

**STUDY OF LOCAL GOVERNMENT
INTERIM REPORT
OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
REPORTED TO
THE GOVERNOR
AND
GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 34

**COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1976**

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INTERIM REPORT
OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
ON
STUDY OF LOCAL GOVERNMENT
UNDER HOUSE JOINT RESOLUTION NO. 135¹

Richmond, Virginia

November 1, 1975

TO: Honorable Mills E. Godwin, Jr., Governor of Virginia

and

The General Assembly of Virginia

The resolution directing the Virginia Advisory Legislative Council to conduct a study of the laws regulating counties, cities and towns provides such study be completed and a report submitted to the Governor and the General Assembly not later than November one, nineteen hundred seventy-five. The Council respectfully requests, in accordance with Exhibit I, that the study be continued an additional year.

The Council, in accordance with the resolution, appointed Delegate Lewis A. McMurrin, Jr., Chairman of a Committee to conduct such study. Vice-Chairmen and other members of the Committee are listed in this report.

All meetings of the Committee have been held in open session. Representatives of the Virginia Association of Counties and the Virginia Municipal League have attended such meetings and their comments and recommendations have been of great assistance. Personnel of the Department of Education and the Auditor of Public Accounts have likewise given invaluable aid to the Committee in those areas of its study that pertained to their departments. Members of the public have addressed the Committee on topics in which they were interested when such topics were being considered.

The Committee, at its first meetings agreed upon certain guidelines to assist in the deliberations of its members. The guidelines are:

(1) The Committee would not duplicate efforts of other study groups. The Virginia Code Commission has, to the extent it found feasible, eliminated many population brackets contained in existing statutes; therefore, the Committee has not dealt with item (2) of its

charge. the Commission on City-County Relationships studying the question of annexation and related matters has made certain recommendations presently before the General Assembly concerning item (3) of the Committee's resolution. So as not to conflict with such recommendations the Committee did not consider item (3) in detail. It limited its study to the first twenty-one chapters of Title 15.1 of the Code of Virginia.

(2) The Committee recognized that in most instances counties and cities are co-equal and independent units of government. It appears logical to have the same laws for counties and cities when the subject matter concerns both. For many years most of the laws applicable to cities have been made available to counties.² In recent years the establishment of cities containing many square miles of farm land has created a need to make laws pertaining to counties available for use by cities. Viewing counties and cities as co-equal and independent units of local government solves this problem and aids in improving relations between counties and cities by abolishing a legally imposed difference.

(3) The Committee agreed local governments should have only those powers granted them by the Constitution and laws of the Commonwealth. The Committee's study indicates a need to broaden the range of permitted activities of all units of local government to give them more latitude in solving their problems.

An interim report (House Document No. 25) containing suggested legislation was presented during the 1975 Session of the General Assembly. The legislation pertained to the removal of public officials and employees from their posts. It was enacted and is found in Title 24.1, Chapter 6, Article 1.1 of the Code of Virginia.

The Committee has completed a substantial portion of its study, however, its conclusions have not been completely fired in the crucible of public opinion. The study should be completed and the Committee's proposals subjected to public debate before final recommendations are made by the Council to the Governor and the General Assembly.

In the course of the study, optional forms of government have been carefully reviewed. The history of optional forms of government may best be stated by quoting from Mr. A. E. Dick Howard's book, Commentaries on the Constitution of Virginia, Volume II, pages 819, 820 and 821³:

" *Optional forms of government.* Under the Constitution of 1902 in its original form, Virginia counties and cities, with the exception of cities operating under a special charter,⁷² could be governed only by the form of government actually prescribed in the Constitution— a board of supervisors in the counties⁷³ and a bicameral council with mayor in the cities.⁷⁴ Further, cities and counties had to have the officers that were enumerated in the Constitution.⁷⁵ In 1912, however, section 117 was amended to permit cities and towns to adopt optional forms of government free of many of the requirements of the Constitution.⁷⁶ This provision was broadened by further

amendment in 1920.⁷⁷ In 1928 section 110 was amended so that counties too could adopt optional forms of government.⁷⁸ Both sections, as amended, required that such a form of government be approved by the voters, although under section 117(c), the Constitution did not require a referendum if a city or town requested a special form in a manner prescribed by law.⁷⁹ These amendments had the practical effect of making obsolete several sections of the Constitution and of eliminating the necessity of enumerating any particular form of government in the Constitution.

The present Constitution leaves the form and structure of county, city, town, and regional governments to statute law.⁸⁰ In addition to permitting general laws and special acts to provide for the organization, government, and powers of these governments, section 2 authorizes the General Assembly to provide by general law optional forms for counties, cities, or towns, to be effective if approved in a referendum in such locality.

The availability of optional forms of government has made it easier for localities to choose forms that best suit their own needs. The General Assembly has provided a range of forms from which to choose,⁸¹ and although the counties have been slower to adopt optional forms, every city in the State has adopted a form of government other than that prescribed in 1902. The obvious advantages of allowing localities to choose optional forms of government have led to the addition of such provisions to the constitutions of some other states.⁸² "

⁷² Before 1920 nine of the 22 cities then in existence operated under a type of council-manager plan.

