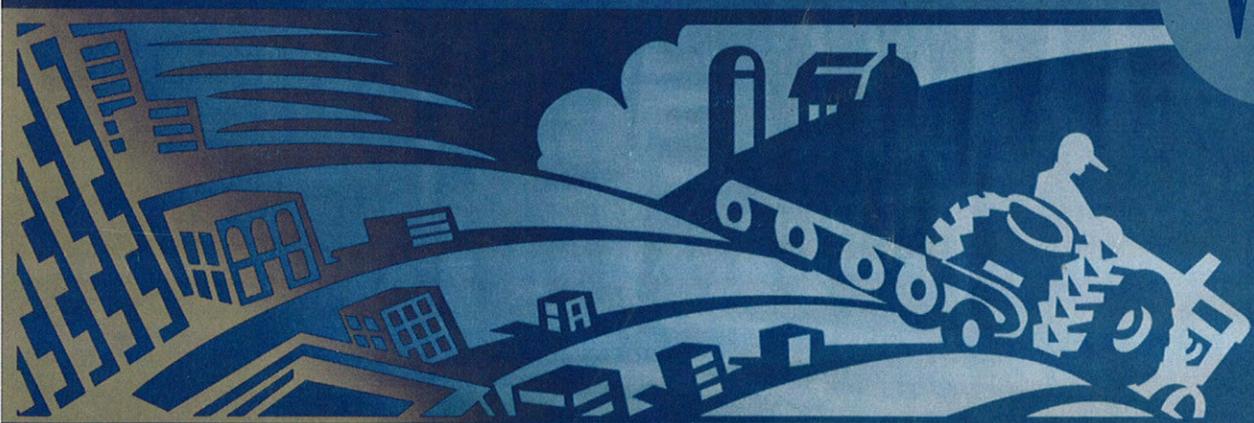


Local Officials'
Resource Series

Reversion

From cities
to towns

★ VML ★



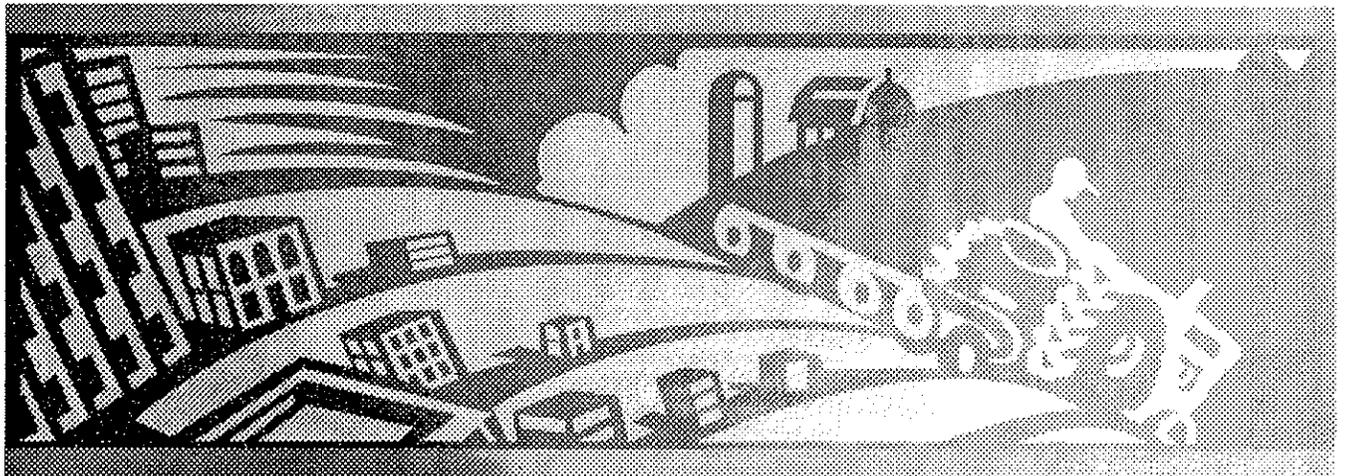


Reversion

From cities
to towns

Written by Adele MacLean

Published by the Virginia Municipal League





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In addition, MacLean serves as secretary to the Virginia Advisory Commission on Intergovernmental Relations. VACIR is a 20-member body of government representatives established by the General Assembly to explore critical intergovernmental issues for the mutual benefit of those involved and for the good of the commonwealth.



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Introduction

The right of small and mid-sized cities in Virginia to revert to town status has been an option for almost a decade, but until recently it had never been tested. The successful transition of South Boston from a city to a town last year, however, set off a wave of speculation and controversy in city halls and county board rooms around the state. Officials in several cities, hoping for solutions to seemingly intractable urban problems, have been pondering whether to follow South Boston's example of integrating a municipality with an adjacent county. Similarly, county officials have contemplated what effect the reversion of neighboring cities would have on their jurisdictions. Despite this intense interest in reversion, local officials have had little practical information to assist them in their deliberations. The South Boston example has provided some guidance, but because it has been a town within Halifax County for only a short time, the full effect remains unclear. The lack of adequate information has made the reversion debate to some extent a matter of guesswork.

This publication helps fill that gap by providing an overview of the reversion process and important details concerning such matters as required procedures and legal effects. Some terms in the text have special meanings that may not be clear. To avoid possible confusion, these key concepts are defined below:

Class A cities: an option for cities surrendering their independent status that the Grayson Commission

recommended but that was never enacted. According to the commission's plan, cities with at least 10,000 population choosing to be designated Class A would have had all the powers of towns and any additional authority granted by the General Assembly. They would have been permitted to maintain their designation as cities and to annex territory within the county by ordinance once every eight years. However, they would have been barred from becoming independent cities again.

Consolidation: a merger of two or more jurisdictions. Functional consolidation may be achieved without formal restructuring, through interlocal agreements that result in the sharing of certain services or responsibilities. The transition of a city to town status, however, occurs only by means of a formal restructuring and results in a partial consolidation. The new town retains its separate identity with its own governing body and charter, yet it also is integrated into a county, which provides it with certain services. Although detailed statutory procedures must be followed, no referenda are required. Total consolidation blends two or more jurisdictions into a single entity, according to the procedures set forth in §§ 15.1-1071 through 15.1-1165 of the Virginia Code. Among other requirements, these procedures call for referenda in the jurisdictions that wish to consolidate.

Tier city: an incorporated community situated within a consolidated county. A tier city must have a population of 5,000 or more

and must be designated as a tier city by the General Assembly. It may exercise the powers of a town and any additional powers granted tier cities by the General Assembly. No tier cities actually exist in the state. (See Virginia Code § 15.1-13.28:1)

Traditional town-county relationship: the set of formal relationships between a town that is a dependent entity and the county that is its parent jurisdiction. These arrangements result in a division of responsibility for municipal services, usually with the county having responsibility for the funding of constitutional officers; election officials and processes; welfare, health and mental health services; solid waste disposal; and public education. The town generally is responsible for providing additional services according to the terms of its charter. Such services might include police, fire, water, sewer, planning, zoning, subdivision regulation, recreation, solid waste collection, and street construction and maintenance services.

Transition to town status: reversion. Throughout this document, these two terms are used interchangeably.

It is also important to note that this discussion does not address city-to-town transitions governed by §§ 15.1-965.1 through § 15.1-965.8 of the Virginia Code. Those statutes set forth mandatory procedures for the reversion of certain cities with populations below 5,000 not exempted by Article VII § 1 of the Constitution of Virginia. Instead, this article addresses the permissive reversion of cities to town status. ↓



Reversion within Virginia's system of independent cities

Why would any city in the commonwealth want to become a town? The answer to this question can be found by understanding Virginia's unique system of city-county separation. The state's basic units of local government are counties, incorporated municipalities and special districts. Of these, municipalities are subdivided further into cities and towns. This configuration of local government units is not unique to Virginia. However, only in Virginia are cities independent political entities, separate and distinct from counties, with both having similar service responsibilities. Towns, on the other hand, are part of counties. Town residents support both town and county governments with their taxes and vote for officials of both political subdivisions. Towns also benefit from the major services their parent counties provide, such as education, social services, mental health, courts and public health.

Virginia's independent city system has advantages as well as disadvantages. Among its benefits are the elimination of overlapping layers of government, obvious lines of political accountability and clear administrative responsibility. On the other hand, it sets cities and counties in competition with one another for resources and strains city-county relations. Because

expansion of a city's boundaries through annexation means a corresponding loss of population and tax base for the affected county, Virginia counties tend to view city growth as a threat.

