ANNEXATION AND STATE AID TO LOCALITIES:
A COMPROMISE IS REACHED

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ANNEXATION AND FUNDING ISSUES

When the General Assembly in 1904 enacted general laws governing local boundary change, it thereby abandoned the practice of readjusting municipal boundaries by special acts. The 1979 legislation is the first significant revision of that statute since 1952, though lesser amendments have been made from time to time. Over the years proposed revisions have been influenced by two salient aspects of Virginia’s governmental system—its unique statewide practice of city-county separation and the use of a judicial process for resolving annexation issues. Abandonment of these principles, in response to changing conditions in the state, was considered by two legislative study groups: the Virginia Metropolitan Areas Study Commission (Hahn Commission), which submitted its report to the General Assembly in 1967, and the Commission on City-County Relationships (Stuart Commission), which reported in 1975. However, both commissions rejected such alternatives for legal, political, administrative, and historical reasons. Thus, the approach by legislators has been to consider reform measures that fit within the existing structure.

During the 1970s, with the hope of promoting an atmosphere more conducive to proper legislative review, the General Assembly established several moratoria on city-initiated annexations, the creation of new cities, and consolidations of certain counties and towns. The first moratorium was imposed in 1971, at the same time that the Stuart Commission was formed. This five-year moratorium, which applied originally to cities above 125,000 population and their adjacent counties, subsequently was broadened and extended through June 30, 1977. Then, during the 1977 General Assembly session, the House passed a bill (HB 855) comprising many of the Stuart Commission recommendations for reform. When it became obvious that the Senate might defeat that bill, the House passed a measure extending the moratoria for ten years, anticipating that the possibility of such an extension would prompt urban legislators to effect passage of HB 855. However, the Senate not only defeated HB 855 but also passed the moratoria extension. Following that action, the General Assembly created the Commission on State Aid to Localities and the Joint Subcommittee on Annexation (CSAL—JSA) with the expectation that appropriate changes in state aid formulas might solve some of the annexation problems.

The CSAL—JSA undertook the sixth major review since 1950 of local-government boundary changes in Virginia. The two groups, meeting jointly during 1977 and 1978, considered and reported on various state formulas used to compute the amount of state aid given to Virginia’s counties, cities, and towns, as well as the need to modify such formulas. Major emphasis was placed on correcting inequities in the disbursal of state funds to localities for support of various functions. However, the CSAL—JSA also addressed issues related to territorial expansion and incorporation, concentrating largely on the earlier findings and recommendations of the Hahn and Stuart commissions. A brief summary follows of the general conditions and interlocal problems analyzed by the various study groups that led to the recommendations embodied in HBs 599, 602, and 603.
Prior to the 1971 moratorium, annexation suits were becoming increasingly protracted and costly both in dollar and political terms, particularly in the more urban parts of the state. For example, a 1974 survey of twelve annexation suits initiated in Virginia between 1965 and 1971 showed that those suits resulted in public expenditures by the involved localities of approximately $7 million and in time commitments of two to nine years. In addition, the provisions of the federal Voting Rights Act of 1965 protecting minority voting rights have further complicated boundary changes.

The social and economic problems of many Virginia cities have intensified in past years, making it difficult for these localities to respond to the high-service needs of their residents while continuing to rely primarily on real property taxes as a source of revenues.

The steady urbanization of many Virginia counties has resulted in their increased provision of urban services. These counties have become increasingly apprehensive about relinquishing any of their tax base to adjacent or new cities via annexation or incorporation petitions.

New problems requiring regional consideration and interlocal cooperation continue to emerge. However, due to the nature of annexation proceedings, localities often have been reluctant to initiate joint public service activities for fear of jeopardizing their positions in future annexation cases.

Certain state funding programs, particularly those for sheriffs' departments and the construction and maintenance of highways, benefit counties more than cities. The state, through the Compensation Board, currently funds two-thirds of the board-approved costs of all sheriffs' offices, but no state funds are provided to the cities and five urban counties for support of their police departments. Also, the state provides for the construction and maintenance of highways and roads in all counties except Arlington and Henrico (which elected many years ago to remain out of the state highway system). Cities and certain towns are reimbursed for maintenance of primary and secondary highway extensions within their boundaries according to specified amounts per moving lane mile, but those reimbursement rates have not been adjusted since 1972.

The 1979 compromise legislation, designed to address these changing conditions in the Commonwealth, includes new procedures in the areas of annexation, state aid to localities, and highway funding.

