

**STUDY OF LOCAL GOVERNMENT
INTERIM REPORT
OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL**

**REPORTED TO
THE GOVERNOR
AND
GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 29

**COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1975**

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INTERIM REPORT
Of The
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
on
STUDY OF LOCAL GOVERNMENT
UNDER HOUSE JOINT RESOLUTION NO. 135

Richmond, Virginia
January 1975

TO: HONORABLE MILLS E. GODWIN, JR., GOVERNOR OF VIRGINIA
and
THE GENERAL ASSEMBLY OF VIRGINIA

The study being conducted by the Council was established by House Joint Resolution No. 135, copy attached. This resolution requires a report to be filed no later than November 1, 1975. Due to certain recent developments in the Commonwealth the Council deemed it advisable to make an interim report and recommendations concerning the removal of public officers from their positions.

There are now found in Titles 2.1, 15.1 and 24.1 provisions relating to this subject. The Council recommends that such provisions be repealed, then amended and enacted as part of Title 24.1.

The Council is concerned that the grounds for bringing actions to seek the removal of public officials from their offices under the provisions of § 15.1-63 (which section sets forth general grounds for removal) are not clearly delineated. Suits under such section will make it difficult to obtain the services of competent persons to serve in State and local government or in the alternative will increase the cost of State and local government due to public servants requiring that they be furnished appropriate liability insurance coverage.

The Council's proposed bill, copy attached, provides that officers who are appointed to their positions, if the appointing person or authority has the power to remove such officers, can be removed from office only by the person or authority who appointed them, unless they are subject to automatic removal because of conviction of a felony by a court of this State or are mentally incompetent. The bill provides that any public officer convicted of commission of a felony by a court of this State, and all rights of appeal have terminated, shall forfeit his office and not be restored thereto even though a pardon be granted him. This would not prevent such person from running again for any office after he received a pardon. It is also provided that any officer may be removed for mental incompetency by a judicial proceeding; and in such proceeding he may have a trial by jury unless waived.

There is a general removal section that has as grounds for removal incompetency, neglect of duty or misuse of office when such grounds have a material adverse affect upon the conduct of the

office. A petition under this section must be signed by a number of registered voters that equals 10% of the number of votes cast for such office at the last election in which it was filled. Another section provides that officers appointed for a term certain, when the appointing person or authority does not have power of removal, may be subject to removal under the above mentioned section on a petition filed by the appointing person or authority.

The Council in the proposed bill further recommends that State and local governments, in the discretion of the court, be authorized to reimburse their officers for reasonable attorney fees or court costs or both that may be incurred in legal actions seeking their removal from office when such actions have been decided in favor of such officers or are dismissed.

The Council is concerned that there may be a proliferation of suits seeking removal of public officers from their positions on inconsequential grounds and at the same time is aware of, and strongly supports, the principle that persons holding public office must be held accountable to the public for their official actions. The Council believes its proposed bill balances the objective of public servants being allowed to perform their duties against accountability to the public and its right of removal for failure to account and recommends passage of the bill at this session of the General Assembly.

Respectfully submitted,

Willard J. Moody, Chairman

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HOUSE JOINT RESOLUTION NO. 135

Directing the Virginia Advisory Legislative Council to conduct a study of the laws relating to the regulation of counties, cities and towns; and to make certain recommendations relating thereto.

Agreed to by the House of Delegates, March 1, 1974

Agreed to by the Senate, March 9, 1974

Whereas, the Constitution of Virginia of nineteen hundred two, which was in effect in this Commonwealth until July one, nineteen hundred seventy-one, prohibited the enactment of special legislation to grant powers to counties, cities and towns, except by the enactment of municipal charters and amendments thereto or by the enactment of types of general laws which are so limited in application that for all practical purposes they are special laws, i.e. laws enumerating specific localities by very narrow population brackets and certain types of optional forms of government; and

Whereas, as a result of this prohibition and similar prohibitions in previous Constitutions of Virginia, it has become a common practice over the years to enumerate in municipal charters all of the powers, duties and limitations imposed upon specific cities and towns, not only those that are special, but also those that are granted by general laws of the Commonwealth and that are inherent to municipal corporations; and

Whereas, almost all such charters have become large, voluminous instruments that are not well documented, but are scattered among more than a hundred volumes of the Acts of Assembly; and

Whereas, the detailed enumeration of powers in this manner often unintentionally limits, rather than extends the authority granted to municipal corporations by general law or inherent power; and

