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GOVERNMENTAL BOUNDARY AND STATUS CHANGES

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15-1 SCOPE: HISTORICAL BACKGROUND

15-1.01 Scope

This Chapter discusses the various statutory mechanisms for the relocation of boundaries of political subdivisions in Virginia, as well as the procedures for changes in governmental status. Boundary change procedures include annexation, deannexation, immunity from annexation, and various types of agreements that can produce boundary changes. Changes in governmental status or structure include town incorporation, transitions of towns to cities, transitions of cities to towns, transitions of counties to cities, and consolidations of counties, cities, and towns.

15-1.02 Overview

Prior to 1902, the boundaries of counties, cities, and towns were contracted and extended by special acts of the General Assembly. The Constitution of 1902, however, required that the General Assembly provide for changes in the corporate limits of cities and towns only by "general laws." Va. Const. art. VIII, § 126 (1902). In 1904, the General Assembly enacted such a general law, enabling a city or town to petition the local circuit court for annexation. 1904 Va. Acts ch. 99. The matter was heard by a single judge, who decided the case based on the "necessity for or expediency of" the proposed boundary change. *Id.* § 3. As a result of a 1924 amendment, three-judge courts began hearing annexation matters. 1924 Va. Acts ch. 441.

The complete separation of cities and counties in Virginia has been a fundamental factor in the interaction of cities and counties. As has been noted by courts and commentators, this "independent city" structure has caused strained relationships between these public bodies because annexation completely divests a county of all territory and tax resources granted to a city. See Robert E. Spicer, Jr., *Annexation in Virginia: The 1979 Amendments Usher in a New Era in City-County Relations*, 17 U. Rich. L. Rev. 819 (1983).

In 1971, the General Assembly responded to the heightening of controversy over the annexation process by appointing the Commission on City-County Relationships (the "Stuart Commission") to conduct a study, and in the interim imposed a moratorium on city-initiated annexations. 1971 Va. Acts ch. 234. As the Virginia Supreme Court later noted, "[r]elations among units of local government pose problems of continuing concern to the General Assembly How well local governments succeed in promoting the common weal depends in large part upon how they are organized and how they interact with their

¹ The authors would like to express their appreciation to the original author of this chapter, Carter Glass IV.

neighbors.” *Cnty. of Rockingham v. City of Harrisonburg*, 224 Va. 62, 294 S.E.2d 825 (1982).

The Stuart Commission study made its final report in 1975, Report of the Commission on City-County Relationships, House Doc. No. 27 (1975), and that report was followed by widespread debate and further study. The efforts undertaken by the Stuart Commission finally culminated in 1979 with major amendments to the laws governing annexation, boundary changes, and governmental structure. 1979 Va. Acts ch. 85. The 1979 amendments created the Commission on Local Government (the “Commission”), the function of which is to “help ensure that all of [the Commonwealth’s] localities are maintained as viable communities in which their citizens can live.” Va. Code § 15.2-2900. The Commission has the power, among other things, to “investigate, analyze, and make findings of fact . . . as to the probable effect” of any proposed annexation, immunity from annexation, incorporation of a town or city, transition from a county to a city, transition from a city to a town, boundary adjustment, consolidation of two localities into a city, or economic growth-sharing agreement between localities. Va. Code § 15.2-2903. The report of its findings and recommendations is admissible in evidence. Va. Code § 15.2-2907(B). The court must consider the Commission’s report, but it is not bound by the findings and recommendations. *Id.* Thus, the degree of weight to be accorded such a report is a matter exclusively for the court to decide as the “fact finder.” *City of Hopewell v. Cnty. of Prince George*, 239 Va. 287, 389 S.E.2d 685 (1990).

The Commission’s proceedings have primarily involved proposed agreements between localities that have addressed annexation, changes in governmental status, revenue sharing, and related matters. Special three-judge courts have given great weight to the Commission’s findings and recommendations in those cases. On the other hand, in contested annexation cases, the record is mixed, and in a few cases, courts have largely rejected the Commission’s recommendations. The Commission maintains a helpful [website](#) that includes its reports on changes in governmental boundaries and status.

The 1979 amendments also created a panel of fifteen judges from which special, three-judge courts would be constituted to hear most boundary change and governmental status matters. Va. Code §§ 15.2-3000, 15.2-3002. When a petition in any case requiring a special court is filed with the local circuit court, the chief judge certifies the filing to the Supreme Court and requests appointment of three judges to hear the matter. Va. Code § 15.2-3000. Although in theory the chief judge should make this determination *sua sponte*, in practice the parties have to bring it to the judge’s attention. Whenever they are appointed to sit on a special court, judges are relieved of their other duties “to the extent necessary” to serve on the special court and participate in the proceedings and decision. Va. Code § 15.2-3003. In 1993, the General Assembly added that any proceedings before a special court “shall have priority over all other cases, including criminal cases, on the docket of the court in which such proceeding is pending or on the docket of each judge designated to hear the case.” 1993 Va. Acts ch. 398; Va. Code § 15.2-3001.

In addition to the modification of annexation procedures, the 1979 legislation also resulted in the addition of several new statutory mechanisms affecting boundary changes. Counties were granted the right to seek “immunity” from annexation actions initiated by cities and to make a transition to city status under certain circumstances. Certain provisions were also added to authorize agreements between localities to change boundaries, which were further expanded in 1983 to create broad enabling legislation for settlements by localities of boundary disputes. 1983 Va. Acts ch. 523.

Each annexation or other adjustment in the boundaries of cities, counties, or towns and most changes in governmental status formerly was subject to the preclearance

requirements of Section 5 of the federal Voting Rights Act of 1965 prior to implementation of any voting changes caused by the boundary or status changes. 52 U.S.C. § 10304; see Chapter 16, Legislative Redistricting and Voting Rights Act Preclearance, section 16-3.01(b). For example, while the reversion of a city to town status does not involve any change in the boundaries of the town, preclearance nevertheless was required because the land area of the city was incorporated within the adjoining county which enlarged the pool of voters who participated in county elections. 28 C.F.R. § 51.13(e). However, as a result of the decision in *Shelby County v. Holder*, 570 U.S. 529, 133 S. Ct. 2612 (2013), the United States Supreme Court has effectively suspended the preclearance requirement until Congress updates the coverage formula that determines which states and localities must satisfy Section 5 of the Voting Rights Act. See Chapter 16, Legislative Redistricting and Voting Rights Act Preclearance, section 16-3. In 2021, however, the General Assembly enacted the Virginia Voting Rights Act, requiring advance notice and comment on, or preclearance of, localities' enactment or administration of certain "covered practices" relating to voting. 2021 Va. Acts chs. 528 and 533 (special session I) (adding Va. Code § 24.2-129). Among the "covered practices" giving rise to these requirements are changes to the boundaries of a locality's election districts or wards, e.g., Va. Code § 24.2-129(A)(3), and changes (or a series of changes within a twelve-month period) to a locality's boundaries that reduce the locality's voting age population of members of a racial or language minority group, e.g., Va. Code § 24.2-129(A)(2). The locality may elect one of two procedures when enacting or administering a covered practice: (1) providing notice and opportunity for public comment, Va. Code § 24.2-129(B), (C); or (2) making a submission to the Virginia Attorney General's Office for a certification of no objection so long as the Virginia Attorney General's Office issues or is deemed to issue such certification, Va. Code § 24.2-129(D).

15-2 ANNEXATION

15-2.01 Overview

Chapter 32, Article 1 of Title 15.2 of the Code of Virginia (§§ 15.2-3200 through 15.2-3230) authorizes proceedings for the annexation of territory in counties by cities, towns, or citizens. In 1987, the General Assembly imposed "temporary" restrictions on this process by prohibiting the filing of city-initiated annexation actions. 1987 Va. Acts ch. 216. Since then, the legislature has made numerous extensions of that prohibition. Currently, the moratorium on city-initiated annexations extends until July 1, 2032, or the July 1 following any biennium during which the General Assembly fails to appropriate the total amount of money for local police departments required by Va. Code § 9.1-169 (except for the biennia from 1998–2000 to 2030–2032), whichever occurs first. Va. Code § 15.2-3201.

The original purpose of the moratorium on city annexation proceedings was to maintain the status quo during a study by the General Assembly of the "desirability of continuing the independent city system in Virginia and the problems caused by annexation." See House Joint Resolution 163 (1986 General Assembly Session). In 1990, the Commission on Local Government Structures and Relationships, commonly referred to as the "Grayson Commission," issued its report recommending major revisions to the State's annexation laws. House Doc. No. 69 (1990 General Assembly Session).

Among other things, the Grayson Commission recommended: (a) the termination of the city annexation process except with the agreement of the affected county, (b) an expansion of the ability of cities having less than 125,000 in population to reintegrate and become part of the counties from which they were originally formed, and (c) a simplification of the town annexation process by permitting annexations by ordinance, with minimal review, and by giving the Commission full authority to order boundary changes without a duplicative trial court review. While legislation was introduced to implement the Grayson Commission's proposals, most of its recommendations were not enacted.

The annexation procedure established in Va. Code §§ 15.2-3200 through 15.2-3230 is the “traditional” means by which a city or town has sought an annexation of territory over the objection of the adjoining county. It is currently one of two methods of initiating a contested suit for a change of boundaries. The other is a suit by a town under Va. Code § 15.2-3234 to establish a unilateral right to annex periodically by ordinance.

The annexation moratorium is not applicable to town-initiated annexations, proceedings to implement an annexation agreement between a city and a county, or annexations initiated by landowners or voters. If a city is the landowner of the property in the county, however, the restrictions apply, and a city may not institute proceedings pursuant to Va. Code § 15.2-3203. Since 1987, however, this traditional annexation process has been used by only a small number of towns and landowners as a result of several factors: (a) the lesser impact on counties of boundary changes involving towns rather than cities; (b) the expanded statutory authority to reach settlements of annexation cases; and (c) the high costs required to pursue a contested case before both the Commission and a special court.

In 2016, the General Assembly charged the Commission with evaluating the structure of cities and counties and the impact of annexation upon localities and with recommending potential alternatives to the current annexation moratorium. 2016 Va. Acts chs. 158 and 364. A stakeholder group formed by the Commission published a report on annexation alternatives in November 2018. Ultimately, the report suggested that the Commonwealth consider making the moratoria permanent especially relative to independent city structure, noting that additional consideration regarding the constitutionality of such an action may be necessary. Commission on Local Government, [Report on Annexation Alternatives](#) (Nov. 2018). The Commission identified a number of alternatives to ensure that all localities are maintained as viable communities. These include, among other things, modification of reversion and consolidation statutes “to remove obstacles,” provision of planning grants to explore interlocal agreements and other operational efficiencies, and incentivizing additional regional cooperation and regional programs. While the Commission “recognize[d] the sensitivity of some of these issues,” it “believes they are far more attainable and practical solutions than what would be gained from lifting the annexation moratoria.” It remains to be seen what actions, if any, will be taken in light of the Commission’s report. Although the Commission recommended that the General Assembly remove obstacles to reversion and consolidation (including by removal or alteration of the requirement for a favorable voter referendum as a condition for consolidation), in 2022 the General Assembly enacted special legislation conditioning one city’s reversion on a favorable voter referendum. 2022 Va. Acts chs. 219 and 220.

In the meantime, the body of law developed in the Virginia courts continues to govern issues related to annexation. The Supreme Court has ruled that, for purposes of withstanding a demurrer, allegations that a city “induced” and “forced” a landowner to file an annexation petition by refusing to provide water and sewer services, as required by a utility contract, were sufficient to state a violation of the annexation moratorium. *Cnty. of Bedford v. City of Bedford*, 243 Va. 330, 414 S.E.2d 838 (1992). Such a claim raises a jurisdictional question, which must be resolved by a special court before the Commission reviews the merits of the annexation request. *Id.* In *Washington County v. City of Bristol*, 63 Va. Cir. 450 (Washington Cnty. 2003), a special court held that a claim was stated for violation of the annexation moratorium where a county alleged that the landowner annexation was “done at the encouragement, suggestion, and concurrence with” a city and was “in nature and substance, a city-initiated annexation due to the [c]ity’s participation in its inception.” The special court subsequently determined that the annexation moratorium was not violated where the county failed to prove that the landowner petitions were procured or induced by the city or that landowners acted on behalf of the city. *Washington*

Cnty. v. City of Bristol, Nos. CL98-185-01, CL03-11 (Washington Cnty. Cir. Ct. Dec. 17, 2003).