HB 603—ANNEXATION REFORM

House Bill 603, the most extensive bill in the package, makes several structural and procedural changes; it becomes effective July 1, 1980, provided that HB 599 (discussed below) is funded in the 1980-82 biennial budget. The major changes provided in the bill, and those that sparked the most discussion in recent years, are as follows:

1. Counties meeting certain specified criteria may obtain complete or partial immunity for an unlimited time from annexation and from incorporation of new cities.

a. Complete immunity may be obtained by any county having either a minimum population of 20,000 and a density of at least 300 persons per square mile or a minimum population of 50,000 and a density of at least 140 persons per square mile. After receiving a petition from the governing body of the county and verifying that the county meets the requisite population and density criteria, the circuit court shall declare the county immune from city-initiated annexations and from incorporations of new cities.

Nine counties are presently eligible for total immunity under the legislation. These are Arlington, Chesterfield, Fairfax, Henrico, Henry, Montgomery, Prince William, Roanoke, and York. If all nine counties take advantage of this provision, a total of fifteen cities will be barred from seeking to annex part of these counties. (The cities of Chesapeake, Norfolk, Portsmouth, and Virginia Beach already are precluded from annexation attempts since they are "locked-in" by water or by other cities.)

An exception to the ban on incorporation of new cities in counties granted total immunity is made for any town therein that, at the time of enactment of HB 603, possessed a population of at least 5,000 and a density of at least 200 persons per square mile. Such towns maintain the right to obtain city status.

b. Partial immunity may be obtained by counties for designated areas in which the circuit court determines that appropriate urban-type services are being provided. The court's deliberations shall focus on the type and level of services provided in the subject area; efforts made by the county to comply with certain state policies (such as environmental protection, education, planning, public transportation, and housing); the degree to which a community of interest exists between that part of the county for which immunity is sought and the remainder of the county or the adjoining municipality; and whether the county or adjacent city has arbitrarily refused to cooperate in the joint provision of services. Partial immunity will not be granted to a county if the result would substantially block an adjoining city of less than 100,000 population from expanding its boundaries by annexation. The partial immunity provisions will apply to twenty-four counties that are ineligible for total immunity and that have common boundaries with cities.

2. A five-member Commission on Local Government will be established as of January 1, 1980; members will be appointed by the governor, subject to confirmation by the General Assembly. Annexation petitions must be submitted to the commission for consideration before any court action is taken; a written report of the commission's findings will be admissible as evidence in any subsequent court proceeding. Similarly, the commission will have authority to investigate and submit factual reports relating to boundary disputes and requests for partial immunity from annexation, for the establishment of towns or cities, for transition from a county to a city, and for approval of economic growth-sharing agreements among local governments. The commission also may actively seek to negotiate a settlement of any of the above actions.

3. Existing statutes have been revised to expedite the proceedings for annexation, transition of towns or counties to cities, and consolidations and to ensure their equity. One significant change is a list of factors that the court shall consider in annexation cases, many of which are similar to those affecting partial immunity requests (discussed above). Interlocal cooperation is encouraged by a provision stating that cooperative agreements will not prejudice any party's case in an annexation proceeding. In addition, the moratoria on annexation and other governmental processes will be lifted as of July 1, 1980, and city-initiated annexation attempts will be limited to one every ten years (instead of five).

A departure from existing procedures will permit a town in a county or part of a county not immune from annexation to annex territory by ordinance, provided that the town and the county agree to the permanent renunciation of the town's right to become a city. Towns of at least 5,000 population that do not enter such agreements will maintain the right to petition for city status; a referendum on the question of seeking city status must receive support from a majority of the town's electorate. In hearing such cases the court will consider the town's ability to function fiscally as an independent city and to provide appropriate urban-type services, as well as whether the creation of the new city would impair substantially the ability of the affected county to meet the service needs of the remaining population.

4. Annexation, immunity, or consolidation matters will continue to be heard by a three-judge court when such issues are litigated. However, future courts will be selected from a panel of fifteen circuit court judges appointed by the Supreme Court of Virginia especially for this purpose. No judge may hear a case involving jurisdictions in his own circuit. These procedural changes, which preserve the judicial nature of annexation proceedings in Virginia, were designed in part to ensure the judges' development of expertise in annexation and related matters.

5. Provisions are included for voluntary fiscal agreements between any city and county. A city would relinquish its right to initiate annexation petitions with respect to all or any part of the county included in the
agreement, in exchange for a share in the economic growth of the two jurisdictions. This provision is intended to offer an alternative to territorial expansion.

HB 599—AID TO LOCALITIES

House Bill 599 provides increased financial aid to localities, with the intention of thereby reducing the need for annexation. Effective July 1, 1980, the bill will provide $150.5 million in state funds during the 1980-82 biennium for new or increased assistance to local governments.