Whereas, the necessity for constantly amending and revising these more than a hundred lengthy charters consumes more than a reasonable and acceptable amount of legislative time at each session of the General Assembly; and

Whereas, there are at present many sections scattered throughout the entire Code of Virginia which refer to certain counties, cities and towns by population brackets and it is a most difficult task to find out which counties, cities and towns each of these sections apply to since it would be necessary to search all of the various census figures from the time each section was enacted to find out which particular localities were within such population bracket when the section was enacted and which localities grew into or grew out of such bracket since that time; and

Whereas, it seems proper that all counties in the Commonwealth should have the powers, duties and limitations similar to those of other counties in the Commonwealth, that all cities in the Commonwealth should have powers, duties and limitations similar to those of other cities of the Commonwealth, and that all towns in the Commonwealth should have powers, duties and limitations similar to those of other towns of the Commonwealth, except where

population distribution, geographic location, economic status, industrialization, or some other significant factor peculiar to a particular city or town requires it to be granted special consideration; and

Whereas, Section 2 of Article VII of the present Constitution of Virginia permits the General Assembly to "provide by special act for the organization, government, and powers of any county, city, town or regional government...." so that a need for lengthy municipal charters or special types of "general law" as referred to above no longer exists and cities and towns should derive all of their powers, duties and limitations from general laws except where cogent special factors exist which can now be dealt with by special legislation; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is hereby directed to conduct a study of all laws of the Commonwealth relating to the regulation of counties, cities and towns and to make recommendations regarding:

(1) the need for amending or revising the general laws of the Commonwealth relating to the powers, duties and limitations of counties, cities and towns;

(2) the need for amending or repealing sections in the Code of Virginia which refer to counties, cities and towns by population brackets;

(3) the need for developing classes of counties and classes of cities so that general laws relating to counties and cities can be more specific and effective;

(4) the need for changes in the present form and content of municipal charters, including the need for standardization of such charters; and

(5) the need to develop legislative rules and procedures for providing and amending municipal charters.

The Council shall complete its study on these matters and submit its report to the Governor and the General Assembly not later than November one, nineteen hundred seventy-five.

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3 A BILL to amend the Code of Virginia by adding in Chapter 6
4 of Title 24.1 an article numbered 1.1, consisting of
5 sections numbered 24.1-79.1 through 24.1-79.10; and to
6 repeal §§ 2.1-36, 15.1-63 as amended, 15.1-64, 15.1-65,
7 15.1-66 and 24.1-78 of the Code of Virginia, the added
8 and repealed sections relating to vacancy in public
9 offices and removal of public officers from office.

10

11 Be it enacted by the General Assembly of Virginia:

12 1. That the Code of Virginia is amended by adding in
13 Chapter 6 of Title 24.1 an article numbered 1.1, consisting
14 of sections numbered 24.1-79.1 through 24.1-79.10 as
15 follows:

16

Article 1.1.

17

Removal of Public Officers from Office.

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§ 24.1-79.1. Applicability of article.--This article

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shall be applicable to all State, county, city, town and

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district officers, elected or appointed, except such

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officers whose removal from office is specifically provided

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for in the Constitution of Virginia and requires any such

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removal shall be only in accordance with the provisions of

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the Constitution.

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§ 24.1-79.2. Further exception to

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article.--Notwithstanding § 24.1-79.1, an appointed officer,

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except an officer appointed to fill a vacancy in an elective

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office or appointed to an office for a term established by

1 law and the appointing person or authority is not given the
2 unqualified power of removal, shall be removed from his
3 office only by the person or authority who appointed him
4 unless such officer be sentenced for a crime as provided for
5 in § 24.1-79.3 of the Code or is determined to be mentally
6 incompetent as provided for in § 24.1-79.4, of the Code.

7 § 24.1-79.3. Forfeiture of office by person sentenced
8 for commission of certain crimes.--Any person holding any
9 public office of honor, profit or trust in this State who
10 may be convicted for commission of a felony by the courts of
11 this State and all rights of appeal have terminated, shall
12 by such final conviction forfeit his office or post and be
13 thereafter incapable of acting therein under his previous
14 election or appointment; and though a pardon be afterwards
15 granted him, such pardon shall not void the forfeiture.

