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SENATE BILL NO. 1178

Offered January 14, 2009

Prefiled January 13, 2009

A *BILL to amend and reenact §§ 15.2-102, 15.2-2903, 15.2-2907, 15.2-3526, 15.2-3807, 15.2-3900, 15.2-3907, 15.2-3915, 15.2-4005, 15.2-4113, 15.2-4115, and 22.1-25 of the Code of Virginia, relating to independent cities.*

Patron—Watkins

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-102, 15.2-2903, 15.2-2907, 15.2-3526, 15.2-3807, 15.2-3900, 15.2-3907, 15.2-3915, 15.2-4005, 15.2-4113, 15.2-4115, and 22.1-25 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-102. Definitions.

As used in this title unless such construction would be inconsistent with the context or manifest intent of the statute:

"Board of supervisors" means the governing body of a county.

"City" means any ~~independent~~ incorporated community ~~which~~*that* became a city as provided by law before noon on the first day of July, nineteen hundred seventy-one, or ~~which~~*that* has within defined boundaries a population of 5,000 or more and ~~which~~*that* has become a city as provided by law.

"Constitutional officer" means an officer provided for pursuant to Article VII, § 4 of the Constitution.

"Council" means the governing body of a city or town.

"Councilman" or "member of the council" means a member of the governing body of a city or town.

"County" means any existing county or such unit hereafter created.

"Governing body" means the board of supervisors of a county, council of a city, or council of a town, as the context may require.

"Locality" or "local government" shall be construed to mean a county, city, or town as the context may require.

"Municipality," "incorporated communities," "municipal corporation," and words or terms of similar import shall be construed to relate only to cities and towns.

"Supervisor" means a member of the board of supervisors of a county.

"Town" means any existing town or an incorporated community within one or more counties which became a town before noon, July one, nineteen hundred seventy-one, as provided by law or which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law.

"Voter" means a qualified voter as defined in § 24.2-101.

§ 15.2-2903. General powers and duties of Commission.

The Commission shall have the following general powers and duties:

1. To make regulations, including rules of procedure for the conducting of hearings;
2. To keep a record of its proceedings and to be responsible for the custody and preservation of its papers and documents;

3. To serve as a mediator between localities;

4. To investigate, analyze, and make findings of fact, as directed by law, as to the probable effect on the people residing in any area of the Commonwealth of any proposed action in that area:

a. To annex territory,

b. To have an area declared immune from annexation,

c. To establish a town or ~~independent~~ city,

d. To settle or adjust boundaries between localities,

e. To make a transition from city status to town status,

f. To make a transition from a county to a city,

g. To consolidate two or more localities, at least one of which is a county, into a city, or

h. To enter into economic growth-sharing agreements among localities;

5. To conduct investigations, analyses and determinations, in the sole discretion of the Commission, for the guidance of localities in the conduct of their affairs upon the request of such localities;

6. To receive from all agencies, as defined in § 2.2-128, assessments of all mandates imposed on localities administered by such agencies. The assessments shall be conducted on a schedule to be set by the Commission, with the approval of the Governor and the Secretary of Commerce and Trade, provided

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59 that the assessments shall not be required to be performed more than once every four years. The purpose
60 of the assessments shall be to determine which mandates, if any, may be altered or eliminated. If an
61 assessment reveals that such mandates may be altered or eliminated without interruption of local service
62 delivery and without undue threat to the health, safety and welfare of the residents of the
63 Commonwealth, the Commission shall so advise the Governor and the General Assembly;

64 7. To prepare and annually update a catalog of state and federal mandates imposed on localities
65 including, where available, a summary of the fiscal impact on localities of all new mandates. All
66 departments, agencies of government, and localities are directed to make available such information and
67 assistance as the Commission may request in maintaining the catalog; and

68 8. To perform such other duties as may be imposed upon it, from time to time, by law.

69 § 15.2-2907. Actions for annexation, immunity, establishment of city, etc.; investigations and reports
70 by Commission; negotiation.

71 A. No locality or person shall file any action in any court in Virginia to annex territory, to have an
72 area declared immune from annexation based upon provision of urban-type services, to establish an
73 independent a city, to consolidate two or more localities, at least one of which is a county, into a city,
74 to make a transition from a county to a city or to make a transition from city status to town status,
75 without first notifying the Commission and all local governments located within or contiguous to, or
76 sharing functions, revenue, or tax sources with, the locality proposing such action. Upon receipt of the
77 notice the Commission shall hold hearings, make investigations, analyze local needs and make findings
78 of facts and recommendations, which may, in cases where immunity or annexation is sought,
79 recommend a grant of immunity or annexation of a greater or smaller area than that proposed by the
80 locality pursuant to the procedures of this chapter. Such findings shall be rendered within six months
81 after the Commission receives notice from the locality intending to file court action, provided that the
82 Commission on its own motion may extend the period for filing its report by no more than sixty days.
83 No further extension thereafter of the time for filing shall be made by the Commission without the
84 agreement of the parties. No court action may be filed until the Commission has made its findings of
85 facts. Unless the parties agree otherwise, no court action may be filed more than 180 days after the
86 Commission renders its final report as provided for in this section. While the matter is before the
87 Commission, the Commission may actively seek to negotiate a settlement of the proposed action
88 between the affected localities. The Commission may direct that the conduct of the negotiations be in
89 executive session. In addition, the Commission may, with the agreement of the parties, appoint an
90 independent mediator, who shall be compensated as agreed to by the parties. Offers and statements made
91 in negotiations shall not be reported in the finding of facts or introduced in evidence in any subsequent
92 court proceedings between the parties.