15-2.02 Procedures

15-2.02(a) Annexation Ordinance, Notices, and Commission Review

To commence an annexation action, a city or town must first notify the Commission of its intention to file an annexation court action.² The Commission's regulations request that the notice include pertinent information on the population, public services, and land uses in both the county and the city, although the city or town "may submit" as much supporting material as "it deems appropriate." 1 VAC 50-20-540, 1 VAC 50-20-180. The Commission may allow the filing by a later date of supplemental data that it deems "necessary or appropriate." 1 VAC 50-20-390(H). A metes and bounds description of the annexation area is the one mandatory item that a municipality must submit. 1 VAC 50-20-540. The "metes and bounds" do not have to include a traditional surveyor's description with compass directions and precise distances; instead, the description of the proposed annexation line is sufficient if it refers to readily understandable monuments such as railroad rights-of-way and public roads so that a non-engineer could follow the line with "reasonable certainty." *City of Suffolk v. Cnty. of Nansemond*, 212 Va. 1, 181 S.E.2d 621 (1971). The city or town must also notify other localities of the proposed annexation when it seeks Commission review, including "all local governments located within or contiguous to, or sharing functions, revenue, or tax sources with" the city or town proposing to annex. Va. Code § 15.2-2907(A) and 1 VAC 50-20-180(C). The Commission may require that the parties to the proceeding file written testimony of witnesses in support of their positions. 1 VAC 50-20-390(R). If a party fails to file testimony by the date established by the Commission, it is barred from thereafter presenting testimony and may only cross-examine the testimony of the other parties, unless otherwise permitted by the Commission. *Id.* Where a party pre-files such written testimony, the questioning of such witnesses is limited to cross-examination by the other parties. 1 VAC 50-20-620(H).

Following the giving of appropriate notices, the Commission holds hearings, makes investigations, analyzes local needs, and makes findings of fact and recommendations as to the proposed annexation. Va. Code § 15.2-2907(A). The Commission must render its report on the proposed annexation within six months, although it may unilaterally extend its reporting deadline for sixty days. For good cause, the Commission may seek a court order for an additional extension of not more than ninety days. Va. Code § 15.2-2907(C). The Commission's report is admissible as evidence in proceedings before a special court that hears the annexation petition. Va. Code § 15.2-2907(B).

Annexation actions may also be commenced by a notice to the Commission by citizens who desire to be annexed. Citizen requests must meet one of the following two requirements: 51 percent of the qualified voters of the geographical area petition for the annexation or 51 percent of the owners of real estate in number and land area petition for the annexation. Va. Code § 15.2-3203. That requirement is jurisdictional, and if it has not been met, the Commission has no authority to proceed with a review of the proposed annexation. *Allfirst Tr. Co. v. Cnty. of Loudoun*, 268 Va. 428, 601 S.E.2d 612 (2004). For that reason, it is imperative that a special court resolve any question as to compliance with the 51 percent requirement before the Commission hears the merits of the case. *Id.* In *Allfirst Trust Co.*, the Supreme Court also ruled that the Commission may allow citizens to supplement their initial notice with a metes and bounds description, at which time a special court can determine whether the annexation is supported by a majority of voters or

² A recent [example](#) of the procedure can be seen from the Town of Leesburg's initially contested annexation of land in Loudoun County, which subsequently ended with a voluntary settlement.

landowners. *Id.* If the area sought to be annexed consists of two or more non-contiguous tracts, the 51 percent requirement must be met for each separate tract, rather than by the combined tracts. *Id.* (dismissing Commission proceeding where neither of two non-contiguous areas was supported by 51 percent of landowners).

The Commission must generally issue its report of findings and recommendations within six months, unless extensions are granted in accordance with Va. Code § 15.2-2907. One special court ruled, however, that the statutory deadline is not applicable to annexation proceedings initiated by voters or landowners. *Leonard, L.P. v. City of Bristol*, No. CL05-65 (Washington Cnty. Cir. Ct. Sept. 25, 2006) (copy available from editor or authors).

15-2.02(b) Court Review of Annexation Petitions

Following review by the Commission, the city, town, or citizens may petition the circuit court of the county for the annexation of the adjacent county territory. Before filing with the court, the city or town must serve on appropriate county officials an annexation ordinance adopted by the municipality, which must contain a metes and bounds description of the area sought to be annexed, land use information, and a statement of the terms and conditions upon which the annexation is proposed. The annexation ordinance and a notice must be published once a week for four successive weeks. Va. Code § 15.2-3204. The Code includes a liberal provision for the intervention of other affected parties. Va. Code § 15.2-3205. The special court hears the annexation matter, and no judge may be appointed to hear a matter involving jurisdictions in his own circuit. Va. Code § 15.2-3000.

Where citizens petition for annexation, there is some ambiguity in the statutory language regarding the timing of newspaper publication. One special court ruled that such notice published *prior* to the filing of the court petition, rather than *after* that date, meets the statutory requirements. *Leonard, L.P. v. City of Bristol*, No. CL05-65 (Washington Cnty. Cir. Ct. Sept. 25, 2006) (copy available from editor or authors).

If an annexation action is pending and a second petition is filed seeking annexation of the same territory or a portion thereof, the court must consolidate the cases and make a decision taking into account the interests of all parties. Va. Code § 15.2-3206.

Two grounds exist for a stay of the annexation court proceedings. First, a petition for total or partial county immunity filed in court after the commencement of the annexation action stays a city-initiated annexation proceeding until the court resolves the immunity issue, Va. Code § 15.2-3301, if the immunity suit was filed within the time limit for the filing of pleadings in the annexation case. A trial court has ruled that the filing of an immunity notice with the Commission constitutes the filing of the immunity suit so as to require a stay of annexation proceedings. *City of Petersburg v. Prince George Cnty.* (Prince George Cnty. Cir. Ct. Dec. 29, 1986). Second, the filing with the Commission of a “notice to negotiate” also stays court proceedings while settlement negotiations are in progress between the city or town and the county. Va. Code § 15.2-2907(E).

The annexation court conducts an evidentiary hearing and may direct any state agency, in addition to the Commission, to present evidence. Va. Code § 15.2-3208. While an annexation court must render a written opinion, Va. Code § 15.2-3209, it is not required to prepare an “exhaustive analysis” of the statutory factors to be considered in determining whether an annexation should be awarded. *City of Hopewell v. Cnty. of Prince George*, 239 Va. 287, 389 S.E.2d 685 (1990).

15-2.02(c) Rejection of Court’s Decision by City

A city or town has the right to reject an annexation order, with court approval, if it adopts the ordinance requesting such action within twenty-one days after entry of the annexation

order, within twenty-one days after denial of a petition for appeal, or within twenty-one days after entry of the mandate in an appeal which has been granted. Va. Code § 15.2-3213. In such case, the city or town pays the entire cost of the proceedings, including reimbursement of the county's costs of defending the suit, which include reasonable attorneys' fees, engineering fees, witness fees, and other costs determined by the court. *Id.* In addition, a city or town possesses an absolute right to reject an annexation order that results from a citizens' suit brought under § 15.2-3203.

15-2.02(d) Enforcement of an Annexation Order

If the court grants annexation, the court remains in existence for ten years from the effective date of its annexation order. The court may be reconvened to enforce the terms and conditions of the annexation either on its own motion, at the request of the county or city, or on a petition by a specified number of voters or property owners in the area annexed. In its discretion, the court may award attorney's fees to the party moving to enforce the annexation order. Va. Code § 15.2-3217.

Alternatively, a resident can institute a mandamus proceeding to compel a city or town to comply with the terms of the annexation. In *Town of Front Royal v. Front Royal & Warren County Industrial Park Corp.*, 248 Va. 581, 449 S.E.2d 794 (1994), the original annexation decree provided that the town was required to construct water and sewer lines to a developer's property as they became necessary and economically feasible, but that they "shall be completed" within five years from the effective date of annexation. Five-and-a-half years later, a reconvened annexation court held that the town was in substantial compliance with the original decree based on the town's presentation of plans for a limited sewer extension. On appeal, the Supreme Court held that the original annexation decree imposed a ministerial duty to construct the sewer lines to all lots and that any different conclusion by the reconvened annexation court was invalid, because the reconvened court's powers under Va. Code § 15.2-3217 were limited to enforcement of the original terms and conditions and the court had no power to reconsider its prior orders. The Court held that a writ of mandamus should be issued to compel the town to install the utility lines.

A mandamus proceeding to enforce an annexation court order is subject to a statute of limitations, but the applicable limitations period is not clear. In *C. Givens Brothers, L.L.C. v. Town of Blacksburg*, 273 Va. 281, 641 S.E.2d 113 (2007), a landowner complained about Blacksburg's failure to install certain sewer lines in an area annexed pursuant to a 1970 court order. The mandamus suit was not filed, however, until thirty-five years later. Rejecting the landowner's argument that no statute of limitations is applicable to a mandamus action seeking equitable relief rather than a monetary payment, the Supreme Court held that the nature of the relief sought makes no difference. The trial court ruled that the five-year statute of limitations for injuries to property was applicable to a mandamus proceeding. The Supreme Court declined to decide whether a two-year, three-year, or five-year statute of limitations was applicable, because the suit was not timely under any of those periods. The Court also found it unnecessary to determine precisely when the landowner's cause of action accrued. Ruling that the cause of action accrued, at the latest, upon the town's enactment of a 1985 ordinance declaring that its annexation obligations had been satisfied, the Court affirmed the trial court's decision that the landowner's petition was barred by the statute of limitations when it was filed twenty years later.

The annexation decree in *Town of Front Royal* spawned eleven years of litigation in federal court. In addition to seeking mandamus relief, the developer filed a § 1983 suit in federal court, alleging that the town's failure to extend sewer lines, as required by the annexation order, constituted a "regulatory taking" in violation of the Fifth Amendment to the U.S. Constitution, a denial of the developer's substantive due process rights, and a

denial of the equal protection clause of the Fourteenth Amendment. *Front Royal & Warren Cnty. Indus. Park Corp. v. Town of Front Royal*, 922 F. Supp. 1131 (W.D. Va. 1996). The Fourth Circuit, however, disagreed and reversed the district court order that had awarded the developer damages of \$359,441 and attorney's fees of \$105,317. *Front Royal & Warren Cnty. Indus. Park Corp. v. Town of Front Royal*, 135 F.3d 275 (4th Cir. 1998). The appellate court held that a regulatory taking had not occurred because the town's failure to install the sewer lines did not deprive the developer of "all economic value or even close to that." *Id.* (emphasis added). Based on the record, the diminution in value was, at most, only 50 percent of the fair market value of the property.

Moreover, no substantive due process claim existed, according to the Fourth Circuit, because such a constitutional claim required a showing that the state courts were not capable of rectifying the "Town's dereliction." Because Virginia law authorized a mandamus proceeding to remedy the violation of the annexation decree, there was no violation of substantive due process rights. Finally, the Fourth Circuit rejected the equal protection claim. Although the town was required to extend sewer service by order of the annexation court, the Fourth Circuit ruled that the pertinent question was whether Town officials "reasonably could have believed that the action was rationally related to a legitimate governmental interest." Because Town officials could have believed that "garden-variety economic factors" justified their decision not to extend utility service to the developer's property, there was no equal protection violation.

By contrast, in *Mountain Venture Partnership Lovettsville II v. Town of Lovettsville*, 42 Va. Cir. 109 (Loudoun Cnty. 1997), the circuit court held that an annexation order did not impose a mandatory duty to provide water and sewer service. The language at issue stated that the town was required to "cause sanitary sewer and water service to be available to all residences and business establishments within . . . the area of annexation on the same basis and manner that such service is made available within the Town." Noting that the annexation order contained no direction to construct any specific facilities, or any time period in which to complete them, the Court held that the language was intended solely to prevent the town from discriminating against annexation area residents. It observed that water and sewer lines had not been extended to serve all the pre-annexation portions of the town.

As a general rule, a city or town may not seek to annex territory of a county within ten years after the effective date of an annexation or within ten years after the date of the final order denying an annexation, except by mutual agreement of the parties. Va. Code § 15.2-3227. This prohibition does not apply to citizen-initiated petitions for annexation commenced under Va. Code § 15.2-3203. See *Mowry v. City of Va. Beach*, 198 Va. 205, 93 S.E.2d 323 (1956).