Cities, counties, and towns with police departments will begin for the first time to receive state aid; however, part of the cost of operating such departments under an arrangement that considers factors such as the state’s per capita expenditures for sheriffs, the population of the recipient jurisdiction, and the potential crime rate in the area. Statewide, the average reimbursement is expected to be about 30 percent of local police department costs. Before calculating the amount to which each locality with a police department will be entitled, 5 percent of the total aid available will be placed in a discretionary fund for distribution to localities with special law enforcement needs. Also, instead of sharing the costs with localities, the state will begin paying 100 percent of the salaries of circuit court judges, the salaries and related expenses of commonwealth’s attorneys, and the approved salaries and expenses of sheriffs’ offices, as well as paying 75 percent of local costs for hospitalization and treatment of welfare recipients.

As intended, cities are the primary beneficiaries of the increased aid resulting from HB 599, although counties also will benefit from the distribution of the funds. Excluding the aid targeted for town police departments and the police discretionary fund, approximately 59 percent of the new aid will go to the cities and 41 percent to the counties during 1980-82. The per capita reimbursement for cities will be slightly more than twice that of the counties. The five urban counties with police departments (Arlington, Chesterfield, Fairfax, Henrico, and Prince William) will receive about 20 percent of the total package (half of the allocations to all counties).

HB 602—HIGHWAY FUNDING

The aim of HB 602 is to reduce the financial pressure on cities for the maintenance and construction of their streets. The bill’s provisions do not increase the total amount of funds available at the state level for highway construction and maintenance. However, the funds will be allocated differently.

As noted earlier, state reimbursements to cities for maintenance of roads have not been adjusted since 1972. To compensate for inflation during the past seven years, these reimbursement rates for primary and secondary highway extensions within city boundaries will increase to $3,850 and $2,200 per moving lane mile, respectively, as of July 1, 1979. Similar provisions are included for towns with populations under 3,500 that maintain their own streets. The projected increased maintenance payments to cities and towns for 1979-80 total about $14 million. The bill also includes a clause that requires the State Highway Department to calculate annually the percentage change in maintenance costs in each highway district and to adjust the lane mile reimbursements accordingly. Another feature of the bill is a reduction in the matching payments that cities must provide for highway construction within their boundaries, from 10 to 5 percent.

Counties, principally the more rural ones, will gain from another provision in HB 602. An “Unpaved Secondary Road Fund” will be established and funded by taking 3.75 percent of the state funds available for construction of primary, secondary, and urban highways; the fund is estimated to be approximately $10 million in 1979-80. The aid will be distributed among the counties in the secondary system on the basis of their respective proportions of the state’s nonsurface-treated roads carrying fifty vehicles or more per day.

POLICY CONSIDERATIONS

Given the complexity and salience of issues and the intensity of interest shown by policymakers in Virginia, new policies that significantly affect intergovernmental relations understandably require a series of compromises for an agreement to be reached. The state and each of its 189 towns, 95 counties, and 41 cities can be expected to consider “reform” legislation in light of their own practical and political interests. The state must weigh the needs and requests of all jurisdictions in exercising its constitutional responsibilities. Cities can be expected to favor the option of annexation or, if their boundaries are constricted, to want increased state financial assistance or additional revenue options. Concurrently, counties adjacent to cities feel threatened by possible extensions of city boundaries and the resulting loss of county size, population, and tax base. The more rural counties, which are unaffected by city annexation attempts, are wary of proposals granting increased state aid to urban areas for fear that less state assistance will be available to meet their own needs. Towns also have a vested interest in preserving options to expand their boundaries and to convert to city status, just as several unincorporated communities wish to ensure the possibility of petitioning for town status.

In recent years various policy alternatives have been considered by legislators in an effort to obtain a compromise. Generally, the three study commissions cited earlier all agreed that the traditional involuntary annexation process no longer remains an appropriate method for the adjustment of municipal boundaries in the more urban areas of the state. The Hahn Commission suggested in 1967 that annexations within metropolitan areas should require the mutual consent of the local governments involved. Later, the Stuart Commission recommended that the most densely populated and urbanized counties be granted immunity both from city-initiated annexation and from the creation of new independent cities within their boundaries, provided certain criteria were met. Subsequent considerations would have permitted counties with specified populations and densities to gain annexation immunity if they entered into an economic growth sharing arrangement with an adjacent city. However, none of these proposals proved acceptable to a majority of the legislators—a factor which led to the CSAL-JSA’s recommendation that counties meeting specified population and density criteria be granted automatic immunity from both city-initiated annexations and incorporations of new cities.

In addition, issues such as the minimum population a town must possess before it can obtain city status, whether referenda should be required for annexations or changes in governmental structure, the criteria to be considered in annexation proceedings, and the development of equitable state policies affecting all local jurisdictions were the focus of considerable discussion in legislative study groups and committees. Obviously, the task of developing policy that satisfied the oftentimes conflicting goals of all participants was virtually impossible. However, the general recognition of the need for new processes governing both local boundary changes and the distribution of state aid to localities led to an accommodation of interests and the successful passage of legislation this year.

