the charter of any incorporated community of less than five thousand inhabitants having a city charter at the time of the adoption of this Constitution, or to prevent the abolition by such incorporated communities of the corporation or hustings court thereof.

And insert in lieu thereof the following:

Sec. 116. As used in this article the words "incorporated communities" shall be construed to relate only to cities and towns. All incorporated communities, having within defined boundaries a population of ten thousand or more, shall be known as cities; and all incorporated communities, having within defined boundaries a population or less than ten thousand, shall be known as towns. In determining the population of such cities and towns the General Assembly shall be governed by the last United States census, or such other enumeration as may be made by authority of the General Assembly; provided that any city which has become a city of the first class prior to the effective date of this amendment shall continue as a city of the first class notwithstanding this amendment; and provided that nothing in this section shall be construed to affect the charter of any city having a city charter prior to the effective date of this amendment; nor to affect any right or power enjoyed or exercised by any such city as a city of the second class prior to this amendment.