Few local issues in this state have been as contentious as annexation. Over the years the General Assembly has tried repeatedly to address this problem by creating special legislative study commissions to review applicable statutes and to recommend needed changes. The most recent of these was the Commission on Local Government Structures and Relationships, established in 1987 and popularly known as the Grayson Commission after Delegate George W. Grayson of Williamsburg who sponsored legislation establishing it (HJR 163/1986). That same year, the General Assembly placed a moratorium on annexation actions initiated by independent cities. The moratorium was imposed to give the Grayson Commission a chance to study the highly-charged issue of municipal boundary changes without inducing cities to "race to the courthouse" to preserve their annexation authority.

Although the Grayson Commission issued its final report in 1990, the moratorium on city-initiated annexation was never lifted. In fact, it recently was extended to 2000 (Virginia Code § 15.1-1032.2,

HB 475/1996). As a result, city boundaries essentially have been frozen since 1987, depriving urban areas of the opportunity to grow. The threat of a continuing moratorium makes their futures uncertain as well.

The moratorium, however, does not bar annexations by towns. Because towns are dependent components of counties, expansion of a town's boundaries does not reduce the county's area or population or adversely affect its fiscal bases in any significant way. Thus, a city that reverts to town status gives up its independence but regains the right to petition for the annexation of territory in the adjacent county.

This right is critical for a municipality confronting the daunting problems urban areas across the country are facing—growing social needs, violent crime, loss of jobs, suburban flight, shrinking tax bases and more. Annexation and growth offer an opportunity to acquire the additional land and tax base needed to address these problems. Indirectly, then, Virginia's system of independent cities is a factor in the stagnation and decline of the commonwealth's urban centers. For eligible cities, reversion represents a possible solution. ♦



Origins of reversion

The idea that a city might give up its charter and revert to town status evolved from the work of the Grayson Commission. When the commission submitted its final report to the governor and General Assembly in 1990, it endorsed several recommendations concerning independent cities and annexation by municipalities. (House Document 69/1990.) First, the Grayson Commission recommended that no new cities with populations less than 25,000 should be established unless authorized by a two-thirds majority of the General Assembly. Second, the commission recommended that cities with populations of 125,000 or more should remain independent, since they are considered more likely to provide services economically. The commission, however, proposed that cities with independent status should not be permitted to expand their boundaries, except by voluntary agreement with the affected counties.

To address the problems of small- and medium-sized cities, the Grayson Commission advocated that cities with a population less than 125,000 be offered incentives to surrender their independent status and to reintegrate with adjacent counties. Three types of inducements to reversion were proposed: authorization to expand municipal boundaries at regular intervals by ordinance through an administrative process, guaranteed

state aid for five years following the transition to a dependent status, and eligibility for a new financial incentive fund to reward certain kinds of interlocal cooperation. The reversion process could be initiated either by municipal ordinance or by a citizen petition signed by at least 15 percent of a city's registered voters.

The Grayson Commission also proposed two status options for cities that reverted. First, according to the commission's plan, an eligible city with a population of less than 125,000 could opt to become a town with all the functions and responsibilities of any other town in the commonwealth. Second, cities with a population between 10,000 and 125,000 could reintegrate as dependent political units known as Class A cities. Such cities would have the powers of towns and any additional powers that the General Assembly might grant. Thus, a formerly independent city could retain its designation as a city, maintain its constitutional officers and negotiate an agreement with its receiving county to provide certain municipal services, such as education. In addition, towns and Class A cities would have the right to annex by ordinance unincorporated territory once every eight years. However, they would not be permitted to return to independent status.

All of these recommendations were translated into legislation that

was introduced in the 1990 session of the General Assembly. (HB 550/1990.) Although the proposed bill received the support of the House Committee on Counties, Cities and Towns and was debated in the House of Delegates, it was never passed by the General Assembly. Some of the Grayson Commission's proposals, however, such as the reversion of independent cities to town status and the "no loss" of state funds for five years following reversion, were enacted.

Legislation that authorized small- and medium-sized cities to revert to town status was enacted in 1988 even before publication of the Grayson Commission's final report. (Virginia Code §§ 15.1-965.09 — 965.27.) Generally the new reversion statute was based on the concept proposed by the Grayson Commission, but some major differences exist between the final legislation and the process the commission had recommended. First, under the statute passed then and still in force, only cities with populations of less than 50,000 are eligible to revert to town status. Secondly, the Class A city option is not included in the legislation; a formerly independent city can only make the transition to town status. In addition, the legislation does not authorize a city seeking to revert to town status to negotiate the terms and conditions with the affected county. ♦



How a city reverts to town status

An eligible city may begin the process of reverting to town status in either of two ways: by action of the city's governing body or by citizen petition. (Virginia Code § 15.1-965.10. A more detailed outline of procedures required by both approaches is contained in Attachment A.) For both types of reversion action, the process requires an initial review by the Virginia Commission on Local Government and then a determination by a special three-judge court. Neither approach requires a referendum nor approval by the affected county.

City-initiated reversion

For city-initiated reversions, the process begins when a majority of the city council approves an ordinance or resolution authorizing the transition to town status. Next, the city files notice with the Commission on Local Government of its intention to petition for an order granting town status. Upon receipt of the city's formal notice, the commission begins an extensive review of the circumstances surrounding the proposal.

The commission's review includes several steps. Early in the process, staff and members of the commission meet with representatives of the city and the affected county or counties. The commission collects and analyzes data and information from the localities, other state agencies and independent sources. In addition, it holds a

public hearing to give citizens and representatives of other potentially affected political subdivisions an opportunity to offer comments on the reversion action. At the end of the review period, the commission makes a report containing findings of fact and recommendations to the affected local governments and to the special three-judge court. Although the report is not binding on the court, it must be considered as evidence in any subsequent judicial proceedings on the proposed reversion.

Once the commission's report has been issued, the city may proceed to the second phase of a reversion action, a hearing before the special court. To do so, it first must file a petition with the circuit court of the municipality, alleging that the city meets all of the statutory standards for reversion and requesting that the court grant it town status. The local circuit court then requests that the chief judge of the Virginia Supreme Court appoint a special three-judge panel to hear the case. The members of the special court are chosen from a list of 15 judges selected to hear cases involving local boundary change and governmental transition actions. In addition, the judges serving on the special court that reviews a proposed reversion action must be from judicial circuits that do not encompass the affected city or county.

The commission's review of a proposed reversion, as well as the

final decision of the special three-judge court, must be based upon the criteria set out in the statute.

(Virginia Code § 15.1-965.16 B.)

These standards require that the commission and the court find that:

- the city seeking to revert to town status has a current population of less than 50,000;
- the adjoining county or counties have been made party to the proceedings;
- the proposed reversion will not substantially impair the affected county's ability to meet the service needs of its residents;
- the proposed transition to town status will not result in a substantially inequitable sharing of the resources and liabilities of the town and the county;
- the proposed change from city to town status is, in the balance of the equities, in the best interests of the city, the county, the commonwealth and the people of the city and the county; and
- the proposed reversion would advance the commonwealth's policy of promoting strong and viable units of government.

If the special court determines that the statutory criteria for reversion have been met, it enters an order granting the city's petition and establishing the effective date of transition. The special court also may impose certain terms and conditions to ensure an orderly transition; to adjust for any finan-

cial inequities that would otherwise result; to balance the equities between the affected jurisdiction; and to protect the interests of the city, the county, the commonwealth and the people of the city and the county. (Virginia Code § 15.1-965.16 C.)

If the city accepts town status under the conditions imposed by the special court, the court maintains continuing jurisdiction over the case for 10 years to enforce its transition order. (Virginia Code § 15.1-965.27.) If the city finds the court's terms and conditions unacceptable, it may decline the special court's grant of town status as ordered. If the city council chooses to reject the transition to

town status, it must do so within 21 days of entry of the court's final order. (*Id.* § 15.1-965.19.) However, the rejection of a grant of town status or the special court's denial of the reversion petition bars the municipality from initiating another reversion action for five years. (*Id.* § 15.1-965.20.) Either party has a right of appeal directly to the Virginia Supreme Court. (*Id.* § 15.1-965.18.)

