

**REPORT OF THE
COMMISSION ON**

**Local Government
Structures and
Relationships**

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



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**Report of the
Commission on Local Government
—Structures and Relationships**

TO: The Governor
and
The General Assembly of Virginia

House Joint Resolution No. 163 passed during the 1986 Session of the General Assembly, established the Commission on Local Government Structures and Relationships to study the relationships among the Commonwealth's counties, cities, and towns, the desirability of continuing the independent city system, and the problems caused by annexation. At its initial meeting in 1986, the Commission elected Delegate George W. Grayson of James City County as its Chairman and Senator Howard P. Anderson of Halifax County as its Vice Chairman. The General Assembly subsequently extended the Commission for another year in 1988 (*House Joint Resolution No. 6*) and again in 1989 (*House Joint Resolution No. 286*), with the same membership.

THE CHALLENGE FACING THE COMMISSION

House Joint Resolution No. 163 directed the Commission to address a number of controversial issues. Included in its charge were responsibilities to:

1. Make the provision of services more rational;
2. Maximize the return from state and local tax dollars through economies of scale in local government;
3. Accomplish boundary adjustments within a framework which would avoid the bitter, expensive, and prolonged battles which have attended existing annexation proceedings;
4. Reexamine the legal and de facto differences between cities and counties; and
5. Address problems in the relationships between counties and the towns within their jurisdictions.

The Commission had before it several competing approaches by which to respond to this challenge. It could seek to:

1. Preserve the status quo. By far the easiest option for the Commission would have been to accept the traditional structure and relationships as givens and to concentrate on a few incremental, short-term adjustments to meet the most immediate and vocal sources of dissatisfaction.
2. Mobilize planners, economists, engineers, demographers, sociologists, and political scientists to redraw county, city, and town boundaries pursuant to the recommendations of the Governor's Commission on Virginia's Future (*Spong Commission, 1984*). Although short on specifics for achieving its goal, this Commission urged: "A bold realignment of local government boundaries or responsibilities is necessary, which will mean consolidating many rural counties and eliminating the independent city concept."
3. Remove the impediments and create the necessary incentives to enable Virginia's local governments, on a voluntary basis, to move towards a more rational and cooperative approach to solving their own problems.

To recommend simply preserving the status quo would have been irresponsible. Fiscal constraints imposed by federal and state governments argue for prudent reforms that will promote local cooperation to improve the quantity and quality of services provided to Virginia's taxpayers. In addition, the current system of adversarial, judicially-focused annexations must not continue. Under the existing system, small- and medium-sized cities and contiguous counties continue to earmark millions of dollars for legal cases at a time when public monies are desperately needed for vital public services. Not only are hostile annexation proceedings enormously expensive, they engender deep-seated bitterness among neighbors who otherwise have more in common than in conflict, divert local officials from their normal duties, and discourage businesses from expanding or locating in an area beset by an annexation battle. A corporation that avoids investing in one Virginia locality may not seek opportunities in another part of the Commonwealth. Rather, it may establish or enlarge a plant in North Carolina, South Carolina, or in other states where hostile annexation does not exist.

The Commission rejected the proposal of the Spong Commission to significantly redraft local governmental boundaries. Redrawing the map of Virginia might be justified on purely technical grounds; however, for political, social, and psychological reasons, most elected officials and average citizens want to retain the community in which they live. When living amid unprecedented change in the state, nation, and the world, association with a particular county, city, or town enhances one's personal identity, provides a sense of belonging, and furnishes a proximate level of government to which concerns can be addressed. A resident of the small City of Poquoson told the Commission's chairman in no uncertain terms:

"To some sophisticated urban planner, it might appear that Poquoson should be consolidated with York County or Hampton. But the fact is that we like our own school system, we like our own police force, we like our own library, and - above all - we like our own independence. Furthermore, we are willing to pay for it. Anyone who wants to take this independence away from us will have to fight his way from one end of Little Florida Avenue to the other."

Ultimately, the Commission recognized that reform of local governmental structures was required, but that the Spong Commission recommendations were unacceptable. A consensus was reached on a compromise approach -- namely, that establishing new and more effective structures should occur, not through legislative fiat, but by offering choices and providing means by which local governments could agree upon more productive relations.

The Commission established three subcommittees to concentrate on the main elements of the task: Annexation and Boundary Adjustments (*C. Richard Cranwell, Chairman*), Incentives for Cooperation (*Leslie L. Byrne, Chairman*), and Town-County Relations (*William S. Moore, Jr., Chairman*). The Commission's work benefited greatly from the creative deliberations of the three subcommittees.

During the past three and one-half years, the Commission held 28 meetings, including eight public hearings, and extended work sessions in Richmond and in locations throughout the state. It solicited and received the assistance of academic experts, representatives of individual local governments, the Virginia Municipal League, the Virginia Association of Counties, the Local Government Attorneys of Virginia, Inc., and numerous other state and local officials. The Commission on Local Government and its staff were extremely helpful both in providing information collected through that office on a wide range of topics and in sharing the views of members and staff on the issues before the Commission. Citizen associations and individuals from across the state also shared their experiences with the present structure of local government and made helpful suggestions.

The Commission particularly wishes to acknowledge the cooperative efforts of the Virginia Association of Counties, the Virginia Municipal League, and their constituent local governments. In late 1987, the two associations formed a joint task force and asked the Commission to hold its recommendations in abeyance while the task force pursued an agreement. These two organizations made remarkable progress in identifying areas of common interest, while seeking fair-minded compromises on a number of points of disagreement. The report of the joint task force, while differing in detail, paralleled the thinking of the Commission itself. The efforts of the Association and the League over the last two years truly mark an unprecedented level of cooperation in the relations between the county and municipal interests. The Commission has benefited immensely from the work of the joint task force and wishes to commend all parties involved.

While the Commission did not incorporate the task force's recommendations verbatim, it did accept and recommend, among other ideas, a simplified annexation process, an incentive program for cooperative actions among local governments, and equal powers of taxation for counties and cities.

A consensus had been reached by late 1988 on major components of a restructuring of local government in Virginia which the Commission believed would help remedy the problems increasingly evident in the present system. However, implementation of these basic principles required extensive rewriting and revision of several chapters of Title 15.1 and of other sections of the *Code of Virginia*. These statutory provisions merited careful crafting as the framework for local government structure and cooperative efforts in the future. Local governments and the general public desired and deserved ample time to study and to react to the specific proposals.

The Commission therefore deemed it imprudent to introduce a hurriedly drafted bill in the 1989 Session. Instead, it issued a status report to a joint session of the House Counties, Cities and Towns and Senate Local Government Committees -- with the proposal that the study be extended for an additional year.

The extension enabled the staff, in consultation with representatives of local governments, to prepare the bill by mid-September 1989 which allowed local governments and the public abundant time to consider the proposals and express their views in a series of five public hearings held across the Commonwealth in the fall of 1989. The Commission made public early and disseminated widely the text of a bill that would form the basis of legislation. At the conclusion of the hearings, the Commission held two work sessions to consider proposed changes in the draft bills and adopted the final set of proposals. This report summarizes and explains the Commission's final recommendations.

A BACKGROUND PERSPECTIVE ON LOCAL GOVERNMENTAL STRUCTURE

The basic local governmental structure and methods for boundary adjustments in the Commonwealth were designed at the turn of this century for a largely rural state, quite different from contemporary Virginia. The preliminary staff study prepared by the Division of Legislative Services which reviews the history of city-county separation and the annexation process is included as **Appendix B**.

The system of independent cities, or "city-county separation," had evolved sufficiently to be a general principle of Virginia government approximately one hundred years ago. The Constitution of 1902 recognized separation, although it was not explicitly spelled out in its provisions. The Constitution of 1971 specifically recognizes the independence of cities.

Likewise, the system of local boundary adjustment in Virginia was established at the turn of this century. The Constitution of 1902 reversed the practice of annexation by special act of the General Assembly and required the Assembly to provide by general law for altering corporate limits. In 1904, the General Assembly instituted the judicial process for boundary adjustment, which has remained the fundamental practice.

City-county separation and annexations initiated by municipal ordinance and decided by the courts served the Commonwealth well as long as the state remained largely rural and municipal services were clearly distinct from the traditional responsibilities of counties. There was less opposition to annexation because cities usually provided services while counties did not. By the 1960's, however, Virginia clearly was becoming an urban state in which traditional municipal-county functional distinctions had begun to blur and the adversarial nature of annexation led to tension in many urban areas. Consequently, local government structures and the boundary adjustment process have been continuously on the public agenda for the last 20 years.