15-2.03 Legal Standard for Annexation

15-2.03(a) General Principles

Virginia Code § 15.2-3209 directs the court to grant a petition for annexation if it finds that the annexation is "necessary" and "expedient." The question of necessity and expediency involves a consideration of "the best interests of the people of the county and the city or town, services to be rendered and needs of the people of the area proposed to be annexed, the best interests of the people in the remaining portion of the county and the best interests of the Commonwealth in promoting strong and viable units of government." Va. Code § 15.2-3209.

The city or town is not required to prove that the annexation will be in the best interests of the people of all the governmental units. Rather, a city or town must prove, on balance, the overall necessity for and expediency of annexation. *Cnty. of Rockingham v.*

City of Harrisonburg, 224 Va. 62, 294 S.E.2d 825 (1982); *Johnston v. Cnty. of Fairfax*, 211 Va. 378, 177 S.E.2d 606 (1970). No single factor controls in determining necessity and expediency. *Rockingham; Cnty. of Fairfax v. Town of Fairfax*, 201 Va. 362, 111 S.E.2d 428 (1959).

The Virginia Supreme Court has rejected the proposition that urban areas must be governed by cities or towns. See *City of Alexandria v. Cnty. of Fairfax*, 212 Va. 437, 184 S.E.2d 758 (1971). It has noted that provisions for total and partial county immunity are a legislative acknowledgment of that fact. *Rockingham*, 224 Va. 62, 294 S.E.2d 825 (1982). “[W]hen a county cannot qualify for immunity, it remains a matter of proof which local government can better serve an area proposed to be annexed.” *Id.*

15-2.03(b) Specific Statutory Factors

In considering the “best interests” of all citizens, the statute requires the court to consider the factors noted below. The list is not exclusive, and other factors may be taken into account:

1. The need for urban services in the area proposed for annexation, the level of services provided in the county, city, or town, and the ability of such county, city, or town to provide services in the area sought to be annexed, including but not limited to:
 - a. Sewage treatment;
 - b. Water;
 - c. Solid waste collection and disposal;
 - d. Public planning;
 - e. Subdivision regulation and zoning;
 - f. Crime prevention and detection;
 - g. Fire prevention and protection;
 - h. Public recreational facilities;
 - i. Library facilities;
 - j. Curbs, gutters, sidewalks, and storm drains;
 - k. Street lighting;
 - l. Snow removal; and
 - m. Street maintenance.
2. The current relative level of services provided by the county and the city or town.
3. The efforts by the county and the city or town to comply with applicable State policies with respect to environmental protection, public planning, education, public transportation, housing, or other State service policies promulgated by the General Assembly.
4. The community of interest that may exist between the petitioner, the territory sought to be annexed, and its citizens as well as the community of interest that exists between such area and its citizens and the county. The term “community of interest” may include, but not be limited to, the consideration of natural neighborhoods, natural and man-made boundaries, and the similarity of needs of the people of the annexing area and the area sought to be annexed.
5. Any arbitrary prior refusal by the governing body of the petitioner or the county whose territory is sought to be annexed to enter into cooperative agreements providing for joint activities which would have benefited

citizens of both political subdivisions; however, the court shall draw no adverse inference from joint activities undertaken and implemented pursuant to cooperative agreements of the parties.

6. The need for the city or town seeking to annex to expand its tax resources, including its real estate and personal property tax base.
7. The need for the city or town seeking to annex to obtain land for industrial or commercial use, together with the adverse effect on a county of the loss of areas suitable and developable for industrial or commercial uses.
8. The adverse effect of the loss of tax resources and public facilities on the ability of the county to provide service to the people in the remaining portion of the county.
9. The adverse impact on agricultural operations in the area proposed for annexation.

Va. Code § 15.2-3209. The services listed in Va. Code § 15.2-3209 are those that the legislature believes typical urban areas need and that typical urban governments should provide. *See Cnty. of Rockingham v. City of Harrisonburg*, 224 Va. 62, 294 S.E.2d 825 (1982)

One of the factors in Va. Code § 15.2-3209 is the need of a city or town to expand its tax resources. Nevertheless, the Supreme Court has held that a city's present economic well-being is not a bar to annexation. In fact, an annexation may be denied where a city is financially weak and, therefore, might be unable to bear the burden of providing urban services to an increased area. *Rockingham, supra* (upholding trial court finding of the city's need to expand its tax resources where evidence showed the city was "approaching the point of fiscal stasis" and would "soon need a larger tax base"). *See Town of Big Stone Gap v. Wise Cnty.*, No. L03-19 (Wise Cnty. Cir. Ct. Dec. 8, 2003) (special court) (denying annexation where town lacked "financial strength" to provide urban services, which would result in "deficits to the [t]own" and a "drain on . . . [its] already strained financial resources"). The annexation court may consider whether a city's need to expand its tax resources has been caused by its own actions and can be corrected by managing its affairs more efficiently or by developing vacant land within its boundaries. *City of Hopewell v. Cnty. of Prince George*, 240 Va. 306, 397 S.E.2d 793 (1990).

With respect to the factor dealing with intergovernmental cooperation, the Supreme Court has held that "noncooperative" actions of a local government, if prompted by a "reasonable perception of legitimate self-interest," are not arbitrary. *Rockingham, supra*. In evaluating the ability of a municipality and a county to provide urban services, a court may not draw inferences adverse to either locality from the mere existence of cooperative agreements to provide services. Adverse inferences with respect to the delivery of services, however, may legitimately be based on a comparison of localities' past delivery of services and their capacity to provide additional services to meet future needs. *Id.* The Supreme Court has also directed that cooperative activities should be disregarded in considering the community of interest element in Va. Code § 15.2-3209.

The adverse effect on the county of the loss of tax resources and public facilities is a specific consideration under the statute. The size, wealth, and population of a county relative to other counties in the state are relevant in judging the impact of a proposed annexation. *City of Hopewell v. Cnty. of Prince George*, 240 Va. 306, 397 S.E.2d 793 (1990). The Commission has ruled that, in town annexation proceedings, there is no "legal or

practical basis” for considering the impact on the county of a possible future transition to city status by the annexing town if the annexation request is granted. See [Commission Report on the Town of Christiansburg-County of Montgomery Annexation Action](#) (Feb. 1987).

15-2.03(c) Other Statutory Limitations

As an additional requirement before awarding an annexation, the court must be satisfied that the city or town has substantially complied with the conditions of the last preceding annexation. Va. Code § 15.2-3209. Alternatively, this condition is met if the court finds that compliance with the decree was impossible or that sufficient time for compliance has not elapsed. *Id.*

Other limitations on annexation also exist. No annexation is allowed if the area remaining in the county after annexation would be less than sixty square miles, excluding property owned by the United States, or the remaining county would be insufficient in area, population, or sources of revenue adequately to support county government and schools. Va. Code § 15.2-3228. If either of those circumstances is present, an annexation of the whole county could be decreed, if the necessity and expediency standard is otherwise met. *Id.* A town may be annexed by a city only if the whole town is annexed. Va. Code § 15.2-3229.

15-2.04 Terms and Conditions of Annexation

Virginia Code § 15.2-3211 states that “[t]he special court, in making its decision, shall balance the equities in the case, shall enter an order setting forth what it deems fair and reasonable terms and conditions and shall direct the annexation in conformity therewith.” This provision further states that the court has the power to order seven different types of terms and conditions as part of its annexation order. In *Town of Christiansburg v. Montgomery County*, 216 Va. 654, 222 S.E.2d 513 (1976), the Supreme Court held that the broad language authorizing fair and reasonable terms was limited, with respect to financial adjustments, by the language granting the seven specific powers, which will be discussed below.

The Court has the power:

1. To determine the metes and bounds of the area to be annexed, including a greater or smaller area than that described in the ordinance or petition. The court shall draw the lines of annexation so as to have a reasonably compact body of land, and no land shall be taken into the city which is not adapted to city improvements, or which the city will not need in the reasonably near future for development, unless necessarily embraced in such compact body of land. Va. Code § 15.2-3211(1).
2. To require the assumption by the city or town of a just proportion of any existing debt of the county or any district therein. Va. Code § 15.2-3211(2).
3. To require the payment by the city of a sum to be determined by the court to compensate the county for the value of permanent public improvements owned and maintained by the county at the time of annexation; and further to compensate the county in not more than five annual installments for prospective loss of net tax revenues during the next five years, to such extent as the court in its discretion may determine, because of annexation of taxable values to the city. Va. Code § 15.2-3211(3).

4. To require the payment by a town of a sum to be determined by the court to compensate the county for any public improvements which become the property of the town by annexation; provided, that the order may provide that if, within five years after the order, such town becomes a city, it shall, from and after it becomes a city, make such payments as are provided for in paragraph (c) for a period not to exceed five years from the date of such order. Va. Code § 15.2-3211(4).
5. In lieu of providing for compensation of the county for any public improvement, to provide that any such improvement shall remain the property of the county, or to provide for joint use thereof by the county and city or town under such conditions as the court may prescribe with consent of the governing bodies affected. Va. Code § 15.2-3211(5).
6. To prescribe what capital outlays shall be made by the city in the area after annexation. Va. Code. § 15.2-3211(6).
7. To require the payment by the city or town to any common carrier of passengers by motor bus for business injury caused by the annexation. Va. Code § 15.2-3211(7).
8. To include terms and conditions to protect agricultural operations in the annexed area, including the rights provided for in the Right to Farm Act, Va. Code §§ 3.2-300 et seq. Va. Code § 15.2-3209(9).

The usual practice of annexation trial courts has been to find that a just proportion of debt equals the proportion of a county's assessed property values (or only assessed real property values) contained within the area annexed. The Commission has recommended, however, that the amount of debt to be assumed should equal the percentage of a county's total local tax revenue generated within the annexed area. [Commission Report on the Financial Settlement Provisions of the City of Waynesboro-County of Augusta Annexation Action](#) (Aug. 1983). The Commission commented that it is the county's revenue from all sources that is used to retire its debt.

The Commission has also found that a county's unfunded past service liability to the Virginia Supplemental Retirement System is not a "current debt owed." It has recommended that such potential expense not be considered part of a county's existing debt. *Id.*

With respect to revenue compensation payments, the term "tax revenues" refers to money the county collects from taxes it levies on assets, transactions, and privileges within its taxing jurisdiction and does not include state and federal funds, except for state sales tax receipts. *Cnty. of Rockingham v. City of Harrisonburg*, 224 Va. 62, 294 S.E.2d 825 (1982). The term "loss of net tax revenues" means the loss measured by the difference between a county's loss of "tax revenues" and the amount of budgetary expenditures that annexation saves a county. *Id.*

The customary practice of annexation trial courts has been to order the city to make five annual payments to the county in equal amounts to compensate it for lost revenue. *But see* [Commission Report on the Financial Settlement Provisions of the City of Waynesboro-County of Augusta Annexation Action](#) (Aug. 1983); [Commission Report on the City of Petersburg-County of Prince George and City of Hopewell-County of Prince George Annexation Actions](#) (June 1986) (recommending that the city be required to pay on or before June 30 following the effective date of annexation a sum equal to the base-year revenue loss multiplied by five, or alternatively, five annual payments adjusted yearly by changes in the implicit price deflator for state and local government purchases of goods and services).

The court is not authorized to order such net tax revenue payments in town annexation proceedings. *Town of Christiansburg v. Montgomery Cnty.*, 216 Va. 654, 222 S.E.2d 513 (1976).

With respect to payments for public improvements that become the property of the city or the town, the court is to take into consideration the original cost less depreciation, reproduction cost less depreciation, and present value. Va. Code § 15.2-3212. Where an annexation court orders a city to make payments for school facilities owned by the county school board, such compensation is paid to the county, not the county school board, and is available, as part of the county's general revenue fund, for appropriation for any purpose by the board of supervisors. See 1986–87 Op. Va. Att'y Gen. 93.

Annexation orders are effective at midnight on December 31 of the year in which they are issued or of the following year. On the joint motion of the parties, the court may direct that the annexation be effective at midnight of any other date. Va. Code § 15.2-3209. The county cannot, between the entry of the annexation order and its effective date, make or contract for any permanent public improvements to be paid for by the city or town, without the consent of the city or town. Va. Code § 15.2-3212.

All taxes in the annexation area for the year at the end of which the annexation becomes effective and for all prior years must be paid to the county. Va. Code § 15.2-3209. For example, prior to annexation a parcel of land may have been assessed on the basis of its "use value" under the county's land use assessment ordinance. If a change in use subjects the property to roll-back taxes following annexation, the city may not collect such taxes for the years when the land was under county jurisdiction. Va. Code § 58.1-3237(F).