Citizen-initiated reversion

Voters also may institute proceedings for the reversion of a city to town status. To do so, they must collect the signatures of at least 15 percent of the qualified voters of the city on their petition for rever-

sion. The petition is then served on the attorneys for the governing bodies of the city and the affected county and is filed with the circuit court. Once the local court determines that the petition is valid, the issue is forwarded to the Commission on Local Government for review. (Virginia Code § 15.1-965-10 B.) Voter-initiated reversion actions are reviewed in the same manner as required for city-initiated reversion cases, but the city and the affected county are named as defendants. Also, the governing body of the affected city can decline a grant of town status awarded as a result of a voter-initiated reversion suit. (Virginia Code § 15.1-965.19.) ♦



South Boston's reversion experience

On July 1, 1995, after more than three years of litigation, three court rulings and nearly \$1 million in legal fees and expenses, South Boston officially became a town within Halifax County. Located in the south central portion of the state and with a 1990 population of about 7,000, South Boston is the only city in Virginia that has exercised its right to revert to a town.

Throughout the 20th century, South Boston and Halifax County have grown and developed in tandem. South Boston has served

as a focal point of economic life for Halifax County, whose socio-economic profile essentially matches South Boston's. Both jurisdictions' populations are somewhat older and less affluent than the state's as a whole. Similarly, both jurisdictions have struggled in the recent past to develop viable property tax bases. In 1960 South Boston became an independent city and five years later effected an annexation that almost doubled its land area. However, the city experienced relatively little population growth after the 1970s.

"Finding itself confronted by a deteriorating fiscal condition and by the inability to capture additional tax base and land for future development through annexation, South Boston filed notice in December 1990 of its intention to revert to town status."

In fact, during the 1980s, growth in the property tax bases of the city and the county lagged significantly behind the commonwealth's overall. Even so, the county surpassed South Boston in growth of manufacturing employment and taxable retail sales during that decade. A significant portion of the new growth and development in Halifax County occurred just outside the corporate limits of South Boston in the unincorporated sections of the county. The city contributed to this growth by committing a majority of its water and sewerage capacity, directly or through agreements with Halifax County, to nonresident connections.

Facing similar difficulties, South Boston and Halifax County collaborated successfully for years in activities of mutual benefit, setting the standard for other cities and counties in the commonwealth. Among these joint projects were the provision of major services (health, welfare, mental health and substance abuse); the operation of facilities (juvenile group home, library and airport); and the support of economic development projects, rescue squad and services to the aging. Because South Boston was a second class city, it shared the election and support of three constitutional officers (clerk of the court, commonwealth's attorney and sheriff.) Even in the realm of education, the two jurisdictions shared a single superintendent and successfully operated joint junior and senior high schools for many years. Despite this remarkable degree of interlocal cooperation, some public services that could have been provided collaboratively remained separate, such as solid

waste disposal and elementary education.

During the late 1980s, South Boston and Halifax County began to explore other cooperative service arrangements intended to make governmental operations more efficient and cost effective for the two jurisdictions. In 1986 representatives of both localities were selected to serve on the Joint City/County Study Committee. Although that body examined a number of interlocal alternatives, it ultimately recommended the merger of the city and county into a consolidated county, with South Boston becoming a "tier city" within Halifax County. Under state statutes, the "tier city" of South Boston would have had all the powers and responsibilities of a town, as well as whatever additional authority the city and county might have granted the dependent political subdivision in the consolidation agreement. As envisioned by the joint committee, the county would have assumed responsibility for the entire cost of public education, health, welfare and the judicial system and would have been entitled to collect all revenues associated with the provision of those services. In essence, the joint committee's recommendation would have established a traditional town-county relationship between the city and county. However, subsequent negotiations between South Boston and Halifax County on the "tier city" proposal were unsuccessful.

Following these failed negotiations, South Boston's City Council began to explore the feasibility of annexing a portion of the county that contained an industrial park and other facilities. As an alterna-

tive to this potential loss of revenue-generating territory, in 1989 the county proposed a revenue-sharing agreement with South Boston and an expansion of the city's boundaries that incorporated two tracts of predominantly undeveloped land, in exchange for a 13-year moratorium on further annexations. Although South Boston rejected the offer, other efforts to expand its boundaries were halted by the legislatively-imposed moratorium on city-initiated annexations.

Finding itself confronted by a deteriorating fiscal condition and by the inability to capture additional tax base and land for future development through annexation, South Boston filed notice in December 1990 with the Commission on Local Government of its intention to revert to town status. The commission reviewed the merits of the city's request, as required, and in January 1992 issued its report to South Boston and Halifax County, recommending the reversion. Following the commission's review, a special three-judge court was empaneled and rendered its decision in December 1992. The ruling granted South Boston's petition but imposed a variety of additional terms and conditions. The city appealed the special court's decision to the Virginia Supreme Court. The court reversed portions of the judgment in February 1994 and remanded the case to determine the effective date of South Boston's transition, without the court-imposed terms and conditions. In accordance with the Supreme Court's ruling, the special court issued a final order in December 1994, establishing the effective date of transition as July 1, 1995. ♦



Decisions in the South Boston case

Because South Boston's transition to town status was unprecedented, the case serves as the only available guide for other cities considering reversion. Thus, the Commission on Local Government's analysis of the issues identified by the city and Halifax County in the proposed reversion and the reasoning of both the special court and the Virginia Supreme Court merit a closer look.

Commission on Local Government analysis

As expected, during the commission's review of the issues, South Boston and Halifax County held opposing views on whether the city met the statutory standards for reversion. Their dispute focused on the issue of whether reversion would substantially impair the county's ability to serve the needs of its citizens, the equitable sharing of resources and liabilities, and the future interests of the county.

With respect to the county's possible impaired ability to provide services, the commission determined that the resolution of this issue hinged on whether the two separate elementary school divisions could be consolidated feasibly, since the county had conceded that reversion would only interfere substantially with its provision of education services. South Boston argued that the county should be required to assume responsibility for the city's two elementary

schools, subject to certain terms and conditions related to ownership of educational facilities and equipment, pupil attendance zones, teacher salaries and continued employment, and assumption of existing debt. The county asserted that a merger of the two school systems, especially under the terms and conditions South Boston had proposed, would either produce serious deficits in school funds or force the county to reduce educational services.

In the end, the commission concluded that integration of the two school systems would not impair the county's ability to provide services and found instead that the proposed reversion would result in "relatively moderate fiscal consequences" for Halifax County, even if the county did incur some of the additional costs it had projected. This determination was based, in part, on information from the Virginia Department of Education that state educational assistance to Halifax County was not likely to be reduced after reversion. In reaching its conclusion, the commission also took into account other factors, such as the county's low property tax rate, debt burden and absence of either a merchant's capital or business and professional license tax within its jurisdiction.

Concerning the equitable sharing of resources and liabilities, South Boston contended that, because the proposed reversion

would establish a "traditional" town-county relationship between the two jurisdictions, Halifax County should assume full responsibility for the funding of the constitutional officers; election officials and processes; welfare, health and mental health services; and solid waste disposal, as well as public education. On the other hand, the county argued that the reversion statute did not contemplate the establishment of the traditional town-county relationship, since the court was permitted to establish terms and conditions to prevent an inequitable sharing of resources and liabilities between the two jurisdictions. Specifically, Halifax County insisted that the city commit 1 million gallons per day of capacity in its water and sewerage systems as a condition for using a certain portion of the county's landfill capacity. In addition, the county asserted that, should reversion be approved, any increased costs over and above its then-existing appropriations for public services should be funded either by the State or by South Boston. The commission, however, determined that the statute contemplates establishing a traditional town-county relationship following city transition to dependent status. Further, it decided that the additional revenues the county would derive from within the corporate limits of South Boston would be significant enough to offset the

county's increased liabilities. Thus, the commission reasoned that South Boston's residents should be permitted use of all county services, including the county landfill, without additional compensation to Halifax County.

Issues related to the future interests of Halifax County focused on annexation and the possible transition of the new town back to independent city status. The county contended that if the reversion was approved, South Boston should not annex unincorporated territory for an extended period of time to allow the county to become acclimated to its changed circumstances. The county asserted that once South Boston became a town, the municipality should remain part of Halifax County in perpetuity. The city countered that one of the incentives for reversion to town status was the restoration of its annexation authority and that no moratorium on the future expansion of its boundaries was warranted, since the county would not suffer any significant loss from annexation by a town. South Boston did agree, however, to a long-term prohibition against its seeking to return to city status.

The commission addressed these issues in its recommendations and observed that, although annexation initiated by cities had been banned since 1987, annexations by towns had not been proscribed. Thus, annexation was a right that a reverted city also should enjoy. In addition, South Boston's interests would be served by sharing in the development of areas beyond its boundaries, following the annexation process. Ultimately, the commission strongly recommended, subject to certain terms and conditions, that the court grant the city's petition for reversion.