The Metropolitan Areas Study Commission (*Hahn Commission, 1966-1967*) concluded that annexation had become less effective and potentially disruptive in larger urban areas. Its major recommendations embraced the creation of a Commission on Local Government to replace the courts in annexation and other boundary adjustments, incorporation of towns, and related decisions. The Commission also advocated establishing the system of planning districts with the view that a district might evolve into a unit of regional government to be known as the service district. Nevertheless, the Commission continued to support city-county separation.

The Commission on Constitutional Revision (1968) unsuccessfully proposed a 25,000 minimum population for the creation of new cities. Its suggestions for ways to diminish city-county distinctions to an extent have been adopted or implemented. Examples include the granting of county charters and the option now available to counties to be treated as cities with regard to borrowing. The new Constitution provided for "regional government," thus recognizing the Hahn Commission's goals of service districts and other instruments for regional cooperation.

The General Assembly devoted almost the entire decade of the 1970's to seeking a solution to its local governmental problems. Thus, the Commission on City-County Relationships (*Stuart Commission, 1971-1975*) produced the recommendations which were the genesis of the annexation "compromise" of 1979. It proposed permanent immunity for certain densely populated counties and more specific boundary adjustment standards. The Commission also supported a minimum population of 25,000 for new cities.

These recommendations were endorsed by its successor group, the Commission on State Aid to Localities and Joint Subcommittee on Annexation (*Michie Commission, 1977-1978*). Still, the role of economic growth as a factor precipitating annexation efforts was the primary focus of this group. Various proposals were made to base state aid on local need, effort, and ability to pay. The hallmark of this effort was the financial aid package -- increasing state aid to localities for law enforcement, support of judicial and constitutional offices, welfare, and highways -- which accompanied the 1979 annexation compromise legislation. Also included were provisions for voluntary fiscal agreements whereby municipalities could forgo annexation rights in return for economic growth-sharing arrangements with counties and the establishment of a Commission on Local Government.

More recently, the Joint Subcommittee to Review the Functioning of Annexation Laws (*House Joint Resolution No. 25, 1983*) examined some technical aspects of the new annexation procedures and suggested limited adjustments.

This review demonstrates that for at least a quarter of a century the inadequacy of the traditional pattern of local governmental structure and relationships has been recognized. The persistence of the issue also indicates that the changes which occurred at the turn of this decade have not fully addressed the problems.

Since enactment of the annexation statute, there have been at least 167 city annexation proceedings. While some have been by agreement, more of them, if not most, have been bitterly contested, divisive, and expensive, as in the following examples:

In 1975, the City of Harrisonburg initiated annexation proceedings against Rockingham County. The two jurisdictions were involved in negotiations and in the courtroom for seven years, spending \$1.53 million. However, a moratorium on annexation did interrupt the proceedings.

In 1985, the Cities of Petersburg and Hopewell filed annexation proceedings against Prince George County. This controversy has yet to be concluded and has cost nearly \$6 million to date.

In 1975, the Commission on City-County Relationships carried out the latest in-depth review of the annexation laws. It was hoped that the 1979 statute would resolve the annexation problem in Virginia. Unfortunately, this has not been the case. Large urbanized counties, by being granted the right of immunity from annexation, have been able to remove themselves from the annexation battles; however, the conflict has intensified for counties surrounding medium- and small-size cities.

Annexation by towns has not created the ill will nor been as hotly contested as those by independent cities. This is because town annexations do not remove real property from the county's tax base.

The Commission recommends that independent cities with less than 125,000 people may annex only if they join an adjoining county and those with 125,000 people or more not be allowed to annex. The Commission strongly believes that "independent" means that a municipality can stand on its own two feet without attempting, through hostile annexation, to expand its boundaries at the expense of a contiguous county.

There are many studies on the question of the optimum size of municipalities; however, there is no definitive study on the point. Many of the studies indicate that there are few economies of scale to be realized by cities above 125,000 in population (Commission on Local Government, Report on the City of Covington -- City of Clifton Forge -- County of Alleghany Consolidation Action, July 1986).

With such a population, cities usually have fully developed professional staffs, permitting a greater degree of specialization, and are sufficiently large to provide economically a full array of municipal services. Some studies have indicated that each service provided by a municipality may have an optimum size for economical delivery of that particular service.

A recent study by the Commission on Local Government (Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities 1985/86 and 1986/87, June 1989, Tables 1.7, 3.7) shows that the average revenue capacity per capita of the State's larger cities is less than the average for cities of smaller size. Meanwhile, the revenue effort is the reverse -- a greater average revenue effort is made in the larger cities than is made in the State's smaller cities.

The Commission carefully considered the data presented to it and concluded that a city with a population of 125,000 is capable of achieving economies of scale while avoiding diseconomies. Still, we recognize the need of some cities to increase in size. Under the proposed legislation, a small- or medium-sized city could convert itself, through local initiative, from an "independent" to a "class A" city. This transition is accomplished by integrating with a surrounding or adjacent county. A class A city would have the right to expand its boundaries once every eight years. However, once becoming a class A city, a municipality could never revert to independent status. The state will not force any municipality to make the transition from an independent to a Class A city. The jurisdiction and its elected officials will decide the status that a city will occupy.

SUMMARY OF PROPOSALS

The Commission's recommendations are organized around the following general goals and principles.

1. All but the largest independent cities in Virginia should have the opportunity to reintegrate with the county from which they originally were formed. Under the Commission's proposals, the following levels of municipal status would result:
 - a. Cities with a population of 125,000 or more would remain independent of any county.
 - b. All other existing cities may continue to be independent but would be offered incentives to reintegrate with the county. The city could reintegrate as a town or as a dependent unit known as a class A city if it has a population of at least 10,000. An agreement on the educational system, revenues, and delivery of service would be negotiated between city and county.

- c. No new independent city would be established unless it has a population of at least 25,000 and could come into existence only by two-thirds vote of the General Assembly.
 - d. Only towns with a population of at least 10,000 would be eligible to become dependent, class A cities.
 - e. A population of at least 3,500 would be required for the establishment of a new town.
2. The adversarial annexation process would be replaced by an administrative system which would allow municipalities to expand their boundaries at fixed intervals by ordinance, with minimal review. However, only class A cities and towns would be allowed to expand their boundaries. The boundaries of the independent cities would be frozen, and independent cities no longer would be allowed to annex the territory of contiguous counties.

The duplicative, two- or three-step process (Commission on Local Government; special three judge court; State Supreme Court) for boundary adjustments, transitions, and consolidations would be removed and the courts would cease to be a key part of the process. In its place, the Commission on Local Government would be responsible for reviewing and approving all such changes.

3. The proposed legislation would encourage cities to integrate into counties and offers inducements for functional consolidation of services. First, only those cities which reintegrate with counties would be permitted to expand their boundaries. Second, localities would be guaranteed that net state financial aid would not be reduced for a period of five fiscal years as a result of consolidation of governments or services. Third, a new financial incentive program to reward governmental and functional consolidation would be created under the aegis of the Commission on Local Government.

The Commission did consider several proposed changes as a result of the public hearings held in the fall of 1989. Generally, the recommendations which the Commission is making reflect the initial principles upon which agreement was reached in late 1988.

The Commission considered and rejected a proposal to afford a small window of opportunity for independent cities to engage in traditional, judicially-focused annexation. Eligibility for such annexation would have been confined to those cities that do not have voluntary agreements with neighboring counties which would prevent annexation and that have a true real property tax of 50 percent or more above the neighboring county. A small number of cities would have been eligible under these criteria. Support among most Commission members for such a window of opportunity evaporated when a spokesman for the Virginia Municipal League candidly stated that his organization would fight the proposed legislation even if the annexation provisions were adopted.

The Commission also rejected a proposal which would have replaced its incentive plan with a formula which automatically would have provided bonuses in State funding to localities that consolidated governments or services. Underlying this action was the fact that the costs of such an approach were unknown and uncapped. Moreover, it deprived the State of the opportunity to reward especially innovative efforts in cooperation.

The Commission did alter its proposal by which local governments would have been relieved of a major financial responsibility by having the State assume the mandated local costs of mental health, health, and social services. Instead, the Commission proposed that 25 percent of net lottery proceeds be allocated to local governments. Four-fifths of the funds would be distributed to all counties and cities in the following fashion:

Two pools of money would be established (a county pool and a city pool), based on point of sale of lottery tickets.

The county pool would be distributed among the counties based on school age population and further divided and distributed to towns in counties according to the current formula for sales tax proceeds.

The city pool would be distributed among cities on a per capita basis.

The remaining one-fifth of the funds would compose an incentive fund administered by the Commission on Local Government to encourage certain cooperative undertakings by local governments. The Commission recommends the distribution of lottery moneys to all local governments, not merely cities and counties involved in mergers.