Where an annexing city has, by ordinance, provided for the imposition of taxes on a fiscal year basis of July 1 to June 30, the question has arisen whether it may levy taxes in the annexed area for the six-month period following the effective date of the boundary change on January 1, or six months after the beginning of its tax year. Article X, § 1 of the Virginia Constitution requires that all real estate and personal property be taxed and that uniform taxes be imposed upon the same class of property in a taxing jurisdiction. Therefore, the Attorney General has advised that, in such circumstances, the annexing municipality not only has the power to collect taxes within the annexation area from January 1 to June 30, but must do so. 1985–86 Op. Va. Att'y Gen. 257.

Whether the Attorney General reached the correct conclusion is uncertain in light of dictum in a subsequent case involving a transition of a city to town status. In *Alderson v. County of Alleghany*, 266 Va. 333, 585 S.E.2d 795 (2003), the Supreme Court considered special legislation that addressed the imposition of county personal property taxes, where the former City of Clifton Forge became a town within Alleghany County on July 1, 2001, which was the middle of the county's tax year. The Court commented that, in the absence of special legislation, the taxpayers brought within the county by a transition to town status would not have been subject to personal property taxation, because that change in the county's territory did not occur until six months after its "tax day." *Id.*

Pursuant to Va. Code § 15.2-3219, an annexing city or town may, by ordinance, allow a lower rate of taxation to be imposed upon annexation area property than is imposed on similar property already within that city or town. The lower rate must be based on "differences between nonrevenue-producing governmental services giving land urban character which are furnished in the area added as compared to other areas in the city or town." This provision for reduced taxation may be extended up to ten years after the effective date of annexation.

A final requirement of an annexation award is the holding of a special election. Notwithstanding other Code provisions, an election for members of the city or town council must be held on the first Tuesday in May following the effective date of annexation unless the annexation increases the municipality's population by only 5 percent or less.³ Va. Code § 15.2-3226. Alternatively, the special election may be held on the Tuesday after the first Monday in November, upon the approval of the court and the affected governing bodies. *Id.* If council members are chosen from districts, then the election must be held only for those districts affected by the annexation. If members are chosen at large, then the election is held for the unexpired portion of the term of each council member whose term extends beyond July 1 immediately following the effective date of annexation. If the members of the city or town council serve staggered terms, candidates for unexpired terms must declare whether they seek a shorter or longer unexpired term. See 1981–82 Op. Va. Att'y Gen. 16; 1978–79 Op. Va. Att'y Gen. 94.

Any annexation, as well as related changes in election districts or terms of office, formerly required federal preclearance under Section 5 of the federal Voting Rights Act. 28 C.F.R. § 51.13. In the event a city or town failed to obtain such approval of the annexation or redistricting plan, the voters within the annexed areas were barred from participating in the municipal election. See *Halifax Voting Decision Confirmed*, *Gazette-Virginian*, Apr. 24, 2000 (county residents annexed during 1999 boundary adjustment barred from voting in May 2000 town election where Attorney General had not precleared new redistricting plan prior to election). However, as a result of the decision in *Shelby County v. Holder*, 570 U.S. 529, 133 S. Ct. 2612 (2013), the United States Supreme Court has effectively suspended the preclearance requirement until Congress updates the coverage formula that determines which states and localities must satisfy Section 5 of the Voting Rights Act. See Chapter 16, Legislative Redistricting and Voting Rights Act Preclearance, at section 16-3.

As a matter of state law, however, a change to a locality's election districts or wards and certain changes to the locality's boundaries require notice and comment or the Virginia Attorney General's preclearance under the Virginia Voting Rights Act enacted in 2021. 2021 Va. Acts chs. 528 & 533 (special session I) (adding Va. Code § 24.2-129). Among other provisions, the Virginia Voting Rights Act requires localities, prior to the enactment or administration of any "covered practice," to provide notice and allow at least thirty days for public comment, Va. Code § 24.2-129(B), (C), or, instead, submit the proposed "covered practice" to the Virginia Attorney General's Office for a certification of no objection. Va. Code § 24.2-129(D). The statute defines a "covered practice" to include, among other things, any change to the boundaries of a locality's election districts or wards, *e.g.*, Va. Code § 24.2-129(A)(3), as well as any change (or series of changes) to a locality's boundaries that reduces by more than five percentage points the proportion of the locality's voting age population that is composed of members of a single racial or language minority group, *e.g.*, Va. Code § 24.2-129(A)(2). If the locality elects the procedure for notice and public comment, any person who will be subject to or affected by the covered practice can challenge it in circuit court during a thirty-day waiting period after the public comment period. Va. Code § 24.2-129(C). The court may award attorney's fees to a prevailing private plaintiff. *Id.* If the locality elects to preclear through the Attorney General's Office, the

³ The interplay between this provision and a 2021 statutory amendment that provides that a special election must be held at the time of the November general election is unclear. See 2021 Va. Acts ch. 103 (special session I) (adding Va. Code § 15.2-1400(E)) ("Notwithstanding the provisions of §§ 24.2-222 and 24.2-222.1, any city or town charter, or any other provision of law, general or special, beginning with any election held after January 1, 2022, elections for mayor, members of a local governing body, or members of an elected school board shall be held at the time of the November general election for terms to commence January 1.") In 2021 and 2022, the General Assembly amended a number of municipal charters to reflect the shift from May to November elections.

certification of no objection will be deemed to have been issued if the Attorney General does not object within sixty days of the submission, or the Attorney General may affirmatively certify on good cause shown to facilitate an expedited approval within that sixty-day period. Va. Code § 24.2-129(D). However, in either case, the Attorney General's certification does not bar a later action to enjoin enforcement of the covered practice. *Id.*

15-3 DEANNEXATION

15-3.01 Overview

Chapter 32, Article 3 of Title 15.2 of the Code of Virginia (Va. Code §§ 15.2-3236 through 15.2-3244) authorizes the council of any city or town, under certain circumstances, to contract its corporate limits and thereby cause certain land areas to revert to part of the unincorporated area of the county.

This procedure has rarely been used by cities and towns in Virginia. However, on occasion, it has been employed to, for example, shift financial responsibility for expensive bridge improvements from a town to the Virginia Department of Transportation.

15-3.02 Procedures

The council of a city or town may adopt an ordinance describing an area which it proposes to deannex. Within thirty days after the enactment of the ordinance and following newspaper publication, the city or town must apply to the circuit court for an order granting the contraction of the corporate limits. Va. Code §§ 15.2-3236, 15.2-3237. A special court is appointed to hear the petition, and the residents of the territory proposed for deannexation or the governing body of the county may intervene in the proceeding. *Id.*

If the court finds that the city or town has met the required legal standard, it will enter an order contracting the limits of the city or town. Va. Code § 15.2-3238. The court order granting or denying the petition may be appealed to the Court of Appeals. Va. Code § 15.2-3244.

In general, a deannexation proceeding can be initiated only by the city or town council. Efforts at the General Assembly to authorize voters or landowners to petition for deannexation have not been successful. For example, Senate Bill 136, which would have granted such a right, was rejected at the 1998 Session of the General Assembly. There is a limited circumstance in which citizens can initiate a deannexation proceeding: [w]here a town is located partially in one county and partially in another county, citizens within an area proposed for deannexation may petition the court for a contraction of town boundaries. Va. Code § 15.2-3241. The petition must be signed by a majority of the voters residing in that part of the town proposed for deannexation. The petition is then heard by a special court.

15-3.03 Legal Standard for Deannexation

A city or town council petitioning for deannexation must present evidence demonstrating to a special court that the following criteria have been met:

1. The deannexation will not cause the city or town debt to exceed 10 percent of the assessed valuation of real estate remaining in the municipality;
2. Less than three-fourths of the landowners in the deannexation area are opposed to the contraction of boundaries;
3. No "substantial damage" to property owners or to the county will be caused by the change in boundaries; and

4. The contraction of the corporate limits will be in the best interests of the city or town.

Va. Code § 15.2-3238.

A slightly different legal standard is applicable to a petition filed by citizens in a town lying partially within one county and partially within another county. In that situation, the court must be satisfied that the deannexation will be in the best interests of a majority of the people in the territory proposed to be deannexed and that the “general good of the community will not be materially affected.” Va. Code § 15.2-3243.

15-3.04 Terms and Conditions of Deannexation

Upon entry of the order granting the deannexation, the “abandoned territory” becomes part of the adjoining county. The statutes contain no express authority for the special court to impose other terms in granting a petition by a city or town council, as is the case in a city or town annexation action. However, in hearing a petition by voters in a town lying partially within one county and partially within another, the court has authority to impose “just and equitable” terms regarding the disposition of the property of the town and as to “the payment of any debts or obligations of the town as between the county and the inhabitants of the town.” Va. Code § 15.2-3243.

15-4 IMMUNITY

15-4.01 Overview

Enacted in 1979, Chapter 33 of Title 15.2 of the Code of Virginia (§§ 15.2-3300 through 15.2-3308) provides a procedure for counties to obtain immunity from city-initiated annexations and from the incorporation of new cities within their boundaries. Certain counties can obtain immunity for all territory within their boundaries based on population and density criteria. Counties may also seek immunity for portions of their territory based generally on the availability of urban-type services.

The moratorium on city-initiated annexations also encompasses county suits for immunity from annexation. Until July 1, 2032, or the July 1 following any biennium during which the General Assembly fails to appropriate the total amount of money for local police departments required by Va. Code § 9.1-169 (except for the biennia from 1998 through 2032), whichever occurs first, Va. Code § 15.2-3201 prohibits the filing of any immunity suit before the Commission or in court. As a result of the moratorium, there has been no immunity suit since 1987, when the General Assembly adopted that statutory restriction.

15-4.02 Total Immunity Actions

15-4.02(a) Procedure in Total Immunity Actions

To obtain a grant of total immunity, a county adopts an immunity ordinance and petitions the circuit court of the county for an order granting it such immunity. Va. Code § 15.2-3301. A review by the Commission is not required. The court that hears the matter consists of a single judge rather than a panel of three circuit court judges. Va. Code § 15.2-3302.

15-4.02(b) Standard for Total Immunity

A county is entitled to total immunity if it meets either of the following two sets of criteria:

1. It has a total population at the time of filing of at least 20,000, and a population density of at least 300 persons per square mile; or
2. It has a total population at the time of filing of at least 50,000, and a population density of at least 140 persons per square mile.

Va. Code § 15.2-3302. The population figures are based on the latest United States Census, on the latest population estimates of the Center for Public Service, or on a special census conducted under court supervision. *Id.*

The county may elect, in making the determination of density, to exclude from consideration the area within its boundaries which is owned by the federal and state governments and the area covered by bodies of water of forty acres or more in size. Any county residents in such areas must also be excluded. *Id.*

15-4.03 Partial Immunity Actions

15-4.03(a) Procedures in Partial Immunity Actions

To obtain partial immunity, a county must adopt an immunity ordinance designating the area or areas proposed for immunity. Prior to filing partial immunity court proceedings, the county must notify the Commission of the proposed partial immunity request. The Commission then holds hearings, makes investigations, analyzes local needs, makes findings of fact, and issues recommendations as to the proposed grant of immunity. Va. Code §§ 15.2-2907 and 15.2-3304. Following the Commission review, the county petitions the circuit court of the county for an order declaring such areas immune. Va. Code § 15.2-3304. A special court hears the matter, Va. Code § 15.2-3000, and “[a]ny city or town adjoining or within the county, or the parts proposed for immunity” must be made parties. Va. Code § 15.2-3304. The court in these cases may limit evidence to the kinds of services considered by the Commission. It may also award immunity to a greater or smaller area than that for which immunity was sought. *Id.* There is no statutory requirement that the court write an opinion that gives an “exhaustive analysis” of the statutory factors. *City of Hopewell v. Cnty. of Prince George*, 239 Va. 287, 389 S.E.2d 685 (1990).

If a county petitions for total or partial county immunity after the institution of city-initiated annexation proceedings and prior to the time for filing pleadings in such actions, then such annexation court action is stayed until the immunity court determines the petition for immunity. Va. Code § 15.2-3301. If county immunity is granted, all suits are dismissed; if not, all stays are dissolved, and the annexation action goes forward. Va. Code § 15.2-3303.

If the county, city, or town notifies the Commission of a desire to negotiate an annexation or partial immunity action, all suits with respect to the localities involved in such negotiations are stayed while the negotiations are in progress, subject to certain limitations. Va. Code § 15.2-2907(E).