Educational services

In considering the appropriate terms and conditions for educational services, the commission noted that consolidating the elementary schools would complete a partial merger that had served the jurisdictions well for many years. The commission also found positive educational and financial reasons to combine the city and county school systems according to the following terms:

- *Provision of educational services:* the county would bear all costs associated with management and operation of schools.
- *Use and acquisition of educational assets:* the county would be allowed to use South Boston's schools, buses and equipment free of charge but would return them to the municipality when they were no longer needed.
- *Equity in facilities:* the county would acquire equity in the city's school facilities to the extent it improved them.
- *Right of refusal:* the county would be allowed to negotiate with South Boston for the acquisition of school buses and other equipment and materials as needed but would not have to accept unnecessary items.
- *Assumption of debts:* the county would be liable for South Boston's outstanding debts on school facilities they had jointly owned.

Noneducational services

The commission recommended that after reversion the relationship between the two localities should be a traditional town-county

arrangement, with the following terms:

- *Provision of services:* the county would bear all costs of constitutional officers as well as health, welfare and mental health and substance abuse services.
 - *Use of revenue:* the county would be entitled to revenues collected throughout its jurisdiction, including certain ones in South Boston.
 - *Use of county landfill:* South Boston would have access to the county's landfill under the same conditions as any other town in the county.
 - *Allocation of water and sewer capacity:* the county would have to negotiate future access to South Boston's utility systems, rather than having a predetermined amount of capacity dedicated to its use.
- The Commission on Local Government also made the following recommendations:
- *Moratorium on independent city status:* South Boston would not seek independent city status for at least 20 years.
 - *Expansion of boundaries:* while South Boston's authority to initiate annexations of unincorporated territory should not be restricted, the jurisdictions should negotiate an agreement that would enable the new town to expand its boundaries.
 - *Redistricting:* the county and South Boston would jointly recommend a redistricting plan to the federal government.

City of South Boston v. Halifax County. (Halifax Circuit Court, 1992)

After hearing the case and considering the commission's findings and recommendations, the special three-judge court granted South Boston's petition for town status and included in its final order certain statutorily prescribed terms, such as the effective date of transition and matters concerning future town elections. The special court's final order also addressed each of the major issues in the dispute and imposed the following terms and conditions on the reversion:

- *Consolidation of schools:* South Boston would convey all its interests in its school buildings to Halifax County, and the county would manage and operate the schools, according to State Department of Education requirements.
- *Allocation of water and sewer capacity:* South Boston would not have to reserve capacity in its water and sewer utility systems for use by the county, but before granting any new service, the jurisdictions would have to allocate unused capacity by agreement.
- *Water and sewer service rates:* Municipal utility rates for current and future resident and nonresident users would have to be equalized.
- *Use of county landfill:* South Boston would be permitted access to the county's solid waste facility on the same basis as any other town.
- *Municipal service levels:* South Boston would be required to maintain in perpetuity the same level of public services it had provided before the reversion with respect to areas such as

police and fire protection; trash and garbage collection; building inspection, planning and zoning; and other services.

- *Payment to county:* South Boston would not be required to make a cash payment to the county.
- *Moratorium on annexation:* South Boston would not initiate annexation proceedings against the county for 15 years.
- *Moratorium on independent city status:* South Boston would not seek to return to city status for 20 years.

City of South Boston v. Halifax County (Virginia Supreme Court, 1994)

South Boston appealed the terms and conditions of the special court's final reversion order to the Virginia Supreme Court, arguing that the court had abused its discretion in the matter. The Supreme Court agreed, striking the offending terms and conditions identified by the city and returning the case to the special court for the sole purpose of determining a new date for the reversion of South Boston to town status.

The Supreme Court held that the lower court had made the following errors in imposing terms and conditions on the reversion:

- *Allocation of water and sewer capacity:* Although the special court had the authority to allocate surplus water and sewer capacity, it did not have the power to require the localities, under threat of sanction, to reach an agreement between themselves about how those resources should be allocated.

- *Water and sewer service rates:* By requiring that water and sewer rates must be equal for residents of South Boston and the county, the lower court had interfered with an express legislative delegation of authority to municipalities to regulate their own rates and charges for water and sewer services.
- *Maintenance of municipal service levels:* The requirement that South Boston maintain its then-existing level of services indefinitely, regardless of any change in demand or other circumstances, was likely to impair the new town's ability to provide needed services for its residents.
- *Moratorium on annexation:* The Supreme Court found no language in the reversion statute that authorized the special court to divest a town of its express, statutorily prescribed right to annex. The fact that South Boston may have waived its right to become a city for 20 years after reversion by failing to challenge the lower court's ban on independent city status was irrelevant to the issue of annexation. Waiver of one statutory right would not bar South Boston from asserting a completely separate one.

City of South Boston v. Halifax County (Halifax Circuit Court, 1994)

Following the Supreme Court's decision, the special court established the effective date for South Boston's transition to town status as midnight on June 30, 1995. ♣



The effect of reverting from city to town status

Once a city completes the transition to town status, its rights and obligations change significantly, for two reasons. First, reversion is a partial consolidation between the county and the new town, with all the expected adjustments associated with any consolidation. Second, many statutes distinguish between cities and towns, since the General Assembly has delegated different powers and responsibilities to the two types of municipalities. The most important consequences of the reversion process include the following:

General effects

- *Authority.* In general, the new town would have the same powers and obligations as any other town in the commonwealth, although it also would be subject to any terms and conditions that were imposed by the special court in granting town status. (Virginia Code § 15.1-965.16)
- *Charter.* The former city's charter would become the new town's charter until a new one was granted by the General Assembly. (Virginia Code § 15.1-965.22) Similarly, the former city's ordinances would become the town's ordinances and former city officers, agents and employees would continue to serve the new town in those roles until terminated as provided by law or by election of their successors. (Virginia Code at § 15.1-965.24)
- *Constitutional officers.* The terms of office of the former city's constitutional officers would terminate on the effective date of the transition to a town. (Virginia Code § 15.1-965.24)
- *Dependent status.* The new town, having surrendered its independent status, would become a constituent part of the adjacent county, and its residents would be integrated into the county's economic and civic life. For example, municipal residents would pay both county and town taxes and would vote in county and town elections.
- *Expenditures.* Because the new town would no longer be responsible for providing certain services, it would recognize substantial savings. Also, the use of certain county facilities by town residents would relieve the town of the cost of operating and maintaining separate facilities.
- *Indebtedness.* Unless otherwise provided by agreement between the parties or by court order, the town would remain liable for the debts and other obligations of the former city. It also would gain title to the real and personal property of the former city, including all of its rights and privileges under any contract. Some interlocal agreements that the city had been a party to would remain in force, with the town succeeding to the rights and obligations of the former city. (Virginia Code § 15.1-965.23)
- *Land area and population.* The land area of the new town would be added to the county's total land area, and the town's population would enlarge the county's total population proportionately.

Services

Because the new town and the county would have entered into a traditional town-county relationship, the county would assume full responsibility for funding and overseeing constitutional officers; election officials and processes; courts, welfare, health and mental health services; and education. The town would continue to provide other public services to its residents, such as police protection; utilities; and planning, zoning and subdivision regulation, either directly or by agreement with another jurisdiction.

- *Pending court cases.* The new town would be substituted for the former city in any pending court actions by or against the city. City court actions would be transferred automatically to the county's court system. (Virginia Code § 15.1-965.25—26)

Annexation rights

The new town no longer would be subject to the moratorium against city-initiated annexations (Virginia Code § 15.1-1032.2) and could therefore petition to annex areas within the county. If annexed, those areas would remain part of the county. Initially, the annexation would reduce the county's receipts from some minor revenue sources.

Property Taxes

Since the new town would no longer be an independent political subdivision, property within its jurisdiction would be subject to taxation by the county, as follows:

- *Real estate and tangible personal property.* Both real estate and tangible personal property within the new town would be subject to taxation by the county. (Virginia Constitution, Article X, § 10; Virginia Code § 58.1-3001) Although towns have the authority to reassess property within their jurisdictions for their own taxation and debt limitation purposes, they generally use the assessed values assigned by their parent counties. (Virginia Code § 58.1-3265)
- *Machinery and tools tax.* Individuals and entities subject to a town machinery and tools tax within the new town would be subject to a corresponding county tax. (Virginia Code § 58.1-3507)
- *Merchants' capital tax.* Individuals and entities subject to a town merchants' capital tax also would be subject to a county merchants' capital tax, but neither the town nor county tax may be levied on any class subject to a business, professional and occupational license (BPOL) tax. The rate of the merchants' capital tax in either the town or county may not exceed the amount in effect on Jan. 1, 1978. (Virginia Code §§ 58.1-3509, 58.1-3704; for discussion on the effect of a county merchants' capital tax on individuals and entities subject to a town BPOL tax, see the BPOL commentary below.)