POLITICS OF ENACTMENT

Upon reflection, several factors stand out among those that helped to create a favorable environment for refinement and passage of the 1979 legislation. Signing the ten-year moratorium bill in 1977, former Governor Mills E. Godwin stated that the bill was a “harsh” measure but that he was signing it with the understanding that city and county legislators, the Virginia Municipal League (VML), and the Virginia Association of Counties (VACO) would work together to produce a compromise solution. While VML and VACO had previously maintained opposing views on annexation, in 1977 they created a Joint Task Force on Annexation in an attempt to effect legislation acceptable to both organizations. Task force presentations to the 1978 and 1979 General Assembly sessions were compromises of each organization’s previous positions. For instance, VML accepted the concepts of complete and partial immunity for counties, while VACO acquiesced in the continuation of city annexation rights in counties not eligible for total immunity. The enacted legislation did not include all of the task force’s recommendations, but the cooperative efforts of these two groups made it more difficult for legislators and the governor to use competition among counties and cities as a reason for indecision.
At the same time, several General Assembly members from the Tidewater cities formed a coalition with those from urban counties in mutual support of their respective goals—additional state aid for those cities precluded from annexation and automatic immunity from city-initiated annexation for the urban counties. The desire of the cities’ representatives to enter this coalition was in part prompted by a concern that legislative redistricting after the 1980 census would likely reduce the cities’ representation in the General Assembly. In addition, the changes in the governor’s office, legislative seats, and chairmanships of crucial committees that resulted from the 1977 general elections probably increased the receptivity to the three-bill package introduced in 1978 and enacted in 1979.

Bills 602 and 603 were passed by large margins in the House in 1978 and sent to the Senate; however, HB 599 failed to be reported out of the House Appropriations Committee (primarily due to concern about its complicated funding formulas and large cost of the provisions). Judging from his previous opposition to such measures, the former chairman of the Appropriations Committee (who did not seek re-election to the House in 1977) probably would have thwarted attempts to develop an acceptable funding bill. However, the new chairman supported the package of bills and accordingly appointed a subcommittee to revise HB 599 prior to the 1979 legislative session. Since HB 599 was carried over by the House until 1979, the Senate decided to do the same with HBs 602 and 603.

Between sessions the bills’ sponsors increased their efforts to explain the implications of the measures to state and local officials and to garner broader support for them. Such support was achieved in large part by sanctioning additional amendments to the bills, as evidenced by the Appropriation Subcommittee’s changes to HB 599. Specifically, the cost of HB 599 was reduced to a level (about one-fourth of the state’s anticipated new growth revenues during the next biennium) thought to be acceptable to the governor and fundable without the imposition of new or additional taxes. The scope of the bill was narrowed considerably, thereby reducing the potential for conflict (but also reducing the degree of funding equity to be achieved). All new funding formulas were eliminated except the one applicable to state aid for local police departments, for which a simpler version was developed. Also, rural county apprehensions were reduced by increasing the amount of aid available for sheriffs’ offices to 100 percent of approved costs and decreasing the amount for police departments to a statewide average of about 30 percent. The addition of the “Unpaved Secondary Road Fund” to HB 602 also encouraged rural county receptivity to the package; many of those legislators had no particular stake in HB 603, but all were concerned about county roads.

Enactment of HBs 599, 602, and 603 was possible because the 1970s provided an opportunity to explore fully the issues addressed. Perhaps equally important, however, were the roles played by certain influential legislators. For example, normally at least one of the three ranking members of the Senate Finance Committee must favor a finance bill if passage is to be achieved. All three opposed the 1977 version of HB 603, which was defeated in the Senate; but by 1979, largely due to constituency support, two of the three favored the package, thereby helping to overcome the opposition of the most senior member. The willingness of other legislators to go beyond the immediate concerns of their districts also contributed significantly to passage of the legislation.

CONCLUDING COMMENTS

House bills 599, 602, and 603 do not solve all of the complex problems associated with local government boundary change. Even so, both the governor and an overwhelming majority of the General Assembly recognized that the bills reasonably accommodate the varying interests of Virginia’s state and local governments. The alternatives to annexation, such as the immunity provisions and voluntary economic growth sharing plans, should prove less divisive and costly than existing procedures. The Commission on Local Government alleviates the need for judicial resolution of boundary disputes by providing a mechanism for negotiation and cooperation between local governments. While extensive revision was not made in state funding formulas, the increased state aid to localities should reduce the fiscal pressures that often prompt cities to initiate annexation petitions, and, at the same time, better enable all local governments to address citizen needs.

3The 1978 version of HB 599, coupled with an unrelated bill dealing with local government reorganization, had caused some sheriffs to fear that many counties might establish police departments, thus curtailing the sheriffs’ role in law enforcement. However, this funding change meant that it would not be financially advantageous for counties to make such a move.