SUMMARY OF PROPOSED LEGISLATION

No. 1 Commission On Local Government

Under existing law, the Commission on Local Government investigates and makes findings of fact as to the probable effect of various boundary changes, municipal transitions, and consolidations. The Commission's findings are preliminary to judicial proceedings before a special three-judge court. Initially, it was assumed that the role of the Commission would augment and simplify the judicial proceeding. Experience over the last decade, however, has indicated that the two stages largely have duplicated each other, at greater cost to the parties and without any increase in efficiency. In addition, annexation cases can be appealed from the special three-judge court to the State Supreme court.

The Commission on Local Government Structures and Relationships recommends that the courts be removed from this process and that the Commission on Local Government make final determinations. To that end, this proposal sets forth an essentially administrative law process for the Commission. Appeals to the orders of the Commission would go directly to the Supreme Court of Virginia. However, judicial review would be limited; the Court could not set aside a Commission order unless that order was "clearly erroneous" or "without substantial support in the evidence."

No. 2 Incorporation Of Towns

This proposed chapter makes two basic changes in the requirements and procedures for a thickly settled community to be incorporated as a town.

First, it increases from 1,000 to 3,500 the minimum population required to become a town. The Constitution of 1971 sets a ~~minimum~~ population of 1,000, but permits the General Assembly to increase the figure. Even under this lesser figure, no new town has been established since 1966. This change will have no effect on existing towns whose populations are less than 3,500. The figure of 3,500 is used because this is the population figure increasingly employed by State agencies to deliver services and, by law, to impose duties.

Second, the legislation shifts authority to grant town incorporation from the circuit court to the Commission on Local Government, consistent with the intent to remove the courts as much as possible from the local government process. Under present law, the Commission holds a hearing to determine that the community meets the requirements of a town, but the court itself must enter the order granting town status. Except for the population change, the criteria for town status in the proposed chapter mirror the current law.

No. 3 Transition Of Towns To Cities

State law presently permits any town with a population of 5,000 inhabitants or more to seek transition to city status. (Towns located within counties which have been granted immunity from incorporation of cities within their boundaries are excepted.) The town petitions the circuit court to order a referendum in the town on whether to become a city. If the vote is favorable, the town then petitions the court for city status. The court holds a hearing to ascertain that the transition meets certain criteria set forth in the law and enters an order granting the transition.

This proposal applies to a transition to independent city status. The ~~minimum~~ population is increased to 25,000, and a town is required to have had ~~town~~ status for at least ten years before making a transition. See proposal no. 7 for town transition to class A city status.

An independent city can come into existence only by an act of the General Assembly with a proposed Constitutional amendment specifying a two-thirds vote of both the Senate and the House of Delegates. The Commission on Local Government is substituted for the court, but only for the purpose of finding that a town is eligible for independent city status by virtue of meeting the criteria spelled out in the law. Except for the increase from 5,000 to 25,000, the criteria are the same as those which the court now must find before granting city status.

No. 4 Transition Of Second-Class Cities To First-Class Cities

The *Code of Virginia* now distinguishes between "first-class" and "second-class" cities. The basic difference is that a second-class city shares with a county the circuit court, a clerk of court, attorney for the Commonwealth, and sheriff. In effect, second-class cities are not totally independent of the surrounding county. (The distinction goes back to the Constitution of 1902. The Constitution of 1971 dropped the distinctive terms, but the provisions have remained in effect in state law because a number of cities continue to share the court and such constitutional officers.) State law provides for a transition from second to first class status upon the attainment of 10,000 population, but the transition has been treated as voluntary rather than mandatory.

This proposal provides that there would be no new second-class cities after July 1, 1990. Those existing second-class cities whose populations now are, or in the future reach, 25,000 inhabitants, would -- following existing procedure -- be eligible to be declared first-class cities and hence render themselves totally independent of the county; however, this would occur only when the city petitions the court requesting such change in status. Moreover, proposal no. 6 gives the city the option to seek class A status as a part of the county.

No. 5 Transition Of Counties To Cities

Currently, state law allows counties which meet certain criteria to become cities. If a three-judge court designated by the Chief Justice of the Virginia Supreme Court finds that a county which has petitioned to become a city meets the criteria, it orders a local referendum on whether the General Assembly should grant the county a municipal charter. If a majority of those voting approves, the city charter is then presented to the General Assembly. The proposed chapter makes two basic changes in the existing procedure.

First, a county must have a minimum population of 25,000, consistent with the principle that no new independent cities of less than 25,000 shall be established. The present law allows any county with either (i) 20,000 population and population density of 300 persons per square mile or (ii) 50,000 population and population density of 140 persons per square mile to make the transition.

Second, the Commission on Local Government replaces the three-judge court as the body to conduct a hearing and determine whether to grant or deny eligibility for city status based on whether the county meets the criteria for a city specified in the law. Except for the change in population which is being proposed, the requirements for eligibility remain the same as are now in the *Code of Virginia*.

It is to be noted that this chapter applies to county transition to **independent** city status. Since counties already are independent units, it would be neither logical nor possible for a county to revert to dependent status.

No. 6 Transition of City to Class A City or Town Status

This proposal embodies the Commission's recommendation that any city with a population of fewer than 125,000 people be offered the opportunity to surrender its independent status and join the surrounding or adjoining county. (An exception is made where cities have resulted from consolidations involving former counties and hence where there is no county to which the city could revert.)

A formerly independent city would make the transition to town status and then would have the further option of being designated a class A city. Such cities would be part of the county rather than independent and would have the powers of a town along with any additional powers which the General Assembly might grant to class A cities. Thus, the formerly independent city thus could retain its designation as a city, keep its city council and constitutional officers, and – subject to an agreement with the county – continue to provide multiple municipal services.

The transition could be initiated either by an ordinance adopted by city council or by a petition signed by 15 percent of the registered voters of the city. The petition would be heard by the Commission on Local Government, which would enter an order granting class A city status upon the finding of certain facts spelled out in the law.

An amendment to the Constitution is proposed which would allow such class A cities or towns to retain their constitutional officers.

No. 7 Class A Cities

Under the current law, any town with a population of 5,000 is eligible to become an independent city if it meets certain criteria provided by law. (An exception is a town situated in a county which has permanent immunity from annexation). The Commission on Local Government Structures and Relationships is recommending that an independent city must contain at least 25,000 persons.

This proposal allows any town with a population of at least 10,000 to become a dependent city, designated in the chapter as a class A city to distinguish it from an independent city. This is the same status as those formerly independent cities of fewer than 125,000 people who convert to dependent status and then elect to be designated as class A cities as provided in proposal no. 6. The Commission on Local Government must give prior approval to the transition of a town to a class A city. As provided in proposal no. 6, a class A city has all the powers of a town and any other powers which may be granted by the General Assembly.

This proposal provides that any city which makes the transition to town status in order to become a class A city or any town which makes the transition to a class A city must negotiate an agreement with the county as to the how the education system, revenues, and delivery of services will be worked out between them. In effect, the exact powers of a particular Class A city could be negotiated.

No. 8 Settling County, City, and Town Boundaries

Chapter 24 of Title 15.1 of the *Code of Virginia* now provides procedures for making minor adjustments in boundaries between political jurisdictions. The proposal leaves these procedures in place, except that it substitutes the Commission on Local Government for the circuit court.

First, if there is a doubt or a dispute between two localities as to the true boundary between them, they may petition the Commission to appoint a team of commissioners from the localities to establish the true line. The Commission then would approve the report of the commissioners if the vote is unanimous. If the commissioners are not in agreement, either of the localities party to the case may then petition the Commission on Local Government itself to establish the true boundary.

Second, two or more localities may agree to establish, relocate, or change the boundary line between them. If so, they may petition the Commission on Local Government to hold a hearing and order that the line be so located or changed.

Third, if localities agree on changes in the boundary line to facilitate the provision of public services, but cannot agree on the proper location of the line, they may petition the Commission on Local Government to hold a hearing and set the proper location of the line.

In each of these three cases, the Commission on Local Government is substituted for the circuit court as the decision-making body.

No. 9 Boundary Changes Of Certain Cities And Towns

Present annexation statutes specify that boundary changes constitute a judicial process conducted before a special annexation court, preceded by hearings before the Commission on Local Government. This proposal significantly changes the procedure by which class A cities, tier cities, and towns may expand their boundaries. Only these municipalities would be able to expand their boundaries. Any city which is required, or chooses, to retain its status as an independent city may not expand its boundaries, except through voluntary agreements. Briefly, Class A cities and towns would be allowed to expand their boundaries by ordinance once every eight years.