Other taxes

- *Admissions tax.* Six counties are authorized to levy this tax; in these counties the town tax would be in addition to the county tax. (Virginia Code §§ 58.1-3818, 58.1-3840)
- *Alcohol license tax.* Individuals and entities subject to a town alcohol license tax would not be subject to a corresponding county tax. (Virginia Code §§ 4.1-205, 4.1-233)
- *Bank franchise tax.* Entities subject to a town bank franchise tax would not be subject to a corresponding county tax on banks within the town's corporate limits. (Virginia Code §§ 58.1-1209, 58.1-1211)
- *Business, professional and occupational license (BPOL) tax.* Individuals and entities subject to a town BPOL tax within the new town also would be subject to a county merchants' capital tax (Opinion of Attorney General, 2-16-79) but not a county BPOL tax, unless the tax was authorized by the town. (Virginia Code §§ 58.1-3703, 58.1-3711)
- *Cable TV franchise.* Counties, cities and towns have authority to levy a cable TV franchise fee (Virginia Code § 15.1-23.1); however, federal regulations limit the franchise fee in most cases to 5 percent of gross revenues. Local governments also may levy BPOL tax on cable systems. *Chesterfield Cablevision, Inc. v. County of Chesterfield*, 241 Va. 252, 40 S.E.2d 678 (1991).
- *Cigarette tax.* Arlington and Fairfax counties may levy cigarette taxes up to 5 cents per pack or the amount levied by state law, whichever is greater. (Virginia Code § 58.1-3831) Other counties, cities and towns that had authority to do so prior to Jan. 1, 1977 may levy such taxes, however, no county cigarette tax could be levied in a town that also imposes such tax unless authorized by the town. (*Id.* at § 58.1-3830.)
- *Consumer utility tax.* Individuals and entities subject to a town consumer utility tax would not be required to pay a corresponding county tax, if the town operates its own school system or provides police or fire services and water or sewer services. (Virginia Code § 58.1-3812 (C))
- *Contractors' license tax.* Individuals and entities subject to a town contractors' license tax would be exempt from a corresponding county license tax to the extent of the license taxes paid to the town. (Virginia Code §§ 58.1-3711, 58.1-3714)
- *Daily rental property tax.* Individuals and entities in the new town subject to a 1 percent town daily rental property tax also would be subject to a 1 percent county daily rental property tax. (Virginia Code § 58.1-3510.1)
- *E-911 tax.* Individuals and entities subject to a town E-911 tax would not be subject to a corresponding county tax, if the town operated its own school system or provided police or fire services and water or sewer services. (Virginia Code §§ 58.1-3812—3813)
- *Meals tax.* Individuals and entities subject to a town meals tax would be subject to a corresponding county tax of no more than 4 percent above the state and local general sales and use tax, provided the town authorized

the county tax. (Virginia Code §§ 58.1-3711, 58.1-3833, 58.1-3840)

- *Motor vehicle license tax.* Individuals and entities subject to a town motor vehicle license tax would receive a credit toward a corresponding county tax, however, they would remain liable to the county for the difference between the two taxes. (Virginia Code § 46.2-752)
- *Natural resources taxes.* The new town would no longer have authority to levy coal or gas severance taxes (Virginia Code § 58.1-3712), coal and gas road improvement taxes (*Id.* at § 58.1-3713), or oil severance taxes. (*Id.* at § 58.1-3712.1)
- *Probate tax.* The new town would no longer have authority to levy probate taxes. (Virginia Code § 58.1-3805)
- *Recordation tax.* The new town would no longer have authority to levy recordation taxes. (Virginia Code § 58.1-3800)
- *Sales and use tax.* The new town's share of the 1 percent local option sales and use tax that is returned to cities and counties according to site of sales or use would be reduced. Whereas the former city received all such revenue generated by sales or use within its jurisdiction, the new town would receive only a portion of the enlarged county's local option sales and use tax revenues, based on the ratio of the school age population in the town to the school age population in the county. (Virginia Code §§ 58.1-605—606)
- *Transient occupancy tax.* Individuals and entities subject to a town transient occupancy tax would be subject to a corresponding county tax of no more

than 2 percent of the amount charged for a room, provided the town authorized the county tax. (Virginia Code §§ 58.1-3711, 58.1-3819, 58.1-3822, 58.1-3840)

- *Utility license tax.* Entities subject to a town utility license tax would be subject to a county utility license tax of no more than 0.5 percent of a company's gross receipts accruing from business within the municipality, provided the town authorized the county tax. (Virginia Code §§ 58.1-3711, 58.1-3731)

State aid

- *Maintenance of support.* State aid would be distributed to the entity actually responsible for carrying out the program or function. For example, any state aid to the former city in support of programs or governmental functions that the new town continued to carry out, such as law enforcement assistance funds for its police department, would continue to be distributed to the town. Other state categorical assistance, such as basic school aid funds, would be distributed to the county, provided the town did not maintain a separate school system. The formula used to calculate the amount of aid would be based on the premise that the entities had remained separate for five fiscal years following the effective date of the reversion. Thus, for that period of time, the amount of aid would not be reduced. (Virginia Code § 15.1-21.1) After the five-year period, because of the complexity of various state funding formulas, the county might not receive increases in state categorical aid in direct

proportion to the amount of funds the former city had received.

- *Library aid.* For five years following the effective date of transition, state support would continue for any regional library system that had existed between the former city and its surrounding county or for an independent library in the former city that the new town continued to operate. (Virginia Code § 15.1-965, 24:1)
- *State-shared revenues.* Certain revenues provided by the state would be unaffected by the city's transition to town status. Examples of such noncategorical aid include ABC profits, wine taxes, motor vehicle carriers tax, mobile home titling taxes, auto rental tax and grantor's tax.

Elections

- *Redistricting.* The reversion action would be subject to preclearance by the United States Department of Justice under the Voting Rights Act. If the reversion were approved, the county's election district lines would be redrawn. Residents of the town would be eligible to vote for members of the county board of supervisors in subsequent elections.
- *Electoral boards.* The former city's electoral board would be abolished and the county electoral board would assume responsibility within the new town. (Virginia Code § 24.2-106)
- *Town election.* A new election for town council members and other elected town officials would be held at least 30 days before the effective date of transition. (Virginia Code § 15.1-965.24) ↓



Positive and negative impacts of reversion

From a city official's point of view, reversion has numerous advantages and disadvantages that must be taken into account as the city considers its various restructuring options.

Positive impacts

One of the most important benefits is a means for the municipality to expand its boundaries and its population through restoring its annexation authority. The prospect of a renewed right to annex areas within the county gives the city considering reversion a means to increase its tax base and to acquire additional land for future development. Although town annexations can be controversial, they are generally not so acrimonious as city-initiated annexations, because they do not remove tax base or population from the county.

Another advantage of reversion is that it can eliminate duplicated services, saving money for the new town, the county and even the state. Because reversion brings about a partial consolidation of the affected jurisdictions, shared facilities and joint administration of governmental responsibilities and functions can reduce the need for independently provided services. For example, a city's transition to town status immediately reduces the number of constitutional officers required, their staffs and the services needed to support them. Savings often may be realized in other service areas as

well, such as libraries, recreational facilities, and solid waste collection and disposal, depending on specific local circumstances.

Reversion also offers the municipality and its residents official representation in county affairs. Town residents vote in both town and county elections and thus become constituents of the county's board of supervisors. Particularly in areas such as planning, environmental protection and regional economic development where official decisions may have ramifications beyond a single jurisdiction's boundaries, this potential for increased town influence increases the likelihood of cooperative approaches to problems that affect the entire community.

A fourth advantage of reversion is the likelihood of reduced municipal taxes. Although the additional county taxes that municipal residents will be required to pay may offset the tax savings realized from the municipality's reduced service responsibilities after reversion, the county as a whole is statutorily required to provide many basic services that municipal taxes formerly supported independently. Thus costs are spread over a larger tax base than just the municipality's. Moreover the new town has authority to pre-empt a variety of county taxes to prevent the combination of town and county taxes from becoming oppressive to town residents.