15-4.03(b) Standard for Partial Immunity

A county is eligible for partial immunity if a court finds (1) that the county has appropriate urban-type services in the areas proposed for immunity comparable to the type and level furnished in the city from which the county seeks immunity and (2) that other conditions in the statute are satisfied. Va. Code § 15.2-3304.

With respect to the provision of urban services, the county is credited with services provided by cooperative agreement between the county and the city, but not with services provided directly by the city with no such agreement. Va. Code § 15.2-3304. The General Assembly directed that counties be credited with such services provided by means of a cooperative agreement because of a desire to promote cooperation between counties and cities. *City of Hopewell v. Cnty. of Prince George*, 239 Va. 287, 389 S.E.2d 685 (1990).

The Virginia Supreme Court has ruled that a county itself need not be “the” provider of such urban-type services, because the statute focuses on “the existence of particular urban services “in” the County, not the source of such services.” *City of Hopewell, supra*. In

City of Hopewell, the Court rejected the argument that an area in Prince George County containing a United States Army facility did not qualify for immunity where urban-type services were provided mainly by the federal government.

An area of a county has appropriate and comparable urban services, the Commission has concluded, where there is “current availability of an administrative structure and matrix of services suitable for addressing the range of needs of urban communities.” See Commission Report on the County of Augusta Partial Immunity Action at 17 (Dec. 1982). To be comparable, these services must “approximate those within the municipality.” *Id.* The list of services contained in the annexation law, Va. Code § 15.2-3209, is to be used as a guide by the court. Va. Code § 15.2-3304.

In considering partial immunity petitions, the court must also consider the following:

1. Whether the county has made efforts to comply with applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies;
2. Whether a community of interest exists between that part of the county for which immunity is sought and the remainder of the county that is greater than between that part of the county and the adjoining city; and
3. Whether either party has arbitrarily refused to cooperate in the joint provision of services.

Id. Finally, even if those elements are satisfied, the court may not grant partial immunity if it would “substantially foreclose” a city from expanding its boundaries by annexation. This limitation applies only to cities with a population of less than 100,000. *Id.* The Commission’s Augusta Report also addressed this consideration. There, the Commission stated that cities should be permitted an “opportunity to extend their boundaries in a manner which permits them to share reasonably in the population and economic growth of their general areas.” Augusta Report at 122-23. In this regard, “legal and pragmatic impediments” which restrain annexation of the remaining area are pertinent. *Id.* In *City of Hopewell*, the Supreme Court ruled that where 47 percent, or 7.92 miles, of a city’s boundary remained open for annexation, there was no substantial foreclosure. *Id.*

15-4.03(c) Effect of Immunity

A grant of immunity bars any future city-initiated annexation and the incorporation of any new cities. Va. Code § 15.2-3301. However, town-initiated annexations and annexations initiated by voters or landowners under § 15.2-3203 are not barred. Va. Code § 15.2-3306. Also, certain towns retain a right to initiate a proceeding to obtain city status despite a grant of immunity. Va. Code § 15.2-3306. See Transition of Towns to Cities, section 15-9. Finally, the grant of immunity is permanent. Va. Code § 15.2-3305.

Multiple localities entitled to total immunity under Va. Code § 15.2-3302 obtained a judgment barring city-initiated annexations within the first few years after the procedure was enacted in 1979. Very few counties, however, have since sought to obtain partial immunity, primarily because of the ongoing annexation moratorium.

15-5 RELOCATION OF BOUNDARY LINES BY AGREEMENT

15-5.01 General Scope

Chapter 31, Article 2 of Title 15.2 of the Code of Virginia (Va. Code §§ 15.2-3106 through 15.2-3109) authorizes boundary line adjustments between political subdivisions by

agreement. Any two or more localities may agree to relocate the boundary between them. This statutory procedure provides a simple and inexpensive means of quickly altering the boundaries of localities. Since 1980, it has been used much more frequently than any of the other methods of changing boundaries.

Virginia Code § 15.2-3106 authorizes localities to agree to a relocation of their boundary line whenever they “wish” to do so. No express restrictions exist in the statute as to the basis for such an agreement, and no express limitation exists as to the quantity of land that can be involved. Under an earlier version of the Code section, the Attorney General’s Office informally opined that any basis for the boundary change will be sufficient if it is not unreasonable, arbitrary, capricious, or otherwise contrary to law. See Va. Attorney General Opinion to A. Dow Owens (July 10, 1981) (unreported). There is, however, one significant limitation to this procedure. The statute does not contain any language authorizing the parties to include any terms other than the relocation of the boundary line itself. As a result, at least one court has rejected a boundary adjustment agreement, which included additional terms regarding rezoning of the area to be annexed and the conveyance of certain land to the town. *In re Change of Boundary Between the Town of Leesburg and Loudoun Cnty*, 20 Va. Cir. 297 (Loudoun Cnty. 1990) (finding that parties’ request for approval of such an agreement should be heard by means of the “voluntary settlement” procedure in Va. Code § 15.2-3400).⁴

This procedure is often used for minor and incidental changes in boundary lines. Its original language, in fact, contained references to “minor adjustment” in the statutory heading. 1979 Va. Acts ch. 85. A 1997 amendment to this heading eliminated the reference to “minor” adjustments. 1997 Va. Acts ch. 587. A 1983 amendment also modified the text of the statute by adding the phrase “relocate or change such” in place of “and locate the true” boundary. 1983 Va. Acts ch. 594. These changes were clearly intended to permit localities to use the boundary relocation provisions, to some extent, in lieu of the traditional annexation procedure in Va. Code § 15.2-3200 et seq., as well as the voluntary settlement procedure in Va. Code § 15.2-3400.

Although the boundary change statute has been used in dozens of instances around the Commonwealth, its applicability to a major redrawing of the boundaries of localities has been questioned in a few cases. For example, a trial court rejected a boundary adjustment agreement between the Town of Blackstone and the County of Nottoway, which would have increased the area of the town from 2.03 square miles to 5.62 square miles. *In re Petition of Town of Blackstone & Cnty. of Nottoway* (Nottoway Cnty. Cir. Ct. May 29, 1991). The court ruled that, where a town undertakes to double its area, a “careful analysis of the town’s ability to absorb such a large quantity of land” is needed. Thus, it said that, rather than using the procedure in Va. Code § 15.2-3106, the parties should have followed the procedure for approving voluntary settlements contained in Va. Code § 15.2-3400. See section 15-12. The Virginia Supreme Court refused an appeal from the final judgment in that case.

By contrast, landowners challenged the authority of the Town of Buchanan and the County of Botetourt to enter into a boundary change agreement that added about 900 acres to the town, which was then approximately the same size. *Wells v. Bd. of Sup’rs of Botetourt Cnty.*, No. 89-000-101 (Botetourt Cnty. Cir. Ct. Aug. 10, 1989). The trial court rejected the landowners’ argument that Va. Code § 15.2-3106 et seq. could not be used to double the

⁴ By contrast, rezoning land after annexation is permissible when it is authorized by ordinance, and in such a case the rezoning does not violate a property owner’s procedural due process rights. *Bragg Hill Corp. v. City of Fredericksburg*, 297 Va. 566, 831 S.E.2d 483 (2019).

size of the town, and the Virginia Supreme Court refused to grant an appeal from that judgment.

As amended in 1993, Va. Code § 15.2-3108 states that the trial court “shall” enter an order approving the boundary adjustment if the procedural requirements have been met and if the petition is “otherwise in proper order.” 1993 Va. Acts ch. 392. This revision may have been intended to negate the opinion of the trial court in *Town of Blackstone, supra*. Since then, the boundary adjustment procedure has been used, for example, to incorporate six square miles of territory into the Town of South Boston, thereby more than doubling the size of the town. *In re Petition of Town of South Boston & Halifax Cnty.* (Halifax Cnty. Cir. Ct. Dec. 31, 1997). Other courts have routinely used this procedure to incorporate large areas into towns.

The boundary adjustment statute does not contain a requirement that the new boundary line have a “reasonably compact body of land” as is required for a traditional annexation (see Va. Code § 15.2-3211). As a result, localities have greater flexibility in deciding what area will be incorporated than in a contested annexation case. In one case, a circuit court approved a so-called “flagpole” annexation, by which a 1.4-square-mile area was annexed to a town with the only connection to the existing corporate limits being a narrow corridor along a highway. *In re Petition of Town of Bluefield & Tazewell Cnty.*, No. CH05000269-00 (Tazewell Cnty. Cir. Ct. Oct. 11, 2005).

Chapter 31, Article 1 of Title 15.2 of the Code of Virginia (Va. Code §§ 15.2-3100 through 15.2-3105) establishes a procedure to resolve disputes between localities as to the “true boundary line” between them. This procedure does not involve changes made to localities’ boundaries, but rather a determination of where a boundary line is actually located. Therefore, it is beyond the scope of this chapter.

15-5.02 Procedure

Each locality proposing to enter into a boundary adjustment agreement must first hold a public hearing after publication of the agreement. Notice must be served (first class mail is sufficient) on affected landowners, and a representative of each governing body must execute an affidavit confirming that such notices were mailed. Va. Code § 15.2-3107. After the agreement has been approved, the parties must then jointly petition the circuit court of one of the affected jurisdictions and describe the reasons they desire to relocate the boundary. If at least one-third of affected landowners objects to the change, they may intervene in the court proceeding and show cause why the boundary should not be changed. After hearing evidence, the judge “shall” enter the appropriate order establishing the boundary line if the procedural steps have been met and the petition is otherwise in proper order. Va. Code § 15.2-3108. The order must include either a survey plat depicting the change in boundaries, a metes and bounds description of the new boundary line, or a Geographic Information System map that shows the new boundary. The “metes and bounds” do not have to include compass directions and precise distances, although it is customary to include such a survey description. In interpreting the meaning of “metes and bounds” in the contested annexation statutes, the Supreme Court has ruled that a description of a proposed annexation area does not require “literal engineers’ language” as long as it refers to readily understandable monuments such as railroad rights-of-way and public roads so that a non-engineer could follow the line with “reasonable certainty.” See *City of Suffolk v. Cnty. of Nansemond*, 212 Va. 1, 181 S.E.2d 621 (1971).

A single judge, not a special court, hears the evidence, and no review by the Commission is required. Va. Code §§ 15.2-2907(A), 15.2-3000.

Unlike a contested annexation pursuant to Va. Code § 15.2-3200 et seq., a change of boundaries accomplished pursuant to an agreement under Va. Code § 15.2-3106 apparently does not require the city or town to hold a special election for council members. See 1989 Op. Va. Att’y Gen. 60; 1985–86 Op. Va. Att’y Gen. 60. Virginia Code § 15.2-3226 expressly requires that a special election be held following the effective date of any contested annexation that increases a municipality’s population by more than 5 percent. Although a change of boundaries under Va. Code § 15.2-3106 involves an “annexation” of territory in a general sense, such an agreement is based on a separate statutory procedure which does not contain any special election requirement. By contrast, if a boundary adjustment is part of a “voluntary settlement” authorized under Va. Code § 15.2-3400, which is an alternate method of changing localities’ boundaries, then a special election must be held except where the increase in population is 5 percent or less. Va. Code § 15.2-3400(8).

15-5.03 Relocation by Partial Agreement

Two localities can also agree that a boundary change should be made so that public services in an area may be provided more efficiently. If they are unable to agree on the proper location of the new line, they can agree to have a court establish the new boundary. Va. Code § 15.2-3109.

To initiate this process, the localities must jointly petition the local circuit court for an order establishing the new boundary line. The matter is referred to a special court, which requests that the Commission hold a hearing and recommend a new boundary line. Va. Code § 15.2-3109(A).

In this process, the statute directs the court to establish a new boundary line which will promote the “more effective and more efficient provision of public services.” Va. Code § 15.2-3109(A). No specific limitation exists with respect to the land area that can be involved.

Notice of the court petition must be served on the property owners of the area “affected by the agreement,” who can intervene if they object to the change. Va. Code § 15.2-3109(B). The court hears evidence and enters an order establishing a new boundary line and sets forth the “terms for the transfer of territory.” Va. Code § 15.2-3109(A). This procedure has never been used, presumably because of the reluctance of localities to give the court broad discretion to determine a new boundary line.

