

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 728

An Act to amend and reenact §§ 15.1-21.1 and 15.1-1135 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.1-1146.1:2 and 22.1-57.1:1, relating to disbursements by the Commonwealth to a consolidated city; consolidation of city and county; powers of a political subdivision and a school board within a consolidated city.

[H 1648]

Approved April 6, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-21.1 and 15.1-1135 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.1-1146.1:2 and 22.1-57.1:1 as follows:

§ 15.1-21.1. Certain Commonwealth distributions to local governments.

Any state funds that were distributed to a county, city, town, or a local school board in support of a governmental program or function prior to a consolidation of such program or function or the governmental consolidation of the entities providing such programs or functions, shall continue to be distributed to the entity or entities carrying out the program or function after consolidation and shall not be reduced below the amounts that would have been received by each entity from the Commonwealth for the governmental program or function computed on the premise that no consolidation occurred for a period of five fiscal years following the consolidation.

This section shall not prohibit the Commonwealth from terminating or modifying any program or function under which distribution to a county, city, town, or local school board has been made, and if so terminated or modified all obligations hereunder shall cease or be reduced in proportion with such modifications, as the case may be.

If any such consolidations terminate prior to the end of the five-year period, the Commonwealth's obligation under this section shall cease.

For the purposes of this statute, "consolidation" includes the reversion of a city to town status *and further includes the consolidation of a city and a county into a consolidated city containing a shire, borough, or such other political subdivision authorized by subdivision 20 of § 15.1-1135, the initial boundaries of which are the same as the existing city which is included in the consolidated city.*

§ 15.1-1135. Optional provisions of consolidation agreement or plan.

Any such consolidation agreement or plan may contain any of the following provisions:

1. That in any territory a part of the consolidated city, or county proposed to be included therein, there shall be no increase in assessments, except for permanent improvements made after the consolidation, for a period of not exceeding five years.

2. That the rate of tax on real property in any such territory shall be lower than in other territory of the consolidated unit for a period of five years, provided that any difference between such rates of taxation shall bear a reasonable relationship to differences in non-revenue-producing governmental services giving land urban character which are furnished in such territories.

3. That in any area specified in such agreement or plan there may, for the purpose of repaying existing indebtedness chargeable to such area prior to consolidation, be levied a special tax on real property for a period not exceeding twenty years, which may be different from and in addition to the general tax rate throughout the entire consolidated city, county, counties, or tier-city, as the case may be.

4. That geographical subdivisions of the consolidated city, to be known as boroughs, may be established, which may be the same as the existing cities, or counties or portions of such counties included in the consolidated city, and may be the same as the temporary special debt districts referred to in subdivision 3 of this section; the names of such boroughs shall be set forth in the consolidation agreement.

5. That geographical subdivisions of the consolidated county or counties, to be known as shires or boroughs, may be established, which shall be the same as and bear the names of the existing counties, towns, communities or portions of counties included in the consolidated county or counties, and may be the same as the temporary special debt districts referred to in subdivision 3 of this section.

6. That in the event of consolidation of such counties and cities into a single county, there may be established geographical subdivisions of such county, to be known as boroughs, which shall be the same as and bear the names of the existing cities and shires, which shall be the same as and bear the names of the existing counties.

7. That in the event of consolidation of such counties and cities into a single county incorporating a tier-city therein, there shall be established geographical and political subdivisions of such county, to be known as "tier-cities"; such tier-cities shall apply for and receive a charter from the General Assembly

in the same manner as may any municipality and when issued shall thereafter qualify in general law, mutatis mutandis, as a town with respect to its rights, powers and obligations, and shall have such other rights, powers and obligations as may be given it by general law or special charter legislation.

8. That in the event of the establishment of such shires or boroughs, it shall be the duty of the Commonwealth Transportation Commissioner and the Director of the Department of Historic Resources to have suitable monuments or markers erected indicating the limits of such geographical subdivisions and setting forth the history of each.

9. a. That in the event of establishment of a consolidated city, there shall be a new election of officers therefor whose election and qualification shall terminate the terms of office of their predecessors; provision may be made for the exclusion from such new election of such elective officers as is deemed desirable.