Under the proposed procedure, the municipal council would adopt an ordinance identifying and describing the territory it seeks and containing a plan and schedule, upon which it previously has held hearings, for the extension of municipal services to the territory within a five-year period. The Commission on Local Government would review the ordinance; however, it is limited in its discretion. It would be required to approve the boundary expansion unless it finds either that the procedural requirements have not been followed or that the expansion is contrary to the best interests of the Commonwealth. It specifically is prohibited from disapproving an expansion based on its beliefs about the best interests of the local governments involved. As provided in proposal no. 1, the Commission's ruling could be appealed to the Virginia Supreme Court but could be overturned only if it were clearly erroneous or without substantial support in the evidence.

Finally, because boundary expansion by independent cities no longer would be possible, this proposal repeals the existing provisions granting certain counties total immunity from annexation and from city incorporations within their boundaries and permitting any other county to seek partial immunity for a part of the county.

No. 10 Consolidation Of Governmental Units

Chapter 26 of Title 15.1 of the *Code of Virginia* contains extensive provisions for consolidating various combinations of political subdivisions. The proposal reorganizes and rewrites these provisions in order to make the consolidation provisions for the various classifications of local governments as parallel as possible.

The initial articles are the procedural steps for consolidating two counties into a single county (Article 1), two towns into a single town (Article 2), two cities into a single city (Article 3), or a combination of local governments into one county, one county with a tier-city, or one city (Subarticle 4A).

Subarticles 4B through 4E in turn spell out unique adjustments in officers, services, taxes, and the like which are necessary when two different forms of local government (e.g., a county and a city) are consolidated. In this regard, those who compare the proposal with present *Code of Virginia* provisions will find that the substance of these adjustments and procedures remain the same although the organization of the material is somewhat changed.

With regard to the procedures for effecting a consolidation, the following changes should be noted:

First, in all instances the Commission on Local Government must find that a consolidation agreement is in the best interests of the citizens of the consolidating local governments, the consolidating governments themselves, and the Commonwealth before the local governments may proceed to submit the proposal to the voters. Presently, only consolidations resulting in a consolidated city must be referred to the Commission and then to a special three-judge court. All consolidations, as is now the case, must be ratified by the voters in each of the affected jurisdictions.

Second, making procedures uniform would result in a somewhat different procedure when the governing body of one city or one town does not make an effort to enter into a consolidation agreement with the governing body of another city or town. In the case of two counties, or a combination of two different types of local governments, the voters of any locality which does not take the initiative to seek a consolidation agreement may petition the governing body to do so. If the governing body then is unable or unwilling to reach an agreement, the court would appoint a citizen committee to act in place of the governing body. In the case of two towns or two cities, however, the governing body of the willing party may petition the court to order an election on its proposed consolidation agreement if the other governing body is unwilling or unable to reach an agreement. The proposal removes this procedure for cities and towns and conforms to the present procedures for counties or combinations of local government types.

No. 11 Incentives For Joint Undertakings

This proposal requires the General Assembly to establish a "Bonus Incentive Fund" to encourage integration of independent cities with adjoining counties and, alternatively, new functional consolidations of facilities and services by local governments. The Commission on Local Government would administer and distribute these incentive grants.

The proposal directs the Commission on Local Government to consider several factors in awarding incentive payments. Included is a weighting system for various local government activities which might be consolidated. Payments may be granted for up to 10 years, but payments would be gradually reduced after the fifth year if awarded for a period longer than five years.

No. 12 Effect Of Consolidations On Distribution Of State Funds

This proposal provides that the amount of State funds distributed to consolidated or reintegrated governments, or to local governments which have consolidated a functional activity or service, would not be reduced below the combined amount to which the local governments would have been eligible had consolidation not occurred. The guarantee covers a period of five years following the consolidation. If distribution formulas entitle the consolidated government or service to an amount larger than it would have been entitled to had consolidation not occurred, the larger amount would be distributed.

The Commission has amended and relocated a few statutes or added statutes that facilitate cooperation among local governments.

In addition, the Commission recommends that the moratorium on city-initiated boundary adjustments, actions for county immunity, and proceedings to establish new cities be continued until January 1, 1993, to conform with the effective date of the legislation.

Finally, the Commission wishes to emphasize that continuation of the moratorium and consideration of incentives for cooperation should not prejudice continuing negotiations among local governments to reach voluntary agreements designed to accomplish the very purposes towards which the Commission is working. Those localities which hammer out cooperative agreements with respect to functions and services should be assured that they will benefit from legislation proposed by the Commission to provide incentives for joint efforts.

Respectfully submitted,

The Honorable George W. Grayson, *Chairman*

The Honorable Howard P. Anderson, *Vice Chairman*

The Honorable C. Richard Cranwell

The Honorable Franklin P. Hall

The Honorable William S. Moore, Jr.

The Honorable Leslie L. Byrne

The Honorable John C. Watkins

The Honorable J. Granger Macfarlane

The Honorable Kevin G. Miller*

The Honorable Wiley F. Mitchell, Jr.

Dr. Jack D. Edwards

Dr. George Van Sant

Mr. Cole Hendrix**

Mr. Steven A. McGraw

*See Attached Statement

**See Attached Statement

***STATEMENT BY SENATOR KEVIN G. MILLER**

I am opposed to proposal No. 11 contained in this report. It is my belief that for any financial incentive to be workable it must be a fixed or reasonably determinable amount that can be taken into consideration by localities in the initial negotiations for possible consolidation of governments or services. I feel it is conceptually and philosophically unsound for the Commission on Local Government to have the authority to administer and distribute a "Bonus Incentive Fund." This would be placing too much power in the hands of the Commission on Local Government.

****STATEMENT BY MR. COLE HENDRIX**

There is little doubt that there are problems with the concept of the independent city which is common only to Virginia. The largest of these problems is the way in which annexation takes place. Annexations are divisive and very expensive for all parties under the present system, and revisions are in order. The Commonwealth has dealt with this problem the past fifteen years or more by establishing a series of moratoriums which temporarily limited the problem. It was hoped that the Commission on Local Government Structures and Relationships might find a way to restructure local government in Virginia to meet localities' needs in the 21st Century and to also find a permanent solution to the annexation problem. The Commission has worked very hard and must be applauded for its work, but I feel it has not achieved its stated purpose and the end result of its work, if adopted by the General Assembly, will be little more than an end to annexation by the independent city and the provision of a modest increase in funds from the Commonwealth.

It is unfortunate that more time and effort was not spent by the Commission in examining the structure of local government in other states who have eliminated the problems of annexation as we know them in Virginia. By keeping the independent city but not allowing the annexation of urban land surrounding it, a new form of local government will likely be created: the city-county. Counties surrounding independent cities will become more and more urban in nature and a city within a city will be created with both offering similar and often competing urban services. The divisiveness of urban and rural issues will also likely become more apparent in counties as they strive to meet the competing needs of diverse citizen groups. The Commission's recommendations speak to the issue of fostering more interlocal cooperation which is greatly needed, but it is my thesis that the incentives are not great enough to cause cooperation and consolidation that would not have happened otherwise for more compelling reasons.

It is my belief that few, if any, independent cities will revert to towns as provided in the Commission's recommendations. The incentives and benefits to do so are not extensive enough and the whole process is so ill defined that few, if any, cities will be willing to take the risks of the unknown solely to be able to annex under a whole new set of circumstances. The reasons for which an independent city might use the annexation tool may not be present if the city as provided in the Commission's recommendations reverts to a town. However, this reversion may create a whole new set of problems for which annexation, which it can now use, is not a solution.

Cities that cannot grow either internally or externally and which are in an area which is expressing growth are ultimately doomed to become "inner cities" with high percentages of elderly, poor and minorities in their populations with the need to provide extensive public services. Without the provision for annexation or comprehensive revenue sharing agreements these cities will become the poor cousins of the Commonwealth. The Commission's recommendations hold little hope for cities such as these.

APPENDICES

- A. House Joint Resolution No. 163 (1986).
House Joint Resolution No. 6 (1988).
House Joint Resolution No. 286 (1989).**

- B. 1986 Preliminary Staff Report.**

- C. Annexation Proceedings by Cities for Five-Year Periods,
1904 through June 30, 1965.**

- D. Summaries of Prior Proposals Regarding Annexation,
Governmental Subdivisions, and Related Subjects.**

- E. Proposal of Net Lottery Profit Distribution for
Counties and Cities.**

HOUSE JOINT RESOLUTION NO. 163

Requesting a joint subcommittee of the House of Delegates Committee on Counties, Cities and Towns and the Senate Committee on Local Government to study the relationships among the Commonwealth's counties, cities and towns, particularly the desirability of continuing the independent city system and the problems caused by annexation.