16 § 24.1-79.4. Vacancy occurring when officer determined
17 mentally incompetent.--Whenever any officer, whether his
18 office be executive, judicial, administrative, elective or
19 appointive, shall in a judicial proceeding as provided for
20 in § 37.1-128, et seq., be determined to be mentally
21 incompetent the office held by him shall become vacant, and
22 any vacancy occurring by reason thereof shall be filled in
23 the manner provided by law for filling vacancies in such
24 offices. Provided, however, notwithstanding the provisions
25 of § 37.1-128, et seq., any officer shall have a jury trial
26 unless it is waived by him or for him by his counsel of
27 record.

28 § 24.1-79.5. Removal of certain officers by

1 courts.--Upon a petition, filed with a circuit court, such
2 court may remove from office any State, county, city, town
3 and district officers who are elected or who have been
4 appointed to fill an elective office; when such officer
5 resides within the jurisdiction of the court, and §§
6 24.1-79.2, 24.1-79.3 and 24.1-79.4 are not applicable to
7 such officer; for incompetency, neglect of duty or misuse of
8 office when such incompetency, neglect of duty or misuse of
9 office has a material adverse effect upon the conduct of
10 such office. Such petition must be signed by a number of
11 registered voters who reside within the jurisdiction of such
12 officer which is equal to ten per centum of the total number
13 of votes cast for such office which the officer holds when
14 he was last elected.

15 § 24.1-79.6. Removal of officers appointed for a term
16 certain.--Any officer appointed to an office for a term
17 established by law may be removed from such office, under
18 the provisions of § 24.1-79.5, upon a petition filed with
19 the circuit court in whose jurisdiction the officer resides
20 signed by the person or a majority of the members of the
21 authority who appointed him if such appointing person or
22 authority is not given the unqualified power of removal.

23 § 24.1-79.7. Procedure.--Such petitions, as provided
24 for in §§ 24.1-79.5 and 24.1-79.6, shall state with
25 reasonable accuracy and detail the grounds or reasons for
26 removal of the officer against whom the petition is filed
27 and shall be signed by the person or persons making it under
28 penalties of perjury. As soon as the petition is filed with

1 the court, the court shall forthwith cause a rule to be
2 issued, requiring the officer complained of to show cause,
3 if he can, why he should not be removed from office, the
4 rule alleging in general terms the cause or causes for such
5 removal. The rule shall be returnable in not less than five
6 nor more than ten days and shall be served upon the officer
7 with a copy of the petition. Upon return of the rule duly
8 executed, unless good cause shall be shown for a continuance
9 or postponement to a later day in the term, the case shall
10 be tried on the day named in the rule, taking precedence
11 over all other cases on the docket. If upon such trial it
12 shall appear that the officer is subject to removal under
13 the provisions of the preceding section, he shall be removed
14 from office. Any such officer proceeded against shall have
15 the right to demand a trial by jury.

16 § 24.1-79.8. Suspension from office pending hearing
17 and appeal.--In the event of a judicial proceeding under §§
18 24.1-79.3, 24.1-79.4, 24.1-79.5 and 24.1-79.6 the circuit
19 court may, by order entered of record, suspend such officer
20 pending the hearing, which suspension may, in the discretion
21 of the court, be continued in effect until the matter is
22 finally disposed of in the Supreme Court or otherwise.
23 During the suspension of any such officer the court may
24 appoint some suitable person to act in his place. During
25 such period of suspension the compensation of such officer
26 shall be withheld and kept in a separate account and paid
27 such officer if and when such judicial proceedings result in
28 his favor, otherwise it shall be paid back to the county.

1 city, town or State Treasurer paying the same.

2 § 24.1-79.9. who to represent Commonwealth: trial by
3 jury: appeal.--In any trial under this article the Attorney
4 for the Commonwealth shall represent the Commonwealth. If
5 the proceeding is against the Attorney for the Commonwealth
6 then the court shall appoint some attorney to represent the
7 Commonwealth. Any such officer proceeded against shall have
8 the right to demand a trial by jury. The Commonwealth and
9 the defendant shall both have the right to apply to the
10 Supreme Court for a writ of error and supersedeas upon the
11 record made in the trial court and the Supreme Court may
12 hear and determine such cases.

13 § 24.1-79.10. Costs may be allowed.--Whenever a
14 judicial proceeding as provided for in this chapter is
15 dismissed in favor of the respondent, the court may, in its
16 discretion, require that court costs or reasonable attorney
17 fees for the respondent or both such costs and fees be paid
18 by the State agency or political subdivision which the
19 respondent serves.

20 2. That §§ 2.1-36, 15.1-63 as amended, 15.1-64, 15.1-65,
21 15.1-66 and 24.1-78 of the Code of Virginia are repealed.

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