Negative impacts

On the other hand, reversion has disadvantages that city officials need to consider. One of the first drawbacks to be weighed is the toll that the reversion process itself may exact. If the city faces strong opposition from the county, a protracted court battle could result, draining city officials' time, energy and funds. In addition, there is no guarantee that the city's petition requesting town status would be granted. Moreover, the strain on city-county or town-county relations might offset any benefits the city would gain. Ultimately, the upheaval caused by the change in status may be too steep a price to justify the action.

Another disadvantage concerns the town's identity or sense of civic pride, an intangible but nevertheless important consideration. By forfeiting its independent status and integrating with an adjacent county, a city is likely to experience the change as a loss. County and town residents may have different backgrounds, interests and values. After having managed their affairs without outside involvement or interference, the new town's residents may chafe at the unprecedented amount of influence that county residents have in the life of the town. For example, conflict could arise from the county's decision to close a school within the new town that was underused but had sentimental value as a town

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landmark. Municipal pride could be wounded in other ways, too. For example, despite their problems, independent cities are perceived by many to be cosmopolitan centers of social, economic and civic life, entities on par with counties. Residents of the new town may sense that reversion means a loss of influence within Virginia's overall intergovernmental scheme, as the role of counties expands with increasing county urbanization and the position of towns slips in comparison.

A related disadvantage of reversion may be the extent of town residents' influence in the political affairs of the county. Town residents' participation in county elections has the potential for increasing their influence. In practice, however, a great deal may depend on the personality and skills

of the individual elected to represent town interests at the county level, as well as how the district's lines are drawn. If the town does not have a strong advo-

cate on the county board of supervisors, municipal residents may find their political influence diminishing. The dissipation of minority voting strength in county elections after reversion also may be a cause of special concern.

Conflict also may arise over the equity of town and county taxes. For more than a decade, the issue of "double taxation," manifested in a variety of forms, has been a source of recurring conflict between the residents of some towns and counties in the commonwealth. For example, some town residents have objected to the taxes they pay to

fund services primarily for unincorporated areas of the county, such as parks and recreation that duplicate town services, and that townspeople say produce little or no benefit for the town. According to their argument, because they pay town taxes that rural county residents are not required to pay, town residents should be exempt from county taxes that fund such services. Likewise, some county residents have objected that their taxes contribute to higher levels of urban services within the town while, in some cases, they go without basic services. Other town residents have argued that they should be compensated by the county for services such as police protection that the town provides to county residents who live outside the corporate limits.

Another disadvantage of reversion is the new town's loss of control as the county assumes responsibility for certain services. Because rural and town residents may disagree about the level or quality of services they should receive in return for their county taxes, the transfer of authority from the municipality to the county for a variety of municipal services can cause problems. A common example is the complaint that the county is not willing to provide sufficient funds to ensure high quality schools with the competitive salaries, modern equipment and facilities, and high academic standards that townspeople would prefer. Since reversion has only been tested in one case to date, many questions linger in the minds of city residents about the quality of services they might be able to expect after reversion. ♦



Sources of county opposition to reversion

From the county's perspective, reversion may seem threatening for several reasons. One is simple human nature.

Readjustment of relationships

Because reversion represents a radical departure from the status quo, the prospect of dramatic change can be disturbing. The realignment of relationships between the new town and the county necessarily disrupts some facets of civic and economic life in both jurisdictions. For everyone concerned, a city's transition to town status requires a period of adjustment.

Threat of annexation

Equally important, the specter of annexation proceedings may stir up animosities associated with city-initiated annexations that jeopardized city-county relations in the past. Despite the fact that a town's annexation of areas within the county has a smaller adverse impact on a county than a city's and may offer substantial benefits, county officials nevertheless may react negatively to the thought of annexation of any kind. Furthermore, they may mistrust the city's motives and suspect that the real plan is to threaten county officials with reversion to win a stronger bargaining position in existing interlocal agreements.

Shifting of responsibilities

Reversion also may be viewed as a method of shifting the major responsibility for addressing urban problems from the city to the county. In cases where there are sharp distinctions in socioeconomic levels and cultures between the two jurisdictions, this attitude may be especially prevalent. Some county officials may believe that dubious policies and programs contributed to the problems that confront most cities, and reversion should not be used to help city leaders escape accountability.

It has become a truism, though, that if urban social problems are allowed to grow past a manageable level, they spread beyond the city proper and jeopardize the quality of life in the larger community. Like it or not, cities and counties have a mutual interest in dealing with urban issues. Still, the concern that county taxes may have to be raised to pay for increased services, in many cases, is realistic.

Unnecessary costs

Besides the expense of increased services, county officials and residents may see other costs associated with reversion as unnecessary and onerous. Drawing up new county maps, revising the county's comprehensive plan, assigning certain county personnel to new duties, blending town's school age children into the county's school system and redistricting are examples of changes that may be necessary to integrate

the new town into the county, and each adjustment taps county resources. The fact that the town may pre-empt certain county taxes and that after five years the maintenance of support under some state aid formulae is discontinued may reinforce the perception that the city's transition to a town occurs at the county's expense. What may be overlooked, however, is the increased revenue the county will collect from property taxes within the town and from local option sales taxes at points of sale there, as well as from any taxes that are not pre-empted.

Conflicting interests

A further source of friction is the resistance on the part of some county residents to assimilate citizens of the new town into the county's political life. Since the town and the county may have conflicting interests in some areas, town political constituencies could be viewed as an unwelcome intrusion into county politics. Where racial, cultural or socioeconomic differences between the affected jurisdictions are pronounced, the likelihood of such antagonism is greater than in cases where the jurisdictions' profiles are more closely matched. Different backgrounds or viewpoints, however, need not be insuperable barriers to joint action. The more the localities realize how much they have to gain by working together, the more they will benefit from cooperative approaches to problem-solving. ♦



Benefits of reversion for counties

As has been suggested, reversion is not only unlikely to harm counties in the ways many fear, it may bring them actual benefits. Because the opposite view is so prevalent, a summary of the advantages of reversion from the county perspective may be helpful.

Additional land area and residents

While a successful reversion action shifts responsibility for the provision of services from the city to the county, it also increases the county's land area and its population through the addition of territory and residents that once belonged to the independent city. This change in size and population could be significant enough to alter the county's statistical profile and improve its relative position among other localities in the competition for state and federal aid, economic development, tourism or any other endeavor in which a larger size may offer an advantage. In some instances, the change in land area and population base may result in the affected county's qualifying for statutory immunity from the incorporation of new cities and city-initiated annexations. Although the General Assembly has imposed a moratorium until 2000 on immunity actions, at the termination of that period a county's petition for immunity would take precedence before the court over consideration of a conflicting transition or annexation action.

Additional real property tax base

Just as reversion increases the county's land area and population size, it also expands the county's real property tax base, which is many counties' primary source of local source revenue. In the years after the reversion, any growth in the town further enlarges the county's tax base. One result would be to increase the county's bonded debt capacity, which is measured against total assessed property values. With an improved bond rating, the county may find it can borrow funds more easily than it could prior to the reversion.

Other additional revenues

Following reversion, the county is entitled to collect revenues from town residents' tangible personal property taxes, from local option sales taxes collected in the town, and from other minor revenue sources not pre-empted by the town. In addition, the county will receive a portion of the local option sales taxes collected within the town.

State aid

For a period of five years following a reversion action, state aid to the affected county for services such as education, mental health, regional libraries and support of constitutional officers will not be reduced below the level the county formerly received, as if the reversion has not taken place. (Virginia Code § 15.1-21.1 and 15.1-965.24:1).

Cost savings

Depending on the circumstances of individual localities, a city's reversion to town status may reduce the receiving county's expenditures through increased efficiency of operations and economies of scale.

Influence in town affairs

Another change that reversion brings about is a new political landscape. Whereas the former city council had authority to make decisions that affected city residents and the use of city resources without the involvement of officials from neighboring counties, following reversion the county board of supervisors of the receiving county has substantial authority to make policies governing the concerns of the new town.

Promoting regional interests

Regional approaches may be implemented to address problems that the jurisdictions tried to solve differently as separate entities. A single strategy to address issues affecting the entire region such as environmental protection, regional economic development and planning is likely to produce better results than piecemeal policies.

From the county's perspective, as well as the city's, reversion offers substantial benefits, which may be obscured by the heated rhetoric that some proposed reversions produce. Yet, county residents or officials who fear the worst should bear in mind that assessing the best interests of the affected county continues to be a key element in determining the outcome of any reversion petition. ♣



Issues concerning reversion

Although it has been in effect for almost eight years, the reversion statute is still largely untested, since only the South Boston case has begun the process of developing the statute's contours. As a result, numerous questions remain about its scope.