Agreed to by the House of Delegates, March 8, 1986

Agreed to by the Senate, March 8, 1986

WHEREAS, the local governments of the Commonwealth are faced with increasing service responsibilities; and

WHEREAS, the possibility of annexation often causes tension between counties and cities and prevents them from cooperating in the most efficient delivery of services; and

WHEREAS, the independent status of cities in Virginia, the only state in the nation to use such a concept, leads to the problems caused by annexation because counties are subject to the loss of a significant portion of their tax base; and

WHEREAS, to enable local governments to meet their expanding responsibilities, the structural relationships under which they operate may need to be changed; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That there is created a Commission on Local Government Structures and Relationships. The commission shall study the relationships among the Commonwealth's counties, cities, and towns and between the state and local levels of government. It shall examine particularly the desirability of continuing the independent city system in Virginia and the problems caused by annexation.

The commission shall be composed of fourteen members. Six members shall be from the House of Delegates, appointed by the Speaker, and shall include at least three members of the Committee on Counties, Cities and Towns; four members shall be from the Senate, appointed by the Committee on Privileges and Elections and shall include at least two members of the Committee on Local Government; and four members shall be local government officials, appointed by the Governor.

The commission shall complete its work prior to November 15, 1987.

The direct and indirect costs of this study are estimated to be \$39,370.

HOUSE JOINT RESOLUTION NO. 6

Continuing the Commission on Local Government Structures and Relationships.

Agreed to by the House of Delegates, February 16, 1988
Agreed to by the Senate, March 2, 1988

WHEREAS, the Commission on Local Government Structures and Relationships was created pursuant to House Joint Resolution No. 163 of the 1986 Session of the General Assembly to study the relationships between the Commonwealth's counties, cities, and towns and between state and local levels of government; and

WHEREAS, the Commission particularly was directed to examine the desirability of continuing the independent city system in Virginia and the problems caused by annexation; and

WHEREAS, the Commission has made significant progress in identifying both those features of Virginia's system of local government which will continue to function well in the future and those which may have become detrimental to the efficient and harmonious governing of the Commonwealth; and

WHEREAS, it also has become clear to the Commission that current state laws and procedures often discourage voluntary local and regional efforts at cooperation; and

WHEREAS, it is crucial that the Commission be able fully to assess the feasibility, impact, and cost of alternatives which have been offered to various parts of the present system and that representatives of local governments be afforded an opportunity to continue their efforts collectively and with the Commission to reach agreement on structures and relationships which will best meet the needs of the future; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring That the Commission on Local Government Structures and Relationships is requested to continue its study. Memberships on the Commission shall be retained as originally appointed under the 1986 resolution. Any vacancy on the Commission shall be filled by the original appointing authority.

The Commission shall complete its work in time to submit its recommendations to the 1989 Session of the General Assembly.

The indirect costs of continuing this study are estimated to be \$15,860. The direct costs of continuing this study shall not exceed \$15,120. Any unspent funds authorized under the 1986 resolution are hereby transferred to the Commission, to be applied to the costs incurred during 1988.

GENERAL ASSEMBLY OF VIRGINIA -- 1989 SESSION
HOUSE JOINT RESOLUTION NO. 286

Continuing the Commission on Local Government Structures and Relationships.

Agreed to by the House of Delegates, February 6, 1989
Agreed to by the Senate, February 23, 1989

WHEREAS, the Commission on Local Government Structures and Relationships was created pursuant to House Joint Resolution No. 163 of the 1986 Session of the General Assembly to study the relationships between the Commonwealth's counties, cities and towns and between state and local levels of government; and

WHEREAS, House Joint Resolution No. 6 of the 1988 Session of the General Assembly directed the Commission to continue its study; and

WHEREAS, the Commission has achieved remarkable progress in encouraging a reevaluation by local governments themselves of Virginia's local government structure and relationships, methods of boundary adjustments, and desirability of cooperative activity; and

WHEREAS, the Commission has reached a consensus on the major principles for a structural framework of local government and relationships between those governments which it is confident will better serve the interests of the Commonwealth and its citizens in the future; and

WHEREAS, the necessary statutory changes to effectuate the recommendations require extensive and detailed attention for which the Commission lacked sufficient time once its consensus had been reached; and

WHEREAS, the Commission has proposed a schedule whereby the statutory revision proposals will be prepared, disseminated, and subject to a series of public hearings across the Commonwealth during 1989, and then proposed at the 1990 Session of the General Assembly; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Commission on Local Government Structures and Relationships is requested to continue its study. Memberships on the Commission shall be retained as originally appointed under the 1986 resolution. In order to provide continuity, no member shall be required to resign from the Commission by virtue of having resigned or failed to seek reelection or reappointment to the office which was the basis of that member's appointment to the Commission in 1986. Any vacancy on the Commission shall be filled by the original appointing authority.

The Commission shall complete its work in time to submit its recommendations to the 1990 Session of the General Assembly.

The indirect costs of continuing this study are estimated to be \$18,675. The direct costs of continuing the study shall not exceed \$17,640. Any unspent funds authorized under the 1988 resolution are hereby transferred to the Commission to be applied to the costs incurred during 1989.

City-County Relationships at a Glance

I. Counties (in other jurisdictions may be called shires or parishes) are governmental subdivisions established to administer the laws of the state. Counties today, however, furnish many of the same services as those furnished by municipalities.

Municipalities (cities and towns) are public corporations granted charters by the state to administer local affairs. They are part of the county in which they are located, except in Virginia where towns remain part of the county but cities do not. Cities in Virginia perform the same state functions as do counties.

II. A fundamental feature of Virginia local government is city-county separation. Under this practice, which is not followed on a statewide basis elsewhere in the United States, Virginia cities are autonomous, primary, political subdivisions, governmentally independent of the county, or counties, in which they are geographically located.

1. Cities of the first class are completely independent of any county.

2. Cities of the second class are also independent but share with the adjoining county the same circuit court and certain constitutional officers.

3. Towns remain a part of the county in which they are located and use the county's constitutional officers, schools (with four exceptions), health, welfare and court systems.

III. City independence did not begin suddenly but evolved gradually and developed through the years until it gained general acceptance. It achieved a formal place in Virginia local government under legislation enacted shortly after the Constitution of 1869 went into effect. A statute was passed to divide counties into three or more townships except no part of any town or city having a separate organization or a population of five thousand or more was to be included in any township.

The evolution came from:

1. cities obtaining representation in the legislature;
2. withdrawal of county taxing authority over city residents;
3. separate courts;
4. separate local officials; and
5. separate school systems.

IV. The 1971 Virginia Constitution for the first time formally recognized independent cities.

V. Counties and cities differ in that cities may annex county territory, procedures for borrowing vary (although counties may elect to be treated as cities for such purpose), construction and maintenance of roads, appointment of school board members (again counties may elect to be treated as cities for such purpose), cities may construct certain public improvements in counties and sale of certain property and granting of franchises.

"...The history of urban growth in Virginia has not been substantially different from that in the remainder of the nation. In sharp contrast with the practice in most other states, however, Virginia since 1904 has employed a judicial procedure for adjusting municipal boundaries. By a provision included in the Constitution of 1902, the Virginia General Assembly is prohibited from enacting special laws for the extension of municipal boundaries and is required to provide general laws for such changes. In obedience to that mandate, the General Assembly in 1904 adopted a statute providing that the "necessity for or expediency of" extending a municipality's boundaries should be decided by a special court of law presided over by judges selected from the state's judicial system. The extension of municipal boundaries in Virginia was thereby removed from the political realm and made a judicial action, to consist of a suit between the municipality seeking to extend its boundaries and the county in which the territory was located....

The extension of city boundaries in Virginia has consequences not found in other states, for Virginia alone follows a state-wide practice of city-county separation. At the possible risk of oversimplification, it may be stated that the extension of city boundaries in states which do not have city-county separations generally does not result in a redistribution of the basic functions performed by the county. The county continues to perform within the area annexed the services and functions required of it by the state. Its officials have the same jurisdiction within the annexed territory, as well as in the whole of the annexing city, as they had before annexation. Moreover, there is no loss of area, population, or taxable values by the county; the property annexed remains subject to county taxation for general county purposes. Thus, where city-county separation is not observed, the extension of a city's boundaries results in the imposition of an additional layer of government upon the area annexed but does not decrease the basic functions the county is required to perform as a primary political subdivision of the state.

An entirely different situation is presented when a Virginia city's boundaries are extended. Because of city-county separation, the extension of a Virginia city's boundaries transfers the territory annexed from one political jurisdiction to another. The county loses, at the city's gain, a portion of its area, population, and taxable values. Furthermore, when the annexation becomes effective, responsibility for providing all governmental services and functions, including those formerly supplied by the county, falls to the city. Although the city's assumption of these functions relieves some of the county's overhead costs, in many instances the county's loss of revenue is greater than the corresponding reduction in the cost of the services and functions absorbed by the city. Consequently, some counties have been most reluctant to permit the extension of a city's borders, and many annexation proceedings have been bitterly fought.