15-6 TOWN/COUNTY ANNEXATION AGREEMENTS

15-6.01 Overview

Originally enacted in 1979, Chapter 32, Article 2 of the Code of Virginia (Va. Code §§ 15.2-3231 through 15.2-3235) authorizes “voluntary” and “involuntary” agreements between certain towns and counties by which the town permanently renounces its right to become a city but is permitted to annex at regular intervals merely by the adoption of an ordinance. Only towns in counties or parts of counties not immune from annexation may enter into such voluntary agreements. Va. Code § 15.2-3231.

In these statutes, the General Assembly has delegated, in one sense, greater authority to modify boundaries than in any other statutory procedure. Unlike all other methods, such a town/county agreement permits town boundaries to be altered without any judicial review of the agreement itself or subsequent ordinances incorporating territory. About fifteen of these agreements have been entered into since 1979.

15-6.02 Scope of Agreement

These statutes require that the agreement must provide that a town may annex at regular intervals by the adoption of an ordinance. Va. Code § 15.2-3231. They also state that the agreement must provide for an equitable sharing of resources and liabilities. *Id.* In various reports, the Commission has suggested that a town/county agreement under Va. Code § 15.2-3231 should include other provisions, such as the following:

1. A provision requiring the town to include in each subsequent annexation ordinance the types of information required in Va. Code § 15.2-3202 for a traditional annexation procedure;
2. A provision stating that the town will record the revenue derived from and expenses incurred on behalf of an annexed area and will endeavor to provide an equitable allocation of resources to both the former town and annexed areas; such calculations should be continued until the services and facilities committed to an area in an annexation ordinance have been provided;
3. A statement that the town shall not annex acreage which is principally and actively devoted to agricultural production unless such acreage is largely embraced by property appropriate for annexation; and
4. A provision stating that the town will not annex property with residences, commercial concerns, or industries which cannot be provided water and sewerage services, if needed or desired, within five years after annexation.

See, e.g., [Commission Report on Town of Kenbridge-County of Lunenburg Agreement Defining Annexation Rights](#) (Oct. 1981).

The exact scope of the terms that a town and county may include in such an agreement is uncertain, given the expansive language regarding the “orderly growth of the town” and the “equitable sharing of resources and liabilities.” In perhaps the most detailed agreement to date, the Town of Purcellville and Loudoun County used these statutes to give the town the right to annex 4.7 square miles of territory over a fifty-year period. In addition, they agreed to prepare and adopt a joint comprehensive plan that would address land planning and development activities within an “urban growth area,” including land uses, development densities, utilities, proffer guidelines, and the location of public facilities. The town and the county agreed that, once a joint plan was adopted, development “shall be in conformance” with the plan. See [Commission Report on Town of Purcellville-County of Loudoun Agreement Defining Annexation Rights](#) (Jan. 1994). Subsequently, the town and county each approved a joint comprehensive plan for the urban growth area, as required by the annexation agreement.

In *Board of Supervisors of Loudoun County v. Town of Purcellville*, 276 Va. 419, 666 S.E.2d 512 (2008), the Supreme Court considered the enforcement of certain provisions of the joint comprehensive plan (“Joint Plan”) that specified the location of schools and other public facilities. When the county school board proposed a new high school within the urban growth area, Purcellville argued that the school could not be constructed until the planning commissions of *both* the town and the county determined that the school would be in conformance with the Joint Plan. The town pointed to the language, quoted above, in the annexation agreement as well as Va. Code § 15.2-2232. That statute prohibits the construction of certain public facilities not shown on the comprehensive plan of a locality unless its planning commission has determined that the location and character of the facility

are substantially in accord with the locality's plan. Such a process is sometimes referred to as a "consistency review." The county argued that neither the applicable statutes nor the Annexation Agreement authorized the town to exercise a consistency review *outside* its boundaries. The trial court disagreed, holding that such statutory power had been granted and that the annexation agreement, by implication, gave the town the right to have its planning commission determine if the school was in conformance with the Joint Plan. The trial court ruled further, however, that no review by the town or the county was needed, because the approximate location of the school was shown on the Joint Plan.

On appeal, the Supreme Court reversed, holding that nothing in the Code of Virginia, the Annexation Agreement, or the Joint Plan clearly and unmistakably delegated to the town any extraterritorial power to decide whether the proposed high school conformed to the Joint Plan. In a confusing analysis, the Court ruled that the town lacked the power to review the school for consistency with the Joint Plan because such a "zoning determination" as to a facility to be located in the unincorporated area of the county remains exclusively in the hands of the *county* planning commission. Yet, at the same time, the Court emphasized that a consistency review under Va. Code § 15.2-2232 pertains "to the planning function and not zoning." *Id.* This apparent inconsistency in the Court's opinion might be explained by the fact that both the town and the county incorporated the comprehensive plan consistency review into their zoning ordinances, which provided for the issuance of a "commission permit." Hence, the Court may have treated the consistency review as a zoning determination for purposes of this case.

The Virginia Supreme Court also reversed the trial court's ruling that no consistency review at all was needed under these facts. Noting that the school board proposed to construct the high school two miles away from the location of the school site shown on the Joint Plan, the Court held that the proposed school was not a feature already shown on the Joint Plan. Therefore, the Court ruled that the county planning commission was required to make a consistency determination and implied that the planning commission was required to base its review on the parties' Joint Plan. *Id.* In sum, while the Court decided that the town had no right to make its own consistency determination, it suggested that the Joint Plan was binding on the county. However, it did not discuss whether the town had any remedy in the event the county planning commission erroneously concluded that the proposed school substantially conformed to the Joint Plan.

Curiously, in addressing the town's planning and zoning authority as to public facilities in the urban growth area, the Court in *Town of Purcellville* never discussed or even cited Va. Code § 15.2-3231, the applicable enabling statute that authorizes a town and a county to agree, among other things, upon provisions for the "orderly growth of the town." Nonetheless, to the extent the Court held that no statutory power exists for a town to make a zoning determination outside its boundaries, this decision casts doubt on the power of a town and a county to agree upon the joint exercise of *certain* planning and zoning powers in a town/county annexation agreement. The problem facing localities seeking to use this statutory procedure is that Va. Code § 15.2-3231 does not expressly authorize a town and a county to exercise such powers beyond their respective boundaries. By contrast, the General Assembly has specifically provided that "voluntary settlements" of annexation rights, authorized in Chapter 34 of Title 15.2 of the Code of Virginia (Va. code §§ 15.2-3400 through 15.2-3401), may include the "joint exercise or delegation" of powers, including land use and zoning "arrangements." See section 15-12. Courts reviewing such "voluntary settlements" under Chapter 34 have approved provisions by which a town or a county exercises planning or zoning powers outside its usual jurisdictional area.

15-6.03 Procedures for "Voluntary" Agreements

With respect to procedure, the town and county must agree on the terms of the proposed

agreement, which must then be presented to the Commission, which determines whether it meets the following three requirements set forth in Va. Code § 15.2-3232:

1. Does it provide for the orderly and regular growth of the town and county?
2. Does it provide for an equitable sharing of the resources and liabilities of the town and county?
3. Is it in the best interest of the community at large?

After the Commission's advisory review, the town and county may adopt the agreement. If the Commission's determination is unfavorable, the town and county may still adopt the agreement, but only if a public hearing is first conducted. Va. Code § 15.2-3233.

In *Brown v. Town of Purcellville*, No. 65478 (Loudoun Cnty. Cir. Ct. Apr. 28, 2011), a landowner challenged the validity of a town annexation authorized by a town/county agreement that had been adopted pursuant to Va. Code § 15.2-3231. Finding that the enabling legislation made no provision for private citizens to contest the implementation of such an agreement and that private citizens were not third-party beneficiaries of the agreement, the circuit court sustained the town's demurrer on the ground that the landowner lacked standing to contest the incorporation of his land into the town.

15-6.04 Procedures for "Involuntary" Agreements

If a town and county cannot voluntarily reach an agreement as to future annexation rights, the town may petition the Commission for an order establishing the rights of the town to annex territory periodically by ordinance. Va. Code § 15.2-3234. The county must be made a party to the proceeding, and any resident or property owner of either the county or the town may intervene.

The Commission "shall" enter an order granting future annexation rights to the town, based on the criteria in a contested annexation proceeding under Va. Code § 15.2-3234. The Commission can formulate its own terms and conditions for annexation or may adopt those set forth in the town's petition. It may not grant the town the right to annex by ordinance more frequently than once every five years. *Id.*

The Commission order becomes final unless the town or county or 5 percent of the registered voters of either locality petitions the court to review the order. Va. Code § 15.2-3235. In such cases, the special court reviews the Commission decision and enters "any order it deems appropriate." Va. Code §§ 15.2-3000, 15.2-3235.

Virginia Code § 15.2-3234 is a second method by which a town can seek annexation over a county's objection. Only one annexation proceeding has been initiated pursuant to this Code provision, and it was settled before the Commission had an opportunity to determine what annexation rights should be granted. This procedure has been used so rarely because of the ambiguities in the legal standard to be applied, both in terms of a town's entitlement to periodic annexation and the terms upon which such rights are granted.

15-6.05 Effect of Agreement

The adoption of the agreement by both governing bodies, or the entry of the Commission or court order granting future annexation rights, operates permanently to divest the town of its right to become a city. Va. Code §§ 15.2-3233, 15.2-3235.

15-7 INCORPORATION OF TOWNS BY JUDICIAL PROCEEDING

15-7.01 Procedures

Chapter 36 of Title 15.2 of the Code of Virginia (Va. Code §§ 15.2-3600 through 15.2-3605) authorizes the incorporation of new towns through a court proceeding. To institute such a proceeding, a petition signed by 100 qualified voters of any community must be filed in the circuit court of the county. It must request the incorporation of an area into a town as shown on a plat map attached to the petition. The petition must be served on appropriate county officials and published as required by law. Va. Code § 15.2-3600. A special court hears the petition, but it may request that the Commission initially review the proposed incorporation to determine if the criteria in Va. Code § 15.2-3602 have been satisfied. The county in which the area is located may, at its option, become a party to the Commission proceeding. Va. Code § 15.2-3601. The court, if it finds that the required standard for incorporation discussed below has been met, orders the incorporation of the town. Va. Code § 15.2-3602. It appears that only the Town of Newsoms, in Southampton County, has been incorporated under this procedure.

The approval of voters within the area proposed for incorporation is not required. At the General Assembly session following any incorporation, the town requests that the General Assembly grant it a charter, and until one is granted, the town must operate exclusively under the provisions of general law. Va. Code § 15.2-3603.

A new town can also be created directly by the General Assembly by the granting of a town charter that incorporates a particular community. For example, in 1991, the General Assembly created a Town of Castlewood in Russell County. 1991 Va. Acts ch. 399. That town had a short life, as its charter was annulled in 1997.

15-7.02 Standard for Incorporation

For a court to approve an incorporation, the petitioning voters must present evidence showing that the following seven factors have been satisfied:

1. The town status will be "in the interest of the inhabitants" within the area proposed for incorporation;
2. The request for incorporation is "reasonable";
3. The incorporation will promote the "general good" of the community;
4. The population within the area proposed for incorporation exceeds 1,000 persons;
5. The land area proposed for the town is not excessive;
6. The county within which the proposed town is located does not have a population density exceeding 200 persons per square mile; and
7. The "services required by the community cannot be provided by" a sanitary district, by the extension of existing services provided by the county, or by other arrangements provided by law.

Va. Code § 15.2-3602.

Since 1980, this statutory incorporation process has been used only one time. The Commission recommended against the incorporation of a proposed Town of Prices Fork in Montgomery County. Among other things, it found that the proposed town, if established,

would constitute one of Virginia's most sparsely populated towns, with an uncertain capacity to address its principal need for public water and with a proposal to administer its affairs through volunteers and part-time employees. Commission Report on the Incorporation of Prices Fork as a Town in Montgomery County (Nov. 1999). A special court thereafter denied the petition to incorporate that community.

15-8 ANNULMENT OF TOWN CHARTERS

15-8.01 Background

Chapter 37 of Title 15.2 of the Code of Virginia (Va. Code §§ 15.2-3700 through 15.2-3712) authorizes towns, under certain circumstances, to nullify their charters and thereby cause the land area within their boundaries to become part of the unincorporated area of the county.

The former Town of Castlewood in Russell County and the former Town of Clover in Halifax County used this procedure to annul their charters during the 1990s. The residents of the Town of Columbia in Fluvanna County voted to annul the Town's charter in 2015, at which time only thirty-four registered voters still resided in the Town. A few other towns with very small populations have considered the dissolution of their localities.