⁷³ Section 111.

⁷⁴ Sections 120-23.

⁷⁵ For a discussion of the effect of optional forms of government on these requirements, see commentary on § 4, *infra* pp. 830-31.

⁷⁶ Acts of Assembly, 1912, ch. 332.

⁷⁷ Acts of Assembly, 1920, ch. 350.

⁷⁸ Acts of Assembly, 1928, ch. 46.

⁷⁹ Current statutory provisions are found for cities in Va. Code Ann. §§ 15.1-946 to -965 (1973) and for counties in *id.* §§ 15.1-582 to -668 (1973).

⁸⁰ Much of old §§ 111 and 117, the last paragraph of § 120, the part of § 121 requiring two branches in a city council, and most of § 123 were eliminated in the 1969-70 revision.

⁸¹ Cities under 50,000 may choose among the general councilmanic plan, Va. Code Ann. §§ 15.1-917 to -920 (1973), the modified commission plan, §§ 15.1-921 to -924 (1973), and the city or town manager plan, §§ 15.1-925 to -931 (1973). Because cities of more than 50,000 always have charters that are enacted as special acts, they may choose virtually any form they like.

Counties may choose among the county executive form, Va. Code Ann. §§ 15.1-588 to -621 (1973), county manager form, §§ 15.1-622 to -660 (1973), and county board form, §§ 15.1-697 to -721 (1973). Other statutes in Title 15.1 create additional options for counties meeting certain population and other criteria. On the county executive, see George R. Long, "Virginia Counties Turn to an Executive Secretary," 40 *U. Va. News Letter* 34 (1964).

⁸² *E.g.*, Mo. Const., Art. VI, § 9; Ohio Const., Art. X, § 1. See Edward M. Kresky, "Local Government," in Wheeler, *Salient Issues*, pp. 150, 152-54.

As the above excerpt points out, optional forms of governments are available to cities and towns through the medium of charters but were not available to counties until 1928 through amendment of the Constitution and enactment of enabling legislation.

Presently, there are seven forms of optional county governments provided in the statutes. Such forms of county governments and the counties utilizing them are:

- (a) Chapter 13--County Executive and County Manager Forms
 - 1. County Executive Form (§§ 15.1-588 through 15.1-621)
 - Albemarle
 - Prince William
 - Roanoke
 - 2. County Manager Form (§§ 15.1-622 through 15.1-660)
 - Henrico
- (b) Chapter 14--Modified Commission Plan, County Manager Plan and County Board Form
 - 1. Modified Commission Plan (§§ 15.1-670 through 15.1-673)
 - no counties
 - 2. County Manager (§§ 15.1-674 through 15.1-688)
 - Arlington
 - 3. County Board Form (§§ 15.1-697 through 15.1-721)
 - Carroll
 - Lee
 - Russell
 - Scott
- (c) Chapter 15--Urban County Executive Form and Urban County Manager Form
 - 1. Urban County Executive Form (§§ 15.1-728 through 15.1-740)
 - Fairfax
 - 2. Urban County Manager Form (§§ 15.1-741 through 15.1-753)
 - no counties

An analysis of the various forms of optional county government reveals that their major substantive provisions revolve around the establishment of, and powers and duties of, the county administrative officer, the office of treasurer, the office of commissioner of revenue and the school board. These forms of government should be studied in more detail before recommendations are made final.

Council recommends repeal (Exhibit II) of the modified commission plan (§§ 15.1-670 through 15.1-673) and the urban county manager form (§§ 15.1-741 through 15.1-753). Both are forms of optional county government that have not been adopted by any county in the Commonwealth since their enactment in 1930 and 1960, respectively.

Respectfully submitted

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1. attached.
2. § 15.1-522 of the Code of Virginia.
3. Reprinted with permission of the author. Footnotes shown are those found in Commentaries on the Constitution of Virginia.

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 no later than November one, nineteen hundred seventy-five.

EXHIBIT I

HOUSE JOINT RESOLUTION NO.....

Directing the Virginia Advisory Legislative Council to continue its study of the laws relating to the regulation of counties, cities and towns.

WHEREAS, House Joint Resolution No. 135, adopted by the 1974 Session of the General Assembly, directed the Virginia Advisory Legislative Council to study the laws relating to the regulation of counties, cities and towns; and to make certain recommendations relating thereto. Such Resolution further directed the Council to complete its study and submit its report to the Governor and the General Assembly not later than November one, nineteen hundred seventy-five; and

WHEREAS, legislation presently before the General Assembly, if enacted, will have an impact on questions being considered by the Council; and

WHEREAS, the complexity of the material under study requires that it be subject to further study and any recommendations be scrutinized by the public; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is hereby directed to continue its study commenced under House Joint Resolution No. 135, adopted at the 1974 Session of the General Assembly.

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

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EXHIBIT II

A BILL to repeal §§ 15.1-670 through 15.1-673 and §§ 15.1-741 through 15.1-753, as severally amended, of the Code of Virginia, relating to forms of optional county governments.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-670 through 15.1-673 and §§ 15.1-741 through 15.1-753, as severally amended, of the Code of Virginia are repealed.

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