Although Virginia cities are politically independent of county jurisdiction, the same is not true of the other type of Virginia municipality, the town. Accordingly, the county incurs no loss of population, area, or taxable resources when the boundaries of a town are extended. The same procedure is followed for extending town boundaries, but little opposition is presented by the county when a town seeks to annex adjacent territory, unless the purpose of the annexation is to increase the town's population to the minimum required for city status and thereby to attain political independence of county control. Because of a general lack of county opposition to the extension of town boundaries, the major controversies in the Virginia annexation procedure have resulted from the extension of city boundaries...."

Virginia has:

95 counties
41 cities
24 first class
17 second class
189 towns

First class cities are those checked below.

Second class cities share the circuit court (§ 15.1-997) and the Commonwealth's attorney, the clerk of the circuit court and the sheriff for the surrounding county (§ 15.1-994.1).

Second class cities are those cities having a population between 5,000 and 10,000 (§ 15.1-1011).

The present Constitution does not refer to first and second class cities but statutes still do.

Article VII, § 1 of Virginia's Constitution requires a population of 5,000 or more to become a city and 1,000 or more to become a town. The General Assembly by general law may increase these population requirements.

PRE-1902 CITIES

✓ Williamsburg	1722	✓ Fredericksburg	1879
✓ Richmond*	1782	✓ Roanoke	1884
✓ Norfolk	1845	✓ Charlottesville	1888
✓ Petersburg	1850	✓ Bristol	1890
✓ Alexandria	1852	✓ Danville	1890
✓ Lynchburg	1852	Buena Vista	1892
✓ Portsmouth	1858	✓ Radford	1892
✓ Staunton	1871	✓ Newport News	1896
✓ Winchester	1874		

*consolidated with Manchester 1910

POST-1902 CITIES

✓ Clifton Forge	1906	Galax	1953
✓ Hampton	1908	Norton	1954
✓ Suffolk	1910	South Boston	1960
Harrisonburg	1916	Fairfax	1961
✓ Hopewell*	1916	Franklin	1961
✓ South Norfolk	1921	Lexington	1966
(now Chesapeake)			
✓ Martinsville	1928	✓ Salem	1967
✓ Colonial Heights	1948	Emporia	1967
Falls Church	1948	Bedford	1968
✓ Haynesboro	1948	Manassas	1975
Covington	1952	Manassas Park	1975
✓ Virginia Beach	1952	Poquoson	1975

*created from unincorporated territory

City-County Separation and Annexation in Virginia

The purpose of the county unit of government historically has been described as that of an "administrative arm of the state." The county is created by the state in order to administer state laws and carry out certain basic functions which must be provided for the entire state but which are carried out for greater efficiency through the administrative subdivision of the county.

A useful way of illustrating this fundamental purpose in the Virginia context is to reflect upon the functions performed by those five officials commonly known as the "constitutional officers" - sheriff, commonwealth's attorney, clerk of the court, treasurer, and commissioner of the revenue. The services of these offices, along with certain other basic services such as a court system, election administration, education, and welfare, encompass most if not all the traditional functions of county government. Since such functions are at least partly state in nature, it also has been common for the state to share the responsibility for their costs.

Municipal corporations, on the other hand, are established or chartered by the state, ordinarily upon request, to the end that the corporation may provide additional local services solely for the benefit of its inhabitants. The chartering of a municipal corporation customarily does not remove the corporation from the territory and jurisdiction of the county within which it is situated, nor does it require the corporation to assume within its territory the county's responsibility to administer state law and provide state services.

Two facts complicate this governmental arrangement between counties and cities within the context of this study, one a relatively common development which Virginia shares with other states and one a phenomenon unique to Virginia local government.

The common development is the blurring of the distinction between counties and cities in service delivery of a local nature as urbanizing counties have moved to provide many of the same local services to their inhabitants which traditionally have been provided by municipal governments. The evolution of this pattern in Virginia and elsewhere can be traced from the use of special districts and authorities which usually are somewhat removed from financial and other direct control of the county governing body, to the increasing practice of direct service by more urban counties in ways little distinguished from those of municipal corporations.

The fact which is unique to Virginia is the independent status of its cities. Virginia did not invent the independent city and individual examples can be cited from other states. Virginia is unique, however, in that it has established a system whereby independent status is granted to each and everyone of its cities regardless of size or other distinguishing characteristic.

Virginia cities are territorially and governmentally separate and independent of the county of whose territory they were a part before being granted city status. The immediate implication is that the city no longer derives state services and administration through the county and so the city must also assume the role of administrative arm of the state. The county on the other hand loses area, population, and taxable resources when a city is created or its boundaries expanded by annexation (See Appendix).

Evolution of City-County Separation

Chester W. Bain documents in his book, A Body Incorporate: City-County Separation in Virginia, states that the independent city system in Virginia is the result of an evolutionary process. It emerged as certain cities came to be recognized on the same level as counties for legislative representation, county taxing authority over city residents was withdrawn, separate courts were established for cities, cities elected their own sets of local constitutional officers, and cities were granted separate school systems, among other indicia. Bain concluded that this pattern had become sufficiently developed to mark the general acceptance of the practice as a principle of Virginia local government approximately one hundred years ago.

Separation was recognized, although not specifically spelled out, in the Constitution of 1902 in such areas as the court system, election administration, and constitutional offices. It also received both legislative and judicial recognition and acceptance thereafter. Not until the Constitution of 1971, however, did the independence of Virginia cities gain formal recognition in the Constitution when the General Assembly, in reviewing the recommendations of the Commission on Constitutional Revisions, inserted the word "independent" before the term "incorporated community" in the definition of "city."

Interesting to note is that Bain dates a clear distinction of cities from towns as the independent unit to the Code of 1887. Prior to that time, distinctions between municipalities based on population size appear to have been made but not on a purely city-town basis. The inference is that a certain minimum size population was considered necessary before independent status was justified. The term city seems to have evolved to connote those municipalities with sufficient size who had gained independence of counties.

The minimum population size which divided cities from towns in the Code of 1887 was 5,000, and that dividing line made its way into the Constitution of 1902. The 1902 Constitution also contained, but only in the judicial article, a distinction between first class cities with their own courts and second class cities which share courts with the surrounding county. A population of 10,000 was necessary for first class city status. It should be noted that both population figures were regarded as minimum requirements but transitions from one level to another were neither automatic nor required. A town of over 5,000 was not required to become a city nor was a city required to evolve to first class status when it reached 10,000.

In 1902 there were nine cities of the first class and eight cities of the second class. Three of the cities had populations of less than 5,000 (Buena Vista, Radford, and Williamsburg) but their city status was protected by a savings clause in the 1902 document.

The 1971 Constituion dropped the distinction between classes of cities, but it has been retained in certain statutory provisions.

None of the studies of local government in Virginia conducted in modern times has proposed to alter the practice of city-county separation. The issue has been raised indirectly, however, with regard to the minimum population size which might justify city independence in view of the fact that the standard of 5,000 has not changed in a century. The Commission on Constitutional Revision recommended a minimum of 25,000 for the creation of

new cities. The Commission heard testimony that as many as 50,000 would be desirable in order to support a general unit of government but settled for the 25,000 figure on the basis that it was deemed large enough to generate a separate school system of sufficient size to be administratively efficient. The Commission on City-County Relationships in the 1970's likewise returned to the 25,000 figure and a density of 200 per square mile for the creation of new cities.

According to the 1980 census, nine of Virginia's 41 cities have a population of more than 100,000 and a tenth city of major size had 67,000. Four cities were roughly in the 40,000 to 48,000 population range with the chance that two or three of the four might come to exceed 50,000 by natural growth or by annexation. All other cities, roughly two-thirds of the total, were of less than 25,000. Fourteen were under 10,000, nine between 10 and 20 thousand, and four between 20 and 25 thousand. The 1980 census also showed that 14 towns had populations of over 5,000.

Annexation in Virginia

The Virginia system of annexation by judicial process traces to the Constitution of 1902. Prior to that time, municipal boundaries were expanded by special act of the legislature. The 1902 Constitution contained a provision prohibiting such special acts and requiring the General Assembly to provide by general law for the alteration of corporate limits. The Assembly in 1904 adopted legislation to establish the procedure which has been used during this century.