b. That in the event of the establishment of a consolidated city, the constitutional officers of the consolidating jurisdictions may continue in office at not less than their salaries in effect at the effective date of consolidation; that the selection of each constitutional officer for the consolidated city shall be made by agreement between those persons holding such respective offices, and the other or others, as the case may be, shall become assistants or chief deputies, upon filing of a certification of such agreement in a circuit court and approval by the court; that in the event no agreement is reached or no certification is filed on or before a date stated in the consolidation agreement or plan, the circuit court shall designate one officer as principal and the other or others, as the case may be, as assistants or chief deputies; and that in the event of a vacancy in the office of assistant or chief deputy thereby created during such term, the position shall be abolished. Each such officer shall continue in office, whether as the principal officer or as chief deputy or assistant, until the first day of January following the next regularly scheduled election pursuant to §§ 24.1-86 and 24.1-87, whether or not the term to which such officer was elected may have expired prior to that date. When the effective date of the consolidation plan is the same as the end of the term of one or more existing constitutional officers for the consolidating jurisdictions, an election shall be held to select such constitutional officers for the consolidating jurisdictions for a new term to begin on the effective date of consolidation in order to implement this provision. Such newly elected officers may or may not become the principal constitutional officers of the consolidated city under this provision.

c. That in the event of the establishment of a consolidated city, the persons holding office as the superintendents of the school divisions within the consolidating jurisdictions may continue in office at no less than their salaries in effect at the effective date of consolidation, for the terms to which they were appointed; that the consolidated city school board shall designate one of such persons as division superintendent and the other as associate superintendent; that in the event no designation is made on or before a date stated in the consolidation agreement or plan, the designation shall be made by the circuit court for the consolidated city; and that in the event of a vacancy in the position of superintendent or associate superintendent during the term to which appointed, the remaining incumbent shall be the superintendent and the position of associate superintendent shall be abolished.

d. *That, notwithstanding any contrary provisions of subdivision 9 b, in the event of the consolidation of a city having a population of between 5,400 and 6,400 and a county having a population of between 44,700 and 45,700 according to the 1990 United States Census, where such consolidating jurisdictions share the offices of the attorney for the Commonwealth, clerk of the circuit court, and sheriff, and which jurisdictions are consolidating into a single city containing a political subdivision to be known as a "shire" or a "borough," or by such other name as may be established in the consolidation plan, and as provided for in subdivision 20, the attorney for the Commonwealth, clerk, and sheriff in office upon the effective date of the consolidation shall continue in their office as respective officers for the consolidated city, and their terms shall be extended beyond the date of expiration of the full terms for which such officers were elected until January 1 after the next regularly scheduled election for such offices in cities under § 24.2-217. The term "political subdivision" as used in this paragraph and in subdivision 20 shall include a governmental subdivision. In the event of the consolidation, the offices of the commissioners of the revenue and of the treasurers of the consolidating jurisdictions shall be consolidated on the effective date of consolidation; the commissioner of the revenue and the treasurer of the consolidating county shall continue in office as the commissioner of the revenue and treasurer, respectively, of the consolidated city; and their terms shall be extended beyond the date of the expiration of the full terms for which such officers were elected until January 1 after the next regularly scheduled election for such officers in cities under § 24.2-217. The commissioner of the revenue and the treasurer of the former city shall continue in office as the consolidated city's chief deputies for the shire or borough, or political subdivision that has such other name as may be established in the consolidated plan, during the extended terms of the consolidated city's commissioner of the revenue and treasurer at not less than their salaries in effect at the effective date of consolidation. On a transitional basis during their terms in office, they shall perform such duties in respect to the residents of the shire or borough, or political subdivision that has such other name as may be established in the consolidation plan, as are delegated by their principal constitutional officers of the consolidated city. They may also perform such additional duties as they had performed prior to consolidation. The respective positions of chief deputies for the*

shire or borough or political subdivision that has such other name as may be established in the consolidation plan shall be abolished at the expiration of such extended terms or in the event of a vacancy in either office during such extended terms.

10. That in the event of the establishment of a consolidated city the tax rate on all property of the same class within the city shall be uniform; provided that the council shall have power to levy a higher tax in such areas of the city as desire additional or more complete services of government than are desired in the city as a whole and, in such case, the proceeds therefrom shall be so segregated as to enable the same to be expended in the areas in which raised. Provided further that such higher tax rate shall not be levied for school, police or general government services but only for those services which prior to consolidation were not offered in the whole of all the consolidated political subdivisions.

11. That the aforesaid agreement, when proposing the creation of a consolidated city, may incorporate, subject to the subsequent approval of the General Assembly, any provisions of any charter heretofore granted by the General Assembly of Virginia for any of the cities proposing to consolidate or any proposed consolidated city. It is the intention of this subsection to permit the drafting by the governing bodies, or the committees acting for and in lieu of the governing bodies under § 15.1-1132, of a composite charter to be adopted as a part of the consolidation agreement or plan for the proposed consolidated city. In such composite charter the name of the consolidated city, if agreed upon, shall be inserted in lieu of the name of the city which may be specified in the original charters from which the composite charter provisions are taken, or if the name of the consolidated city be left to subsequent referendum, then the phrase "the consolidated city" shall be so substituted. Any such composite charter shall be published as provided in § 15.1-1137 as a part of the consolidation agreement.