93 B. The Commission shall report, in writing, its findings and recommendations to the affected
94 localities, any other localities likely to be affected by such proposed action, and to any court which may
95 subsequently consider the action. The report shall be based upon the criteria and standards established
96 by law for any such proposed action. The report, or any copy thereof, bearing the signature of the
97 chairman of the Commission shall be admissible in evidence in any subsequent proceeding relating to
98 the subject matter thereof. The court in any such proceeding shall consider the report but shall not be
99 bound by the report's findings or recommendations.

100 Before making the report the Commission shall conduct hearings at which any interested person may
101 testify. Prior to the hearing, the Commission shall publish a notice of the hearing once a week for two
102 successive weeks in a newspaper of general circulation in the affected counties and cities. The second
103 advertisement shall appear not less than six days nor more than twenty-one days prior to the hearing.

104 C. A court on motion of any party or of the Commission may for cause shown extend the time for
105 filing of the Commission's report but no such extension of time shall exceed ninety days unless the
106 parties agree otherwise.

107 D. Except for any hearing or meeting specifically required by law, Chapter 37 (§ 2.2-3700 et seq.) of
108 Title 2.2 shall not be applicable to the Commission nor meetings convened by members of the
109 Commission, its employees, or by its designated mediators with local governing bodies or members
110 thereof, nor shall such chapter be applicable to meetings of local governing bodies, or members thereof,
111 held for purpose of negotiating any issues which are or would be subject to the Commission's review.
112 Offers and statements made in any negotiation or mediation activity conducted under the direction of the
113 Commission shall not be recorded in any report issued by the Commission, nor shall they be introduced
114 in evidence in any subsequent court proceeding by the Commission or any other party.

115 E. Notwithstanding any other provision of law, any locality, either prior or subsequent to the filing of
116 any annexation or partial immunity suit in any court of this Commonwealth in which it is one of the
117 parties, may notify the Commission on Local Government that it desires to attempt to negotiate an
118 agreement with one or more adjacent localities relative to annexation or partial immunity under the
119 direction of the Commission. A copy of the notice shall be served on all adjacent localities. The affected
120 localities shall then attempt to resolve their differences relative to annexation or partial immunity, and

shall keep the Commission advised of the progress being made. The Commission, or its designee, may serve as a mediator and the Commission's staff and resources shall be available to the negotiating localities. All expenses of the negotiations, including expenses of the Commission or its staff incurred in the negotiations, shall be borne by the parties initiating the notice unless otherwise agreed by the parties. All suits for either annexation or partial immunity by or against any locality involved in such negotiations shall be stayed while the negotiations are in progress. If, after a hearing, the Commission finds that none of the parties is willing to continue to negotiate, or if it finds that three months have elapsed with no substantial progress toward settlement, it shall declare the negotiations to be terminated. Unless the parties agree otherwise, negotiations shall in any event terminate twelve months from the date the initial notice was given to the Commission. Immediately upon such finding and declaration by the Commission, or upon the expiration of twelve months from the initial notice or any agreed extension thereof, whichever first occurs, any stay of a pending suit for annexation or partial immunity entered under this section shall automatically terminate and no new notice to negotiate shall thereafter be filed by any party.

F. A locality may proceed simultaneously under subsections A and E of this section.

§ 15.2-3526. Hearing and decision by court.

A. The court shall order an election to be held as provided in § 15.2-3538 if, after hearing the evidence, it finds that:

1. The proposed consolidation has a minimum population of 20,000 persons and a density of at least 300 persons per square mile, or a minimum population of 50,000 persons and a population density of at least 140 persons per square mile, based on the latest United States census, or on the latest population estimates of the Weldon Cooper Center for Public Service of the University of Virginia, or on a special census conducted under court supervision; however, where the proposed consolidation includes an existing city, the population and density requirements set forth in this subdivision shall not apply;

2. The proposed consolidation has the fiscal capacity to function as ~~an independent~~ a city and is able to provide appropriate services; and

3. After a consideration of the best interests of the parties, the interest of the Commonwealth in the compliance with and the promotion of applicable state policies with respect to environmental protection, public planning, education, public transportation, housing and other state service policies declared by the General Assembly, and the interest of the Commonwealth in promoting strong and viable units of government in the area, the proposed consolidation is eligible for city status.