Return to city status

One of the most contentious questions until recently was whether an independent city might revert to town status, annex county territory and then petition to become an independent city again. Because the statutes did not bar this chain of events, some county officials became alarmed that neighboring cities might use it as a ploy to circumvent the moratorium against city-initiated annexation. The 1996 General Assembly, however, enacted legislation prohibiting a town that was formerly an independent city from returning to independent city status. (HB 345) The new law took effect July 1. As a result, this issue was laid to rest.

Moratorium against contested annexations

A second bill that passed during the 1996 General Assembly session provides that any city reverting to town status cannot institute contested annexation actions for a period of two years following the effective date of transition. The intent of this measure, HB 346, is to slow down the annexation process. This will give the county and the new town time to adjust to their

new circumstances and time to negotiate an agreement, rather than immediately launching into adversarial annexation proceedings.

Schools

Another emotionally charged question concerns the effect of reversion on education. The primary issue is whether reversion results in an automatic dissolution of the former city's school division and consolidation of the city and county school systems, or whether the two school systems remain intact as separate entities. County representatives are likely to argue against automatic consolidation because of the increased responsibility for education services the county would bear with the merger of the school divisions. In support of this view, § 22.1-25 of the Virginia Code provides that no school division may be consolidated without the consent of the school board of the affected locality and its governing body. However, the special court's authority to impose terms and conditions in its order granting a reversion petition includes the power to consolidate school divisions. The South Boston case supports this view.

Since so many families are affected by decisions concerning education, and a community's life often centers around its schools, the question of whether school divisions should be consolidated can be a major issue for both city and county residents. In light of the court's broad discretion and the lack

of statutory guidelines or precedents, residents' misgivings are natural. Among their other concerns, county residents may fear higher taxes and the possible reduction of state aid in the future, while town residents may be wary of changes in the curriculum content of the county school system. Although the merger of two districts offers potential savings through more efficient use of facilities, equipment and personnel, such a dramatic change also could cause considerable disruption. Unemployment and school closings are examples of more extreme outcomes that are possible from a merger, but even more mundane changes such as the use of different school facilities, transportation routes, schedules, teaching or administrative assignments, curricula, textbooks, or parent-teacher associations may be unsettling.

Interlocal agreements

The effect of reversion on existing interlocal agreements has been the focus of debate in several localities. The major question involved is whether a new town would have to live up to the terms of the bargain it struck when it was a city, or whether its transition to town status would terminate its duties under the contract. The terms at issue in such agreements typically concern matters such as joint projects, revenue sharing and prohibitions against annexation, which the city and county negotiated in good faith.

This issue has not been litigated, but some guidance is given in § 15.1-965.23 of the code. This provision states that, as a general rule, the new town would be liable for the obligations it incurred as a city, unless the affected governing bodies agree otherwise or the court orders a different result. Although some assumptions are involved in applying this statute, it seems reasonable to conclude that in cases where the substitution of the town for the city would be inequitable or burdensome, the court would rule that neither locality was obligated to perform under the contract.

An inequity might be a case where a bargain the city had entered into would be changed substantially by the city's transition to town status. Such an instance would be if a city had anticipated receiving fees from a municipal service and had agreed to dedicate this income stream to a joint city-county project, but the reversion resulted in the county's assumption of responsibility for that service as well as receipt of associated revenues. Under such circumstances, the court could find that the reversion had altered the bargain to such an extent that enforcement would be inequitable and neither party should be required to perform. The court, however, could reach a different result if it determined that the town could provide funds from another source without hardship to meet its obligations under the agreement.

Multiple receiving counties

Another question that the statute does not answer is whether a city may become a town located in more than one county or whether it can choose the county to which it reverts. Some cities in the state

originally were towns partially located in more than one county. In making a determination about whether reversion to more than one county is permissible, a court might look beyond these facts to language in the statute that refers to "county" in the singular. Relying on that observation, the court could construe the statute to mean that the legislature had contemplated only one receiving county. However, it seems equally likely the court could determine that the legislature did not express its will in this regard, the singular form may include the plural, and the primary duty is to determine the best interests of the commonwealth, the affected localities and the people who live there, applying the broad criteria set out in § 15.1-965.16 of the code. Using this approach the court could rule in a specific case that more than one county should receive the new town.

Proposed modifications

In communities where the debate over reversion has grown heated in recent months, a variety of proposals have been made to limit the right cities now enjoy to revert to town status. One suggestion is a moratorium against reversion for a period of years. Supporters argue that this measure would provide a respite that would give affected localities time to study the likely effects of reversion without the threat of an imminent reversion suit and would increase the chance of reaching a workable solution. Opponents point out that the threat of a moratorium might have the opposite effect, inducing some cities to file reversion petitions immediately before losing the opportunity. Further, they contend that, although a state-

imposed moratorium arguably could have a beneficial effect in one region, its repercussions would extend throughout the commonwealth to other localities that might be harmed as a result.

Another approach to limiting cities' authority to revert to town status would require that the affected county must approve the proposed reversion by referendum before the court can grant the town's petition. Not all counties oppose reversion, but the addition of a referendum requirement in the county would likely end the transition to town status as a restructuring option for most cities. Some county representatives argue this would be an improvement because, in their view, cities have too much power over the reversion process and use reversion unfairly as a tactic in interlocal negotiations. Their argument is based on the fact that cities have a right to decline town status, whereas counties have no veto power over the court's grant of a city's reversion petition. However, even if this is true, a referendum requirement would do more than simply tip the balance back in favor of counties. It would likely destroy the city's reversion right altogether.

At least one proposal has been made to expand city authority to revert to town status by increasing the population limit of cities eligible for reversion from 50,000 to 125,000. If enacted, this proposal would enlarge the number of eligible cities by six, from 28 to 34. ↓

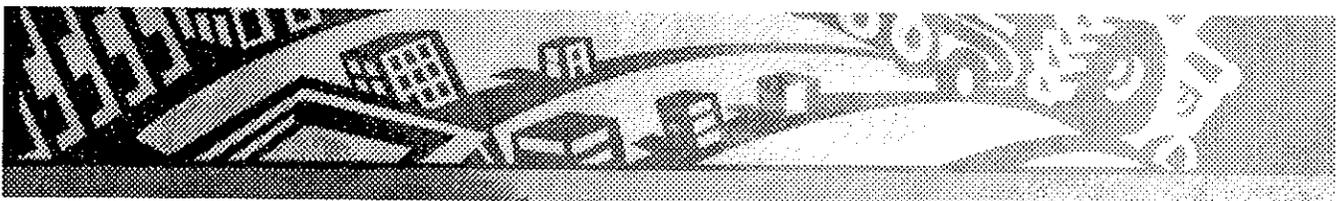


Conclusion

Like their counterparts throughout the country, cities in this state face mounting problems. Although many counties also are struggling, numerous studies have shown that cities in the commonwealth are declining at a faster rate. (See, for example, Commission on Local Government, *Change in the Commonwealth: The City/County Experience in Virginia During the Decade of the 1980s*, March 1993.) For a variety of reasons, cities and counties have been forced to handle these increasing problems with decreasing assets. Virginia's cities, however, labor under a significant additional constraint. Their right to initiate annexation proceedings against neighboring counties has been suspended by the legislature in an effort to avoid the rancorous annexation fights that the independent-cities system generates. While this moratorium against city-initiated annexations may have achieved calmer interlocal relations, it has impeded cities' growth and thereby deprived cities of an important tool for acquiring the means to alleviate fiscal distress, a device available to urban centers in many other states. For cities with little to lure future development, the adverse effect of losing this right is magnified by the lack of other options to help them cope with staggering demands.

Reversion offers small and mid-sized cities a measure of relief. The authorization to seek town status expands the consolidation alternatives that were available to them under prior law. If an eligible city finds its service requirements unmanageable, it may initiate proceedings to forfeit its independence and to integrate with an adjacent county. However, numerous questions about the practical effects of reversion remain: Would a grant of town status justify the expense and disruption involved in making the transition? Would the town's financial position significantly improve? Would basic services in the town remain acceptable? Would county-town relations recover? Would the region as a whole benefit? Without answers to such questions, eligible cities have been hesitant to revert to a town. Only South Boston has made the transition, and its experience as a new town has been limited to 13 months. Since no other prototypes are available, city officials and others are watching South Boston's progress with intense interest. Most seem to agree it is too early to tell whether reversion will live up to its promise as a remedy for ailing cities and a boon for the larger community. ♣

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Appendix

Appendix

REVERSION OF A CITY TO TOWN STATUS (CHAPTER 20.2, TITLE 15.1)

[Reflects any changes to affected statutes through the 1996 General Assembly Session]

I. MUNICIPALLY-INITIATED REVERSION

A. Eligibility

1. Any city with a population of less than 50,000 persons at the time of the latest decennial census may revert to town status under the provisions of this chapter.
2. Special procedural requirements apply to cities having a population of more than 5,000 but less than 5,900. (See Ch. 688, Acts of the Assembly, 1989.)