12. That any agreement between any units of government to form a consolidated county may likewise incorporate provisions of any charter of any such units of government proposing to consolidate and also may include the provisions of any of the optional forms of county government set forth in this title. In any form of government approved by the voters hereunder, irrespective of any other provisions of law, the membership of the governing body shall be as set forth in such consolidation agreement or amendments thereto. Such agreement or plan when adopted and approved as provided herein shall be the form of the consolidated county and the provisions of subdivision 11 above shall be applicable, mutatis mutandis. The governing body of the consolidated unit shall have the power to make amendments to the consolidated agreement or plan not contrary to general law. No such amendments shall become effective until such amendments have been approved by the General Assembly in accordance with the procedures established by Chapter 17 (§ 15.1-833 et seq.) of this title, insofar as such chapter provides for an election or public hearing, notice and advertising.

13. That in any consolidation by a county and all the towns therein into a consolidated county, or in any consolidation of a county and a city into a consolidated county the area of any of such town, towns, city or cities may be designated as a special service district and the delivery of water, sewer and similar type services may be continued; in addition the consolidated county shall have the same powers, rights and duties with respect to the public right-of-way, streets and alleys within such district and receive State Highway Fund allocations as did such town, towns, city or cities prior to consolidation. The roads in the area formerly located solely within the county will continue to be maintained as they were prior to the consolidation, and this subdivision shall not be construed to authorize any allocation from highway funds not previously authorized. The boundaries of such special service district or districts may be altered from time to time by ordinance of the governing body duly adopted after public hearing.

14. That any consolidation agreement may provide for offering to the voters the option of adopting a city or county form of government as well as the option between forms of county governments.

15. That the agreement between a county and the incorporated towns located entirely therein consolidated pursuant to this article may contain provisions for the establishment of special service tax districts wherein a tax may be levied on all classes of property within those shires or boroughs, where, upon the effective date of the consolidation plan, there exists, or the consolidation plan provides for, additional or more complete governmental services than the level of services which are being provided or will, under the plan, be provided in other shires or boroughs, or in the consolidated county as a whole. Additional or more complete governmental services include but are not limited to water supply, sewerage, garbage removal and disposal, heat, lighting, streets, sidewalks and storm drains, fire-fighting equipment and services, and additional law-enforcement services but shall not include separate police forces, additional schools or other basic governmental services to which all citizens are entitled. Any additional revenue produced from any such tax shall be segregated into a separate fund and expended by such consolidated county solely in the shire, borough, or special service tax district wherein such additional tax is assessed. The consolidation plan shall establish the initial boundary lines of such shires or boroughs and the tax rates within each shire or borough. Future adjustments in the boundaries of such shires, boroughs, or special service tax districts shall be made in accordance with § 15.1-18.2, which shall apply to such consolidated county, as well as to the consolidated cities described therein. The governing body of such consolidated county shall have the same power as the city council referred to in such section. Such governing body also shall have the power to tax all sources of revenue which the previous county or incorporated towns therein had prior to such consolidation.

16. That in the event of consolidation of such counties and cities into a single county incorporating a tier-city therein, any rights provided to counties, cities and towns in Chapters 21 (§ 15.1-966 et seq.), 21.1 (§ 15.1-977.1 et seq.), 21.2 (§ 15.1-977.19:1 et seq.), 22 (§ 15.1-982.1 et seq.), and 25 (§ 15.1-1032 et seq.) of this title may be modified or waived in whole or in part, as set forth in the consolidation agreement or plan, provided that the modification or waiver does not conflict with the Constitution of Virginia and provided that such provision in the consolidation agreement or plan is approved pursuant to the provisions of Chapter 26.1:1 (§ 15.1-1167.1 et seq.) of this title prior to the effective date of consolidation.

17. That the agreement may provide for a subsequent referendum of the voters of all or part of one or more of the consolidating jurisdictions to be held after a favorable referendum on the initial question of consolidating. This subsequent referendum shall take the sense of the qualified voters of an area or areas of the consolidating jurisdictions, as determined in the discretion of the governing bodies of the consolidating jurisdictions, on the question of dividing that area or portion from the newly consolidated jurisdiction and merging or consolidating that area or portion with an adjoining jurisdiction not a part of the newly consolidated jurisdiction. The terms and conditions of this division and merger may be included in said agreement or may be determined by the Commission on Local Government if the affected jurisdictions are unable to agree. The nonagreeing jurisdiction shall have the right to reject the recommendations of the Commission, and not accept said area or portion.

18. That in the event of consolidation of such counties and cities into a single city which completely surrounds another city, the agreement may provide for the subsequent unilateral merger of the surrounded city into the consolidated city at any time. The agreement shall provide that a referendum take the sense of the qualified voters of the surrounded city on the question of whether the surrounded city and the surrounding city shall consolidate.