B. The court shall be limited in its decision to granting or denying eligibility for city status and shall have no authority to impose terms or conditions with respect to a proposed consolidation.

C. If a majority of the court is of the opinion that the criteria set out in subsection A herein have not been met, then eligibility for city status shall be denied.

D. The court shall render a written opinion in every case brought under the provisions of this article.

§ 15.2-3807. Hearing and decision by court.

A. The special court shall enter an order granting city status to a town if, after hearing the evidence, it finds that:

1. The town has a minimum population of 5,000 persons;

2. The town has the fiscal ability to function as ~~an independent~~ a city and is able to provide appropriate urban-type services including, based on the advice of the State Department of Education, an independent school system;

3. The creation of the new ~~independent~~ city will not substantially impair the ability of the county or counties from which the town is to be separated to meet the service needs of the remaining population, particularly in education, unless provision is made by order of the court or by agreement of the governing bodies to offset such impairment; and

4. After a consideration of the best interests of the parties, the interest of the Commonwealth in the compliance with and promotion of state policies with respect to environmental protection, public planning, education, public transportation, housing and other state service policies declared by the General Assembly, and the interest of the Commonwealth in promoting strong and viable units of government in the area, a grant of city status should be made.

B. Any order granting city status to a town shall set forth in detail all such terms and conditions upon which the city status is granted as are not provided in this chapter. The order shall be effective on January 1 following the year in which the order is issued or, in the discretion of the court, on the second January 1 following the year in which the order is issued. All county taxes assessed in the town for the year before which the transition becomes effective, and for all prior years, shall be paid to the county.

C. A copy of the order shall be certified to the Secretary of the Commonwealth.

D. If a majority of the court is of the opinion that the criteria set out in subsection A have not been met, then the petition shall be dismissed.

E. The court shall render a written opinion in every case brought under this chapter.

§ 15.2-3900. Transition authorized.

Any county in this Commonwealth may become ~~an independent~~ a city by complying with the requirements and procedures set forth in this chapter.

§ 15.2-3907. Hearing and decision by court.

A. The special court shall order an election to determine if the voters of the county desire the General Assembly to grant the county a municipal charter if, after hearing the evidence, it finds that:

1. The county possesses at the time of the filing of the petition a minimum population of 20,000 persons and a density of population of at least 300 persons per square mile, or a minimum population of 50,000 persons and a density of population of at least 140 persons per square mile, based either on the latest United States census, on the latest estimates of the Weldon Cooper Center for Public Service of the University of Virginia, or on a special census conducted under court supervision; and

2. The county has the fiscal capacity to function as ~~an independent~~ a city and to provide appropriate services; and

3. After a consideration of the best interests of the parties, the interest of the Commonwealth in the county's compliance with and promotion of applicable State policies with respect to environmental protection, public planning, education, public transportation, housing and other State service policies declared by the General Assembly, and the interest of the Commonwealth in promoting strong and viable units of government in the area, the county is eligible for city status.

B. An election held pursuant to this section shall comply with §§ 24.2-682 and 24.2-684. The order for election shall allow sufficient time for the preparation of a charter as hereafter provided for in this chapter. Such election shall be held no earlier than 180 days and no later than 300 days subsequent to the entry of the order of election.

C. The court shall be limited in its decision to granting or denying eligibility for city status and shall have no authority to impose terms or conditions with respect to such eligibility.

D. If a majority of the court is of the opinion that the criteria set out in subsection A have not been met, then eligibility for city status shall be denied.

E. The court shall render a written opinion in every case brought under the provisions of this chapter.

§ 15.2-3915. Transition of county to city requires no action of town council.

A county may become ~~an independent~~ a city in accordance with the foregoing provisions of this chapter without the necessity of any action being taken by the council of any town situated in such county and without the necessity of separate referenda in any such town on the question of the transition of the county to a city.

§ 15.2-4005. Effect when city becomes town; officers.

When a city becomes a town under the provisions of this chapter, its ordinances shall become the ordinances of the town, insofar as they are applicable and consistent with law, until they are repealed, and the existence of such city as ~~an independent~~ a city of the Commonwealth shall terminate, as shall the terms of office and the rights, powers, duties and compensation of its constitutional officers and their deputies and employees. All officers, agents and employees of the city, including the mayor and the members of city council, shall continue to serve as the officers, agents and employees of the town, until they are terminated as provided by law, or in the case of the mayor and members of council, until their successors are elected or appointed. The court shall order an election to be held pursuant to § 24.2-682 not less than thirty nor more than 180 days after the date of the court order granting town status, but at least thirty days before the effective date of the transition from city to town status, at which election the town council and other elected officers of the town shall be selected. The terms of such officers shall commence on the day the transition from city to town status becomes effective and shall continue, unless otherwise removed, until their successors have been elected and assume office. The successors or all such officers whose first election is herein provided for shall thereafter be elected at the time, in the manner and for the terms provided by general law.