While statutory modifications were made from time to time, Bain in his 1966 book, Annexation in Virginia, concluded that the process had remained essentially unchanged to that point. Essentially, the process focused upon four criteria in determining whether the statutory standard of the necessity and/or expediency of a proposed annexation had been shown. They included: 1) the need for additional territory by the municipality for residential and economic development, 2) the need for governmental services in the area proposed for annexation, 3) the community of interest between the municipality and the area, and 4) financial consideration including the fiscal need of the municipality, its ability to pay for annexation, and, to an extent, the fiscal impact on the county.

Bain shows that annexation normally was granted during the first six decades of the century (see Appendix). Between 1904 and 1965, annexation was granted in 87 of 104 cases and denied in only 6. Eleven cases were either dismissed or withdrawn without a hearing. Bain did note increased dissatisfaction with annexation and particular concerns about its future utility in metropolitan areas, a theme which was echoed shortly thereafter by the Metropolitan Area Study Commission, which concluded that annexation was becoming less effective and potentially disruptive in urban and metropolitan areas. These sentiments presaged the modifications which would emerge a decade later and which are now embodied in present law with regard to immunity from annexation for certain urban counties.

The last decade, of course, was the decade of the annexation moratorium. The initial moratorium in 1971 applying to cities over 125,000 soon was extended to a general moratorium on new annexations which eventually continued to mid-1980 while city-county relationships were under study. In 1971, the General Assembly established the Commission on City-County Relationships

(Stuart Commission) which made its major report to the 1975 session and eventually was continued to 1977. The recommendations of the Commission contained the genesis of the annexation bill (HB 603) eventually adopted in 1979.

The other study arose out of 1977 actions to create a Commission on State Aid to Localities and a Joint Subcommittee on Annexation, which met jointly. This group endorsed an annexation bill containing many elements of the Stuart Report but its major focus was upon formulas for state aid to local government, continuing a theme of the Stuart Commission that state aid needed more equity with regard to cities. The latter study recommended changes in funding formulas which became a part of the annexation compromise of 1979.

The highlights of the legislation which resulted from this decade of study included:

1. Permanent immunity for certain counties based on population size and density, reflecting the blurring of city-county service function distinctions in the more highly developed urban counties and the concern that annexation was a deterrent to regional cooperation.
2. A procedure for partial immunity in other counties based on a showing that urban-type services are being provided by the county, again reflecting recognition of the blurring of traditional service delivery lines.
3. More specific standards as to the factors to be considered in annexation, partial immunity, and other proceedings were provided.
4. A Commission on Local Government was created to investigate and issue factual reports on proposed annexations and other procedures prior to judicial proceedings. The Commission was also envisioned as taking an active role in negotiating settlements.
5. The need for economic growth as a force behind annexation also was addressed. One dimension was to provide increased financial aid to localities for law enforcement, support of judicial and other constitutional offices, welfare, and highways. All local governments received some increases, but the major emphasis was to increase aid to cities. The other step was to provide for voluntary fiscal agreements whereby cities could forego annexation rights in return for economic growth sharing arrangements with counties.

Recent Studies

Issues such city-county separation, annexation, state-local relationships, and relating matters have been the topic of several studies and reports in the last two decades.

Metropolitan Areas Study Commission (1966-67). The primary goal of this study was to foster greater attention to area-wide resources and needs in metropolitan areas. The Commission concluded that abolishment of city-county separation would not lead to that result. Its comments on annexation were noted above. The main items recommended by the Commission were the creation of a Commission on Local Government which would replace the courts in annexation and other boundary adjustments, incorporation of towns, and the

like. The Commission also recommended the creation of the planning district system with the view that it might eventually evolve into the service district as a unit of regional government.

Commission on Constitutional Revision (1968). As noted above, it proposed a 25,000 minimum for the creation of new cities. Its proposals for a "charter county" and other steps to bring city and county governments more in line in some cases have made their way into use. The first county charter was granted in 1986, for example. It also included a provision for "regional government" which can be linked to the Metropolitan Areas Study Commission report.

Commission on City-County Relationships (1971-1977). Major recommendations noted above.

Commission on State Aid to Localities/Joint Subcommittee on Annexation (1977-78). This combined study endorsed the basic annexation bill adopted in 1979. Most of its attention focused on state aid formulas and any city-county differences thereunder. The general thrust was to base state aid formulas on statistical indices of ability to pay, local effort, and need. Included was a general formula for determining ability and effort and indices of need in specific functional areas. As noted above, the work of this group led to the financial aid package which was a part of the 1979 annexation package.

The Commission/Subcommittee found that there were two areas - law enforcement and highway construction - where counties received state aid not available to cities. The 1979 legislation addressed the law enforcement area.

Subsequent Studies. Since 1979, one study has been directly made of some aspects of the annexation process. A joint subcommittee created by a SJR in 1983 and extended in 1984 examined some technical aspects of the new procedure and made fairly narrow recommendations for adjustments. There have been, of course, several studies touching on state-local fiscal and programmatic relationships.

**ANNEXATION PROCEEDINGS BY CITIES
FOR FIVE-YEAR PERIODS 1904 - JUNE 30, 1965**

Period	Granted	Denied	Dismissed Without A Hearing	Withdrawn Without A Hearing
1904-1909	7	-	-	-
1910-1914	3	2	-	1
1915-1919	6	-	-	-
1920-1924	8	-	-	1
1925-1929	6	-	-	1
1930-1934	2	-	-	1
1935-1939	7	-	1	-
1940-1944	8	-	-	-
1945-1949	5	-	-	-
1950-1954	10	2	-	2
1955-1959	11	-	1	-
1960-06/30/65	14*	2	1	2
Total	87*	6	3	8

* Includes two proceedings declined by the city and one annexation ordered by the Virginia Supreme Court of Appeals.

Chester W. Bain, *Annexation in Virginia*, Published for the Institute of Government, University of Virginia, by the University Press of Virginia: Charlottesville.

MUNICIPAL ANNEXATION ACTIVITY IN VIRGINIA - 1965-1989

YEAR	TOWN ANNEXATIONS				CITY ANNEXATIONS			
	TOWN INITIATED	CITIZEN PETITION	BY AGREEMENT	DENIED BY COURT	CITY INITIATED	CITIZEN PETITION	BY AGREEMENT	DENIED BY COURT
1965	4					1		
1966	4	3			2	1		2
1967	3	1		1	2	2		
1968	2	2						2
1969	2	2		1	2			2
1970	5				1	1		2
1971	2	1			2			
1972	5	2				1		1
1973	4				1	2		
1974	3	1			1	1		
1975	4	2			3			3
1978	5	1				1		
1977	5					1		1
1978	2	3						
1979		1				1		
1980		1	1			1	1	
1981		1						
1982					1			
1983			2			1	4	
1984	1		6			2		
1985			6				2	
1988			3				2	
1987	1		8				5	
1988			12				3	
1989			14					2*
TOTAL	52	21	50	2	15	16	17	15
Agreement annexations include boundary adjustments (Art. 2, Chapt. 24, Title 15.1), voluntary settlements (Chapt. 28.1:1, Title 15.1), and the initial and subsequent annexations pursuant to a town-county agreement defining annexation rights (Art. 1.1, Chapt. 25, Title 15.1).								
* = Under appeal by city.								

The Commission on State and Local Revenues and Expenditures in 1949 recommended a minimum population of 2,000 for towns and 25,000 for first class cities.

The report stated:

A fairly broad tax base is required to support even the less expensive functions of government; the low population set forth for the creation of cities is too small to finance the more expensive programs which cities, as separate units of government, must provide. This process not only leads to creation of unnecessary units of government but also impairs substantially the ability of the remaining portion of the county to support needed services.

The Commission believes that to raise the limits below which a city cannot be created will go far to solve two problems. One of these is the inability of a small city to finance through its own resources a reasonably adequate program of governmental services. The second problem is the annexation of additional territory by cities, as a means of enlarging the tax base to support governmental activities. Some towns in Virginia which have a population in excess of the population of some cities are meeting all demands upon them. Streets, schools, welfare, health, and the other activities of government cannot be financed properly by small cities.¹

The Commission to Study Urban Growth in 1951 provided:

When the Constitution of 1902 was drafted, Virginia was largely a rural state; large centers of population were few, and in these the functions demanded of municipal governments were few and relatively inexpensive. These conditions have changed radically.

¹Report of the Commission on State and Local Revenues and Expenditures, Senate Document No. 5 (Richmond: Virginia General Assembly, 1949), p. 110.

In recent years there has been a noticeable trend toward the incorporation of small cities. In some cases this has been considered by communities which have not before found the need even for organization as a town. The reasons for trend are varied - in some cases, fear of annexation by a neighboring larger city has played a part. In others, local conditions, State aid and other factors have undoubtedly been influential.