Prior to 1980, the Code of Virginia contained a procedure by which the citizens in towns incorporated after 1908 could initiate a court action to annul the charter of their town and thereby dissolve the municipal corporation. See Va. Code §§ 15.1-972 through 15.1-976 (1973 Repl. Vol.), *repealed by* 1980 Va. Acts ch. 45. The pre-1980 procedure authorized citizens of a town, equal in number to one-fourth of the qualified voters, to petition the circuit court to schedule a referendum on the proposed repeal of the town charter. If a majority of those voting supported the repeal of the town charter, the court was directed to enter an order annulling the charter and making provisions as "may seem to be just" for the disposition of town property and for the payment of town debts. Va. Code § 15.1-973 (1973 Repl. Vol.), *repealed by* 1980 Va. Acts ch. 45.

From 1980 until 1992, the Code did not contain any provision for the dissolution of a town within a county, except indirectly through a consolidation agreement between the county and *all* towns located within that county. See Va. Code § 15.2-3520. Because of a renewed interest by residents in several small towns to "turn in their charters," the General Assembly in 1992 reenacted a general law process to dissolve towns.

15-8.02 Procedure for Nullification of a Town Charter

The current procedure to annul a town charter differs in two fundamental ways from the statutes in existence prior to 1980. First, Va. Code § 15.2-3701 permits the nullification process to be initiated only by the town council and not by the individual voters within a town. Second, the dissolution of a town is permitted only if the town council and the board of supervisors enter into an agreement providing for the disposition of the properties and debts of the town, as well as the services provided by the town. Under the earlier law, the dissolution process could be instituted unilaterally by town citizens over the objection of the county in which the town was located.

Under the current procedure, after the town council and the board of supervisors have reached agreement as to the handling of the properties, debts, and services of the town, the town council, by a majority vote of all members, may petition the circuit court for an order requiring a referendum on whether the charter should be repealed. Va. Code § 15.2-3702. The statutes do not require any review by the Commission.

If a majority of the qualified voters of the town voting in the referendum are in favor of the charter repeal, the circuit court is required to enter an order making the dissolution

of the town effective on January 1 of the following year, or in the court's discretion, one year later. Va. Code § 15.2-3705. The court has no discretion in determining whether to order the dissolution of the town and instead essentially performs a ministerial function.

15-8.03 Effect of Charter Annulment

On the effective date of the annulment of the charter, the incorporated status of the town terminates, as well as the terms of office of all officers of the town. Va. Code § 15.2-3707. If agreed upon by the town council and the board of supervisors, the citizens in the territory constituting the former town may be placed in a special debt district for purposes of repaying over twenty years all or part of the debts of the town existing before its dissolution. Va. Code § 15.2-3709. The county is also directed to request that the General Assembly repeal the Act of Assembly that had originally granted the town charter. Va. Code § 15.2-3712.

Finally, the terms and conditions of the agreement between the county and the town constitute a binding and irrevocable contract "in favor of the public," which can be enforced by mandamus or injunction at the request of any citizen. Va. Code § 15.2-3706. Thus, the former town residents retain the authority to enforce those provisions of the dissolution agreement intended to protect those citizens.

15-9 TRANSITION OF TOWNS TO CITIES

15-9.01 Overview

Chapter 38 of Title 15.2 of the Code of Virginia (Va. Code §§ 15.2-3800 through 15.2-3834) authorizes certain towns to seek city status. No town in Virginia has sought to make a transition to city status for several decades. Moreover, the current annexation moratorium statute bars the creation of any new cities while the moratorium remains in effect. It states that "with the exception of a charter for a proposed consolidated city, no city charter shall be granted or come into force" and "no suit . . . shall be filed to secure a city charter" until July 1, 2032 or the July 1 following any biennium during which the General Assembly fails to appropriate the total amount of money for local police departments required by Va. Code § 9.1-169 (except for the biennia from 1998 through 2032), whichever occurs first. Va. Code § 15.2-3201. When a town becomes a city under Chapter 38, its charter remains in full force and effect, except as it may be inconsistent with provisions of general law applicable to cities. Va. Code § 15.2-3812. Hence, the moratorium statute likely bars such a proceeding, which would result in a "city charter" coming into force for the new city, based on the provisions of its former "town charter."

15-9.02 Towns Eligible to Seek City Status

Any town in the Commonwealth may seek city status (subject to the applicable limitations of the moratorium statute discussed above) except (a) a town located within a county or any portion thereof granted immunity from the incorporation of new cities pursuant to Va. Code § 15.2-3300 et seq., or (b) a town that has entered into an agreement with the county to define its future annexation rights pursuant to Va. Code § 15.2-3231 et seq. Va. Code §§ 15.2-3233, 15.2-3800; *see also* [Commission Report of Town of Marion-County of Smyth Voluntary Settlement Agreement](#) (Sept. 2014) (fifty-year moratorium on seeking city status pursuant to a voluntary settlement authorized by Va. Code § 15.2-3400).

A grandfather clause, however, permits certain towns to seek city status even if they are located within an immune county. Va. Code § 15.2-3306. Under this provision, a grant of immunity will not bar a town from seeking city status if the following two criteria are met: (1) the town must have had in excess of 5,000 people in 1979, and (2) the town must be located within a county which in 1979 met the population and density requirements for obtaining total immunity—a total population of at least 20,000 with a density of 300 persons or more per square mile, or a total population of at least 50,000 with a density of 140 or

more persons per square mile. If such a town has a population of at least 5,000 persons and a density of at least 200 persons per square mile, the town will automatically be granted city status. It is likely, however, that this special provision also is subject to the moratorium statute that generally bars a city charter from coming into force until July 1, 2024. See section [15-9.01](#).

15-9.03 Procedure for a Town to Obtain City Status

Under pre-1979 law, a town wishing to become a city would apply to the circuit court of the county for an order authorizing an enumeration of the town's population. If the census showed that the town had a population in excess of 5,000 persons, the court would enter an order confirming that fact and the town would automatically assume city status on the first day of the following month.

Procedures under current law are much more complicated. Except for towns located within immune counties or within any immune portion of a county, a referendum must be held in the town on the question of whether city status should be sought. Va. Code § 15.2-3801. If the majority of the electorate voting is opposed to city status, the town council is prohibited from going forward. If the majority favors it, the town may proceed to adopt a transition ordinance. *Id.*

The town must then notify the Commission of the proposed transition. The Commission holds hearings, makes investigations, analyzes local needs, and makes findings of fact and recommendations concerning the proposed transition. Va. Code § 15.2-2907(A).

Prior to instituting a transition court proceeding, the town must attempt to agree with the county upon the terms and conditions for transition to city status. Va. Code § 15.2-3802. After these efforts, the town petitions the circuit court of the county for an order granting city status. Va. Code § 15.2-3800. The petition must be served on appropriate parties and published as required by law. Va. Code § 15.2-3803. A hearing is held before a special court which must make certain findings to warrant the grant of city status. Va. Code § 15.2-3807.

The county in which the town is located must be a party to the proceeding, as well as any qualified voter or property owner of the town or county who petitions to intervene. Any other political subdivision with "a common boundary" may also intervene as a party. Likewise, any other "affected" person may intervene. Va. Code § 15.2-3804.

If the court finds that the criteria for city status have been met, it must enter an order granting the town such status and setting forth all such terms and conditions upon which the petition is granted. Va. Code § 15.2-3807. If the parties have agreed on the provisions of the settlement between the town and county, such settlement must be certified by the court. Va. Code § 15.2-3802. The order is effective at midnight on December 31 of the year in which it is issued. Va. Code § 15.2-3807.

15-9.04 Standard for City Status

A town petitioning for city status must present evidence showing a special court that the following criteria have been met:

1. The town has a minimum population of 5,000 persons;
2. The town has the fiscal ability to function as an independent city and to provide appropriate urban-type services including an independent school system;

3. The creation of the new city will not “substantially impair” the ability of the county to meet the service needs of the remaining population. If such a substantial impairment will result, then the court must make provision to offset the impairment; and
4. A grant of city status is warranted based on a consideration of the best interests of the parties and the interests of the Commonwealth in promoting (a) service policies (including environmental protection, public planning, education, public transportation, and housing) and (b) strong and viable units of government.

Va. Code § 15.2-3807.

A special standard for obtaining city status is provided for those towns in immune counties that qualify for transition under the grandfather clause. Under Va. Code § 15.2-3306, a qualifying town needs to demonstrate only the following two facts to be entitled to city status: (1) the town has a population of at least 5,000, and (2) the town has a density of at least 200 persons per square mile.

15-9.05 Terms and Conditions of the Transition

Under pre-1979 law, the new city was required to assume a just and reasonable proportion of any county debt existing at the date of the transition. As a general rule, the amount considered a just and reasonable proportion equaled the percentage of all county taxable property values contained within the new city. See *City of Colonial Heights v. Cnty. of Chesterfield*, 196 Va. 155, 82 S.E.2d 566 (1954). If the parties failed to agree on an equitable debt adjustment, either party could proceed by a bill in equity for a proper adjustment. *Id.*

In making this debt adjustment, “all other equitable claims” of the new city and the county were to be taken into consideration. Equitable claims included the citizens’ beneficial interest in county school property within and without the new city, which would be credited against the debt to be assumed by the city. *City of Colonial Heights, supra*. Equitable claims also included the new city’s just proportion of property taxes collected by the county treasurer during the year of transition. *Id.* There was no authority, however, to require a county to transfer ownership of its property to the new city. See *City of Emporia v. Cnty. of Greensville*, 213 Va. 11, 189 S.E.2d 338 (1972).

Under current law, the same requirement exists that the new city assume a just and reasonable portion of county debt. Va. Code § 15.2-3829. Parties may still proceed by a bill in equity to obtain a proper adjustment of the debt, and equitable claims of the parties must still be considered in making such a debt adjustment. *Id.*

If the transition will substantially impair the county’s ability to serve its remaining population, then city status is to be denied unless provision is made by order of the court, or by agreement of governing bodies, to offset such impairment. Va. Code § 15.2-3807. The current law also provides that the transition court’s order must set forth in detail all “such terms and conditions upon which the city status is granted as are not provided in this chapter.” *Id.* The current version of the law was intended to broaden the powers of the court in making financial adjustments upon transition.

The Stuart Commission recommended that a town be given the option of declining a grant of city status, because the cost of the settlement “as determined by the court” may be such that the town may decide against city status. Report of the Commission on City-County Relationships, House Doc. No. 27 at 54-55 (1975). The current law does in fact

permit a town to decline to accept city status at any time prior to twenty-one days after the final adjudication. Va. Code § 15.2-3810. If city status is denied or declined, proceedings for city status may not be commenced again for three years after the date of the final order. Va. Code § 15.2-3811.

Following transition, the town charter generally remains in “full force and effect,” and the town’s ordinances become those of the city. Va. Code § 15.2-3812. For example, a town’s power to create a local parking authority granted the town by an Act of the General Assembly, which was not expressly repealed by the new city charter, survived the town’s transition to a city. See 1990 Op. Va. Att’y Gen. 103. The new city becomes liable for the bonded indebtedness, current debts, and obligations of the town. Likewise, the title to all property of the town, including its rights under any contract, becomes the property of the city. Va. Code § 15.2-3813.

In *City of Manassas v. Board of County Supervisors of Prince William County*, 250 Va. 126, 458 S.E.2d 568 (1995), the Supreme Court addressed a 1975 town-to-city transition agreement which provided that, after the transition, the city would institute legal proceedings to cede territorial jurisdiction of the courthouse complex, located within its boundaries, to the county. The city never took that action, and the county did not complain until 1990. The county filed suit seeking either a declaration that jurisdiction over the courthouse complex had been “equitably converted” to the county or specific performance. The Court held that laches and statutes of limitations are not defenses against local governments acting in a governmental capacity, that specific performance of the agreement was required, and that the doctrine of equitable conversion was not applicable. Specific performance required that the city make good faith efforts to obtain any necessary judicial or legislative approval to transfer the land area of the courthouse complex to the jurisdiction of the county.