§ 15.2-4113. Restriction on subsequent change in status.

Notwithstanding any contrary provision of law, general or special, a town created under this chapter shall not return to its previous ~~independent~~ city status.

§ 15.2-4115. Effect when city becomes town; officers.

When a city becomes a town under the provisions of this chapter, its ordinances shall become the ordinances of the town, insofar as they are applicable, and consistent with law, until they are repealed, and the existence of such city as ~~an independent~~ a city of the Commonwealth shall terminate, as shall the terms of office and the rights, powers, duties and compensation of its constitutional officers and their deputies and employees. All officers, agents and employees of the city, including the mayor and the members of city council, shall continue to serve as the officers, agents and employees of the town, until their positions or offices are terminated as provided by law, or in the case of the mayor and members of council, until their successors are elected or appointed. The circuit court shall order an election to be

held pursuant to § 24.2-682 not less than thirty nor more than 180 days after the date of the special court order granting town status, but at least thirty days before the effective date of the transition from city to town status, at which election the town council and other elected officers of the town shall be selected. The terms of such officers shall commence on the day the transition from city to town status becomes effective and shall continue, unless otherwise removed, until their successors have been elected and assume office. The successors or all such officers whose first election is herein provided for shall thereafter be elected at the time, in the manner and for the terms provided by general law.

§ 22.1-25. How school divisions made.

A. The Board of Education shall divide the Commonwealth into school divisions of such geographical area and school-age population as will promote the realization of the standards of quality required by of Article VIII, Section 2 of the Constitution of Virginia, subject to the following conditions:

1. The school divisions as they exist on July 1, 1978, shall be and remain the school divisions of the Commonwealth until further action of the Board of Education taken in accordance with the provisions of this section except that when a town becomes ~~an independent~~ a city, the town shall also become a school division.

2. No school division shall be divided or consolidated without the consent of the school board thereof and the governing body of the county or city affected or, if a town comprises the school division, of the town council.

3. No change shall be made in the composition of any school division if such change conflicts with any joint resolution expressing the sense of the General Assembly with respect thereto adopted at the session next following January 1 of the year in which the composition of such school division is to be changed.

B. Notice of any change in the composition of a school division proposed by the Board of Education shall be given by the Superintendent of Public Instruction, on or before January 1 of the year in which the composition of such school division is to be changed, to the clerks of the school board and of the governing body involved and to each member of the General Assembly.

C. Subject to the conditions set forth in subsection A, the Board of Education shall consider the following criteria in determining appropriate school divisions:

1. The school-age population of the school division proposed to be divided or consolidated.

2. The potential of the proposed school division to facilitate the offering of a comprehensive program for kindergarten through grade 12 at the level of the established standards of quality.

3. The potential of the proposed school division to promote efficiency in the use of school facilities and school personnel and economy in operation.

4. Anticipated increase or decrease in the number of children of school age in the proposed school division.

5. Geographical area and topographical features as they relate to existing or available transportation facilities designed to render reasonable access by pupils to existing or contemplated school facilities.

6. The ability of each existing school division to meet the standards of quality with its own resources and facilities or in cooperation with another school division or divisions if arrangements for such cooperation have been made.

D. Consistent with its authority pursuant to Article VIII, Section 5 of the Constitution of Virginia to designate school divisions in the Commonwealth of such geographic size and school-age population as will best promote the realization of the standards of quality, the Board shall promulgate regulations consistent with the provisions of this section that provide for a process whereby school divisions may submit proposals for the consolidation of school divisions. Such regulations shall provide for, among other things, a public notice and hearing process to be conducted by the applicant school divisions.

School divisions submitting proposals for consolidation shall include such information and data as may be required by the Board, including (i) the criteria set forth in subsection C; (ii) evidence of the cost savings to be realized by such consolidation; (iii) a plan for the transfer of title to school board property to the resulting combined school board governing the consolidated division; (iv) procedures and a schedule for the proposed consolidation, including completion of current division superintendent and school board member terms; (v) a plan for proportional school board representation of the localities comprising the new school division, including details regarding the appointment or election processes currently ensuring such representation and other information as may be necessary to evidence compliance with federal and state laws governing voting rights; and (vi) evidence of local support for the proposed consolidation.

For five years following completion of such consolidation, the computation of the state and local share for an educational program meeting the standards of quality for school divisions resulting from consolidations approved pursuant to this subsection shall be the lower composite index of local ability-to-pay of the applicant school divisions, as provided in the appropriation act.