B. Procedure for Initiating Action

(§ 15.1-945, Code of Va.)

1. Prior to petitioning the circuit court for review of a proposed reversion action, the city must first notify the Commission on Local Government of its intention to make the transition from city to town status.

C. Proceedings of the Commission on Local Government

(§ 15.1-945, Code of Va.)

1. Upon receipt of the notice of the reversion action, the Commission shall meet with representatives of the city and the affected county and schedule a review of the proposed reversion. Such review shall include oral presentations and a public hearing in the affected jurisdictions to afford all interested parties an opportunity to present evidence and to offer comment on the proposed reversion.

2. At the conclusion of its review, the Commission shall submit a written report containing its findings of fact and recommendations with respect to the proposed reversion to the affected local governments and to the special three-judge court which subsequently must review the proposed reversion.

- a. The Commission's review of the proposed reversion must be based upon the criteria and standards established for review of such actions as set forth in 15.1-965.16, Code of Virginia.
- b. The Commission's report is advisory in nature and is not binding on the special three-judge court. The report, however, must be considered in evidence in any subsequent court proceeding.

D. Action by the City Governing Body

(§§ 15.1-965.10 and 15.1-965.11, Code of Va.)

1. Following the completion of the Commission's review, the city may, if it opts to pursue the proposed reversion, petition the circuit court of the city by ordinance for an order granting the municipality town status.
2. The city must also serve the appropriate county officials with notice of its intended action, including a copy of the reversion ordinance; and it must publish the notice and ordinance as required by § 15.1-965.11, Code of Virginia.

3. Upon receipt of the petition from the city, the local circuit court judge will request the Virginia Supreme Court to convene a special three-judge panel pursuant to Chapter 26.2, Title 15.1, Code of Virginia.

E. Proceedings of the Special Court

(§§ 15.1-965.16 and 15.1-965.21, Code of Va.)

1. In order for the special three-judge court to approve the proposed reversion it must determine that:
 - a. The city has a current population of less than 50,000;
 - b. The proposed transition of the city to town status will not substantially impair the ability of the affected county to meet the service needs of its population;
 - c. The proposed transition of the city to town status will not result in an inequitable sharing of the resources and liabilities of the town and the affected county;
 - d. The proposed transition of the city to town status is in the best interests of the city, the affected county, the Commonwealth and the people of the county and the city; and
 - e. The proposed transition of the city to town status is in the best interests of the State in promoting strong and viable units of local government.
2. If the court finds that the criteria for reversion has been satisfied an order will be entered granting the petition for town status.
3. Every order granting town status shall specify the effective date of the transition from city to town status.
 - a. The effective date of transition shall be no sooner than six months from the date of the court order granting town status.

F. Powers of the Special Court

(§ 15.1-965.16, Code of Va.)

1. In order to prevent any substantial inequities or any significant impairment of the ability of the county to meet the service needs of its residents, the special three-judge court has the authority to impose terms and conditions to:
 - a. Ensure an orderly transition from city status to town status;
 - b. Make adjustment for any financial inequities which would otherwise result from the transition of the city to town status;
 - c. Balance the equities between the affected jurisdictions; and
 - d. Ensure the protection of the best interests of the city, the affected county, the Commonwealth and the people of the county and the city.

G. Enforcement of Court Order

(§ 15.1-965.27, Code of Va.)

1. The special three-judge court remains in existence for 10 years from the effective date of the transition order to effect compliance with the terms and conditions set forth therein.
 - a. The court may be reconvened at any time on its own motion, on the motion of the governing body of the county, the governing body of the town, or on petition of 15% of the voters of the town to enforce performance of the terms and conditions of the transition order.
 - b. The court is granted the authority to enforce the terms and conditions of its order by appropriate process.

H. Declining to Accept Town Status

(§ 15.1-965.19, Code of Va.)

1. The governing body of a city may decline to accept town status on the terms and conditions imposed by the court. The

ordinance or resolution declining town status must be adopted within certain statutorily prescribed time periods.

I. Limitations on Subsequent Reversion

Actions

(§ 15.1-965.20, Code of Va.)

1. If the special three-judge court finds that a city is ineligible for transition to town status or the city governing body declines to accept town status on the terms and conditions imposed by that court, a city must wait five years before filing a subsequent petition requesting reversion to town status.

J. Limitations on Subsequent Annexation

Actions

(§ 15.1-965.24:2, Code of Va.)

1. A city which reverts to town status cannot institute contested annexation actions for a period of two years following the effective date of transition. The two-year moratorium against such contested annexations would not apply to boundary changes which are components of interlocal agreements.

K. Limitations on Transition to City Status

(§ 15.1-965.22.1, Code of Va.)

1. A city which reverts to town status cannot return to its previous independent status.

L. Town Charter

(§ 15.1-965.22, Code of Va.)

1. If the General Assembly has not granted a new charter for the town prior to the effective date of transition, the special three-judge court shall enter an order conforming the charter of the former city to a town charter.
 - a. The charter entered by the court shall remain in effect until a new charter for the town is granted by the General Assembly.

M. Effect of Reversion to Town Status

1. Disposition of Assets and Liabilities

(§ 15.1-965.23, Code of Va.)

- a. Unless provided by agreement between the former city and the affected county or by the order entered by the special three-judge court, the town remains liable for the indebtedness, obligations, and liabilities of the former city, and all property and contractual rights of the former city shall vest in and become property of the town.

2. Ordinances and Pending Legal Proceedings

(§ 15.1-965.24, Code of Va.)

- a. All ordinances of the former city shall become ordinances of the town insofar as they are applicable and consistent with statute.
- b. Any judicial proceedings pending against the former city at the time of the transition to town status may be perfected to judgment against the town.

3. Constitutional Officers

(§ 15.1-965.24, Code of Va.)

- a. The offices of the constitutional officers and their deputies and employees of the former city shall terminate upon the effective date of transition of the city to town status.

4. General State Aid

(§ 15.1-21.1, Code of Va.)

- a. Under general law provisions, for a five-year period following a consolidation no State funds which are distributed to localities for any "governmental program or function" shall be reduced as a consequence of the consolidation below the aggregate amount which the consolidating local governments would have received had no consolidation had occurred. The term "consolidation" is defined to include the reversion of a city to town status.

5. State Aid to Libraries

(§ 15.1-965.24:1, Code of Va.)

- a. If the former city participated in a regional library system with the adjoining county or continues to operate an independent library following reversion, for a five-year period the State will continue fund the independent town library or former regional library as if no transition had occurred.

N. Town Officers and Employees

(§ 15.1-965.24, Code of Va.)

1. All officers and employees of the former city shall continue to serve the town following the effective date of transition until terminated as provided by law or until their successors are appointed.
2. Members of the governing of the former city shall remain in office following the effective date of transition to town status until their successors are elected.
 - a. The special three-judge court shall order a special election in accordance with Section 24.1-165, Code of Virginia at least 30 days before the effective date of transition to elect members of the town governing body.

2. The petition must be served on the governing body of the affected municipality and county and published as required by Section 15.1-1036, Code of Virginia.

C. Review of Voter-Initiated Reversions

(§ 15.1-965.10 (B), Code of Va.)

1. Voter-initiated reversion are subject to the same review by the Commission on Local Government and the special three-judge court as prescribed for city-initiated reversion petition under the terms of Section 15.1-965.10 (A).

D. Declining to Accept Town Status

(§ 15.1-965.19, Code of Va.)

1. The governing body of the affected city may decline to accept eligibility for town status awarded as a result of voter-initiated proceedings. The ordinance declining town status must be adopted within certain statutorily prescribed time periods.

*Staff
Commission on Local Government
March 28, 1996*

II. CITIZEN-INITIATED REVERSION

A. Eligibility

1. The voters of any city with a population of less than 50,000 persons at the time of the latest U. S. Census may petition the circuit court for the reversion of such city to town status.

B. Procedure for Initiating Action

(§ 15.1-965.10 (B), Code of Va.)

1. Citizen petitions requesting the reversion of a city to town status must contain the signatures of 15% of the qualified voters of the city.