19. That in the event of consolidation of such counties and cities into a single city which completely surrounds another city, the agreement may provide for the subsequent unilateral merger and conversion of the surrounded city to a township within the surrounding city at any time. The agreement shall provide that a referendum take the sense of the qualified voters of the surrounded city on the question of whether the surrounded city shall convert to a township. The township may, in the discretion of its council, continue to be called a city and may formally be referred to as city, a Virginia township. Such township shall have no right to become an independent city, nor to annex or exercise any extraterritorial jurisdiction within the consolidated city but otherwise shall have the rights, powers and immunities granted towns. The consolidated city's legal relationship with such township shall be governed by the same laws that govern county-town relationships, except as modified herein.

20. *That in the event of consolidation of a county and city into a consolidated city, there may be established a geographical and political subdivision within such consolidated city, to be known as a "shire" or a "borough," or having such other name as may be established in the consolidation plan, the corporate boundaries of which shall be the same as the existing city which is included in the consolidated city. Such political subdivision shall apply for a charter from the General Assembly and, when the charter is issued, shall thereafter have the same rights, powers and obligations as towns exercise in counties, and such other rights, powers and obligations as may be granted by general law or by charter. The consolidation agreement may also include a provision permitting the shire, borough, or other unit of government to annex at regular intervals by the adoption of an ordinance, if the shire, borough, or other political subdivision agrees to renounce permanently any right to become a city. Any such provisions permitting annexation shall provide for the regular and orderly growth of the shire, borough, or other political subdivision in conjunction with the consolidated city and for an equitable sharing of resources and liabilities. In the event the consolidation agreement provides for annexation by ordinance, it shall also include provisions establishing a procedure by which property owners in the area to be annexed may petition the Commission on Local Government for review of the annexation proceedings. The Commission's review shall be limited to whether the shire, borough, or other political subdivision substantially complied with the procedures and requirements set forth in the consolidation agreement. Upon the filing of such a petition, the Commission may stay the effective date of the annexation pending the outcome of its review. In any consolidation which establishes a "shire" or "borough" pursuant to this subdivision, the resulting consolidated city shall not annex any area of an adjacent county. Following the holding of a hearing at which the parties may present evidence, the Commission shall enter an order which shall either affirm the annexation ordinance without change or remand the ordinance for further proceedings to comply with the procedures and the requirements of the consolidation agreement. The order of the Commission shall be final and not subject to further review. The consolidation agreement may further include provisions granting the shire, borough, or other unit of government the right to exercise subdivision regulation and zoning authority within designated areas of the consolidated city lying outside the boundaries of the shire, borough, or other political subdivision, and may also include provisions for representation for residents of such designated areas on the Planning Commission and Board of Zoning Appeals of the shire, borough or other unit of government.*

§ 15.1-1146.1:2. Powers of a shire, borough, etc.

Any city which consolidates with a county into a consolidated city and which shall become a shire,

borough, or other political subdivision within the consolidated city pursuant to subdivision 20 of § 15.1-1135 shall have, mutatis mutandis, all the powers, duties and responsibilities exercised by towns within counties, unless otherwise specifically provided, together with such additional powers and responsibilities as may be granted it by general law or charter. Except for those powers reserved to the shire, borough, or other political subdivision in the consolidation plan, the consolidated city shall exercise such powers in the shire, borough, or other unit of government as are exercised by counties in towns. Shires, boroughs, or such other political subdivisions shall receive financial assistance from the Commonwealth in the same manner and to the same extent as is provided to towns. Such a shire, borough, or other political subdivision may transfer to the consolidated city all or part of the revenues it receives, the services it performs, its facilities, other assets, or any portion of its debt as provided in the consolidation agreement. The consolidated city may transfer to the shire, borough, or such other political subdivision all or part of the revenues it receives, the services it performs, its facilities, other assets, or any portion of its debt as provided in the consolidation agreement.

§ 22.1-57.1:1. Referendum in certain consolidated cities.

Notwithstanding the provisions of this article or any other statutory provision, where an existing city and a county consolidate into a consolidated city and where the county at the time of consolidation is providing all school services to the existing city by contract pursuant to § 22.1-27 and the voters of the county have approved direct election of the school board, the consolidation plan or agreement shall provide for the election of school board members directly by the voters of the consolidated city without the necessity of a further referendum under § 22.1-57.2; in such case, the consolidation plan or agreement shall provide that the members of the initial school board shall be elected from the municipal election districts designated in the consolidation plan or agreement. The provisions of § 22.1-57.3 shall apply in all other respects.

2. That an emergency exists and this act is in force from its passage.