The Commission believes that the formation of many small cities is not economical. The obligations of city government imposed by the Constitution are numerous and have grown more and more expensive. If all the communities with sufficient population were to avail themselves of the provisions of existing law and become cities or towns, the resulting impact on the remaining portions of the surrounding counties on the citizens in the incorporated areas, and the State itself, would be drastic.

In order to bring our municipal government requirements into line with modern conditions, the Commission recommends the changing of the Constitutional definition of cities from the present 5000 population for cities of the second class and 10,000 for cities of the first class to 10,000 and 20,000, respectively. The reasons for the change are many but may be best summarized by stating that cities with populations below those recommended require a high per capita cost of government to support the governmental functions which the constitution imposes or their citizens demand.²

A study by the Virginia Advisory Legislative Council studying Virginia governmental subdivisions commented in 1955:

The population figure of 5,000 may have been realistic when it was written into the Constitution in 1902, but it is hardly a valid guide today. As time has passed and the cost of government has increased, small governmental units can no longer adequately meet the cost of local government demanded of them. Nevertheless, when a town meets the population figure of 5,000 it may become a city, thereby reducing the county to a level below that which is even now questioned as an efficient, economical unit of local government.

²Report of the Commission to Study Urban Growth, House Document No. 13 (Richmond: Virginia General Assembly, 1952), pp. 20-21.

While the towns that are close to or above the population requirement set by the Constitution regard their particular problems as unique and feel that they alone should determine when they are to break away from the county and become a city, such a decision is not entirely a local matter. It is an issue of vital importance to the Commonwealth as a whole. As each additional town is permitted to become a city, the burden upon the Commonwealth is increased by the addition of a new set of constitutional officers, the creation of a new and the diminution of an existing welfare and educational unit, and the further division of many other functions in which the Commonwealth has an interest at the local level. It cannot be too strongly stressed that the governmental functions that are most strongly affected by such division are those in which the greatest expenses are being encountered today. Consequently, as more and more units of local government are created of a size that is incapable of financing the functions demanded of them, it seems only inevitable that there must be a continuing trend toward centralization as the Commonwealth is forced to fill in the deficiencies resulting from units that are unable to carry their fair share. Such an outcome cannot help but result in a decline of local self-government.³

The Report of the Commission on Constitutional Revision in 1969 wrote:

Cities. Fragmentation caused by incorporation of cities is more serious than that caused by incorporation of towns. This is true because the city assumes a separate status, taking away from the county all the people and taxable resources within the new city's boundaries. The Commission's studies showed that of the twenty-seven towns with an estimated population in 1966 of over 3,500, thirteen or almost 50% has over 20% of the population of the counties in which they were located. Approximately the same percentage had over 20% of the taxable property in their respective counties.

³Report of the Virginia Advisory Legislative Council, House Document No. 11
(Richmond: Virginia General Assembly, 1955), p. 9.

In 1902 Virginia had seventeen cities. That number has now more than doubled. As Virginians continue to leave their farms and migrate to populated centers, the prospect of a further increase in the number of new cities is apparent. With more efficient communication and transportation now available, the need for increasing units of government is less pressing. Furthermore, the incorporation of a new city not only hinders county government, it also permits, under present population minima, the creation of a new unit of government which is too small to function efficiently. When a town becomes a city it must provide its own constitutional officers and its own school system. The Commission believes that a unit of government with a population base of less than 25,000 has greater difficulties in operating efficiently, thereby burdening the taxpayer. Although the present Constitution permits city-county cooperation in the operation of school systems, this authority has not been used. Therefore, the Commission recommends a population minimum of 25,000 for the creation of new cities, because: (1) so many towns are approaching a population of 10,000 that a 10,000 minimum would not be effective to prevent fragmentation; (2) current studies suggest a minimum of 50,000 for a unit of general government; certainly, with a separate school system to support, a minimum of 25,000 finds support in such studies; (3) towns which cannot become cities will exert greater influence in county affairs because of the recent one-man, one-vote decisions, and (4) 25,000 corresponds to the figure recommended for organization of "charter counties."⁴

⁴The Report of the Commission on Constitutional Revision (Richmond: The Michie Co., 1969), pp. 220 and 221.

APPENDIX E

**Estimated Net Lottery Profits
in Fiscal Year 1992 - 93:**

\$177.6 Million

**5% Incentive Fund = \$ 8.9 Million
20% Lottery Distribution = \$ 35.5 Million**

**Counties would receive
\$19.4 Million, or 54.6%**

**(Distributed to each county based on
school age population)**

**Cities would receive
\$16.1 Million, or 45.4%**

**(Distribution to each city
based on population)**

TABLE 1

DISTRIBUTION OF 20% OF NET LOTTERY PROFIT
UNDER HOUSE BILL NO. 550

(County/City Split By Point of Sale:
City By Population; County by School Age Population)

<u>LOCALITY</u>	<u>AMOUNT</u>	<u>LOCALITY</u>	<u>AMOUNT</u>
COUNTIES:			
Accomack	\$ 133,900	King and Queen	\$ 29,100
Albermarle	281,300	King William	54,300
Alleghany	67,900	Lancaster	48,500
Amelia	50,400	Lee	164,900
Amherst	133,900	Loudoun	403,500
Appomattox	\$ 66,000	Louisa	\$ 108,600
Arlington	508,300	Lunenburg	60,100
Augusta	234,700	Madison	56,300
Bath	23,300	Mathews	33,000
Bedford	217,300	Mecklenburg	157,100
Bland	\$ 31,000	Middlesex	\$ 33,000
Botetourt	122,200	Montgomery	267,700
Brunswick	81,500	Nelson	62,100
Buchanan	203,700	New Kent	62,100
Buckingham	60,100	Northampton	69,800
Campbell	\$ 250,300	Northumberland	\$ 40,700
Caroline	95,100	Nottoway	73,700
Carroll	124,200	Orange	93,100
Charles City	27,200	Page	97,000
Charlotte	66,000	Patrick	83,400
Chesterfield	\$1,249,400	Pittsylvania	\$ 327,900
Clarke	52,400	Powhatan	64,000
Craig	21,300	Prince Edward	75,700
Culpeper	120,300	Prince George	139,700
Cumberland	58,200	Prince William	1,255,200
Dickenson	\$ 100,900	Pulaski	\$ 178,500
Dinwiddie	91,200	Rappahannock	29,100
Essex	44,600	Richmond	33,000
Fairfax	3,947,900	Roanoke	389,900
Fauquier	240,600	Rockbridge	77,600
Floyd	\$ 56,300	Rockingham	\$ 279,400
Fluvanna	58,200	Russell	161,000
Franklin	182,400	Scott	120,300
Frederick	223,100	Shenandoah	141,600
Giles	81,500	Smyth	164,900

TABLE 1
(continued)

<u>LOCALITY</u>	<u>AMOUNT</u>	<u>LOCALITY</u>	<u>AMOUNT</u>
COUNTIES:			
Gloucester	\$ 166,800	Southampton	\$ 93,100
Goochland	48,500	Spotsylvania	294,900
Grayson	81,500	Stafford	345,300
Greene	56,300	Surry	27,200
Greensville	52,400	Sussex	54,300
Halifax	\$ 157,100	Tazewell	\$ 261,900
Hanover	322,000	Warren	122,200
Henrico	964,200	Washington	265,800
Henry	283,200	Westmoreland	62,100
Highland	11,100	Wise	244,400
Isle of Wight	\$ 122,200	Wythe	\$ 128,000
James City	163,000	York	260,000
King George	67,900		

Total Counties = \$19,400,000

CITIES:

Alexandria	\$ 766,400	Manassas	\$ 165,800
Bedford	43,500	Manassas Park	51,200
Bristol	125,600	Martinsville	128,800
Buena Vista	45,100	Newport News	1,159,200
Charlottesville	299,500	Norfolk	2,070,500
	\$1,046,500	Norton	\$ 30,600
Clifton Forge	35,400	Petersburg	293,000
Colonial Heights	124,000	Poquoson	
Covington	53,100	Portsmouth	787,300
Danville	381,600	Radford	95,000
Emporia	\$ 41,900	Richmond	\$1,526,300
Fairfax	143,300	Roanoke	702,000
Falls Church	72,500	Salem	172,300
Franklin	53,100	South Boston	49,900
Fredericksburg	153,000	Staunton	172,300
Galax	\$ 49,900	Suffolk	\$ 375,100
Hampton	922,500	Virginia Beach	2,593,700
Harrisonburg	196,400	Waynesboro	130,400
Hopewell	172,300	Williamsburg	88,600
Lexington	49,900	Winchester	159,400
Lynchburg	497,500		

Total Cities = \$16,100,000

GRAND TOTAL = \$35,500,000