15-10 TRANSITION OF CITIES TO TOWNS

15-10.01 Overview

Enacted in 1988, Chapter 41 of Title 15.2 of the Code of Virginia (Va. Code §§ 15.2-4100 through 15.2-4120) authorizes certain cities to make a transition to town status. 1988 Va. Acts ch. 881. A mandatory procedure for the conversion of a city to a town has been in effect since 1971, but it has a very limited scope. Specifically, under Chapter 40 of Title 15.2 (Va. Code §§ 15.2-4000 through 15.2-4005), if a city contains fewer than 5,000 people as required by Article VII, § 1 of the Virginia Constitution and is not “otherwise preserved,” then the Commission is obligated to commence an investigation of the “population, assets, liabilities, rights and obligations” of the city that can result in a court order converting the city into a town. Because a 1972 amendment to Article VII, § 1 of the Constitution defined “cities” to include all municipalities that became cities prior to July 1, 1971, this mandatory process for conversion to town status applies only to cities created after that date whose populations fall below 5,000. Because of the limited application of this procedure, only the optional transition statutes will be discussed in this section.

15-10.02 Cities Eligible to Seek Town Status

Any city having a population of less than 50,000 at the time of the latest decennial census may seek authority to revert to town status pursuant to Va. Code § 15.2-4100 et seq. The original proposal before the General Assembly would have restricted this procedure to cities having less than 10,000 people and would have further required that any such city be surrounded entirely by one county. See Senate Bill No. 56 (1988 Session, No. LD1055114). The General Assembly, however, expanded the population criterion and discarded entirely the geographical limitation.

Only one city, the former City of South Boston, has initiated a contested city-to-town transition suit that was heard on its merits. See section 15-10.05. A citizen group initiated a reversion action in which it requested that Charlottesville be granted town status, but that proceeding was voluntarily dismissed by the citizens in 1999. The former City of Clifton Forge initiated reversion proceedings before the Commission in 1999, but the proceedings were stayed pending negotiations between it and Alleghany County. Clifton Forge and Alleghany County subsequently reached a [voluntary settlement](#) providing for a reversion to town status pursuant to Va. Code § 15.2-3400. As required by the agreement of the parties, city voters approved the voluntary settlement, and the reversion became effective on July 1, 2001. The former City of Bedford and Bedford County reached a [voluntary settlement agreement](#), pursuant to Va. Code § 15.2-3400, and the city became a town within the county on July 1, 2013.

In September 2020, the City of Martinsville initiated a reversion proceeding with the Commission. In August 2021, the City of Martinsville and Henry County signed and passed resolutions in support of a voluntary settlement regarding reversion and other matters, and in October 2021, the Commission issued its [Report on the City of Martinsville-Henry County Voluntary Settlement](#), recommending that the City of Martinsville revert to a town within Henry County effective July 1, 2023. After receiving the Commission's report and recommendations, the Martinsville City Council adopted the voluntary settlement agreement by ordinance, but the Henry County Board of Supervisors did not. As of mid-December 2022, a resulting arbitral proceeding was suspended and two resulting judicial proceedings were pending, and in January 2023, Martinsville City Council adopted a resolution to terminate the reversion.

15-10.03 Procedure for a City to Obtain Town Status

An action for transition or reversion to town status can be initiated either by city council or by qualified voters equal in number to 15 percent of the registered voters of the city as of January 1 of the year in which a petition is filed. Va. Code §§ 15.2-4101, 15.2-4102. The signatures must have been made and filed within a twelve-month period. Va. Code § 15.2-4102. If initiated by the city council, the request for town status must first be reviewed by the Commission, which is directed to make findings of fact and recommendations concerning the proposed change in the form of government. Va. Code § 15.2-2907(A).

If a reversion suit is initiated by citizens, the procedural steps are slightly different. The Virginia Supreme Court held in *Lucy v. County of Albemarle*, 258 Va. 118, 516 S.E.2d 480 (1999), that there was a conflict between Va. Code § 15.2-2907, which requires that notice of an intended reversion to town status be filed with the Commission prior to filing in circuit court, and Va. Code § 15.2-4102, which provides that a citizen-initiated petition for reversion be filed in circuit court and then referred to the Commission. The Court reconciled the conflicting statutes by construing § 15.2-4102 as a "gatekeeper" statute to weed out legally insufficient petitions prior to the Commission's substantive review. Accordingly, citizen-initiated petitions must be initially filed in circuit court and then referred to the Commission after a determination of their legal adequacy.

After the Commission's review, an evidentiary hearing is held before a special court appointed pursuant to Va. Code § 15.2-3000. The special court may direct any state agency, in addition to the Commission, to gather and present evidence. Va. Code §§ 15.2-4106, 15.2-4107. If the criteria for town status have been met, the court must enter an order granting town status and setting forth appropriate terms and conditions for the change in form of government. Va. Code § 15.2-4106. In "any proceedings" brought pursuant to these provisions, the governing body of the city may, by ordinance, decline to accept a grant of town status on the terms and conditions imposed by the court, if it acts prior to twenty-one days after entry of the order. Va. Code § 15.2-4109. The statutes presumably allow a city

council to nullify even a grant of town status that was obtained in a proceeding independently initiated by city voters.

A city-to-town reversion does not generally require the approval of voters in either locality. A 1989 statute requires referendum approval for reversion of a city having a population of more than 5,000 but less than 5,900. 1989 Va. Acts ch. 688. A 2014 statute required each elected member of the Martinsville City Council to vote on a motion to initiate the reversion process unless otherwise prohibited by law. 2014 Va. Acts ch. 493. In 2022, the General Assembly conditioned Martinsville's reversion on a favorable voter referendum (with a sunset clause of July 1, 2026), during the pendency of reversion litigation before the special court and after the Henry County Board of Supervisors had refused to adopt by ordinance its voluntary settlement agreement with Martinsville. 2022 Va. Acts chs. 219 and 220. Martinsville petitioned the Virginia Supreme Court for writs of prohibition and mandamus to the effect that the special court should proceed to judgment in the reversion litigation without regard to the 2022 enactments, claiming that the acts violated the Virginia Constitution's provisions for the separation of powers and prohibitions against special acts. The Supreme Court denied the petition without reaching the merits, holding that the issues raised should be considered first by the special court. *In Re: City of Martinsville*, No. 220316 (Va. Sup. Ct. Aug. 22, 2022).

In the event the court determines that a city is not eligible for town status, or if a grant of town status is declined by the city council, no subsequent proceeding can be brought under the transition statutes within five years after the date of the court order. Va. Code § 15.2-4110. Orders of the special court may be appealed to the Court of Appeals. Va. Code § 15.2-4108. The special court remains in existence for a ten-year period and can be reconvened at any time to enforce the terms and conditions of the order by which town status was granted. The court can act on its own motion, by motion of the governing body of the county or the town, or on petition of not less than 15 percent of the registered voters of the town. Va. Code § 15.2-4120.

The effective date of a transition to town status must be specified in the court's order and can be no sooner than six months after the date of the order. Va. Code § 15.2-4111. If a charter has not already been approved for the new town by the General Assembly, the court's order must "conform" the city charter to a town charter for use until the General Assembly grants a new charter. If a proposed charter has been granted prior to the entry of the order granting town status, then it automatically becomes the charter of the new town. Va. Code § 15.2-4112.

15-10.04 Standard for Town Status

The city petitioning for town status must demonstrate that the following six criteria have been met to warrant a grant of town status:

1. The city has a current population of less than 50,000 people;
2. The adjoining county or counties have been made defendants to the action;
3. The change will not substantially impair the ability of the adjoining county in which the town will be located to meet the service needs of its population;
4. The change will not result in a substantially inequitable sharing of the resources and liabilities of the town and the county;

5. The change to town status, when balancing the equities, will be in the best interests of the city, the county, the Commonwealth, and the people of the county and the city; and
6. The change to town status will be in the best interest of the Commonwealth in promoting strong and viable units of government.

Va. Code § 15.2-4106.

The opposition of the county or its residents does not itself bar the grant of town status, although underlying reasons for such opposition could be considered relevant to a consideration of the best interests of the county and its citizens. On the other hand, even if the county agrees to the proposed change, the court must still find that the statutory criteria have been met. Insofar as the statutory standard for granting town status involves the weighing of broad policy concerns, it may be considered to place discretion in the special court. In any event, a city's ability to meet its burden of proof is increased by the power of the court to impose fair terms and conditions which may ensure that town status will not result in an inequitable sharing of the resources and liabilities of the city and county.

15-10.05 Effect of Transition to Town Status

Upon the effective date specified in the court order, the existence of the city as an independent municipality is terminated, and it reverts to its status as a town located within and constituting part of the surrounding county. A city that reverts to town status under the provisions of Chapter 41 may not return to its previous independent city status. Va. Code § 15.2-4113. This prohibition may be applicable even where the affected county does not object to the town's return to city status. In addition, a town may not institute an annexation proceeding for two years following a reversion, unless there is an agreement between the town and county to change the town boundaries. Va. Code § 15.2-4117.

The transition to town status permits, in effect, a partial consolidation of the city and the county. Because the statutes providing for the consolidation of cities and counties make no provision for a merger that will result in the creation of a county containing a town, see Va. Code § 15.2-3520 et seq., this transition procedure constitutes a significant expansion of the existing consolidation authority. Moreover, unlike other mergers of cities and counties, a reversion to town status does not ordinarily require referendum approval of voters in the localities. *Cf.* Va. Code § 15.2-3540.

In general, the new town has the same rights and obligations as are provided by general law for other towns.⁵ The consequences of the transition, however, may be affected significantly by the specific requirements of the court order. The court is given authority to include "appropriate" terms and conditions in its order:

1. To ensure an orderly transition from city status to town status;
2. To adjust financial inequities;
3. To balance the equities between the parties; or
4. To ensure protection of the best interests of the city, the county, the Commonwealth, and the people of the county and the city.

⁵ See 2016 Op. Va. Att'y Gen. 287 (reversion of an independent city into a town does not dissolve enterprise zone designations within the former city).

Va. Code § 15.2-4106(B). Unless otherwise provided by agreement of the governing bodies or by the court order, the new town remains liable for all of the debts, obligations, and liabilities it incurred as a city, and all property and all rights and privileges under any contract of the former city automatically vest in the town. Va. Code § 15.2-4114.

In *City of South Boston v. Halifax County*, 247 Va. 277, 441 S.E.2d 11 (1994), the Virginia Supreme Court reversed, in part, the judgment of a special court that had specified broad and detailed terms and conditions for a city-to-town transition, including the imposition of a fifteen-year moratorium on annexation by the Town of South Boston, a requirement that the new town's water and sewer rates be equal for its in-town and out-of-town customers, and a requirement that the new town maintain current levels of certain services. The Supreme Court stated there was no statutory authority for the special court to divest a town of its statutory right to initiate an annexation proceeding. The Court also found no statutory authority for the special court to fix water and sewer rates and concluded that the requirement to maintain certain service levels was an abuse of discretion.

The General Assembly has provided at least two important incentives for a transition to town status that are in the process of being modified. For many years, the biennial appropriation acts included a provision that authorized but did not require the State Board of Education to use a more favorable formula for the distribution of state educational funding whenever two school divisions were consolidated, including a consolidation through a city-to-town reversion. In 2009, the biennial appropriation act was amended to *require* the State Board to use for fifteen years the lowest "composite index" of any of the localities involved in such a consolidation, 2008 Va. Acts ch. 879, Item 140A(4)(c1), as amended by 2009 Va. Acts ch. 781, which had the effect of increasing state funding for any such combined school system. A lower composite index means that a locality is relatively less wealthy compared to other Virginia localities, and therefore the Commonwealth provided a higher level of funding for each student attending such a locality's school system.

In 2013, however, the General Assembly directed the Joint Legislative Audit and Review Commission (JLARC) to analyze and make recommendations regarding the most effective balance between the costs of consolidation incentives and the expected savings and operational benefits resulting from such a consolidation. 2013 Va. Acts ch. 806, Item 139A(4)(c6). In its report, JLARC recommended, among other changes, that the General Assembly eliminate the requirement that the State Board of Education provide consolidating localities with additional state funding based on their local composite indices. In place of that provision, JLARC recommended that the Commission on Local Government determine the amount of additional funding to be granted to consolidating localities based primarily on the "projected cost of the specific consolidation being proposed." JLARC, Report to the Governor and the General Assembly of Virginia, [*Local Government and School Division Consolidation*](#) (House Doc. No. 14, Sept. 14, 2014) at (v). After determining the suggested amount of added funding, the Commission would submit that proposal to the General Assembly through the Governor's budget. *Id.*

In 2015, the General Assembly largely accepted JLARC's recommendations. In the biennial appropriation act, it repealed the statutory authority for additional state funding based on composite indices and stated that incentive funding for future consolidations would be "as set forth in future Appropriation Acts." 2015 Va. Acts ch. 665, Item 136A(4)(c1). The General Assembly further directed the Commission to develop and submit no later than December 1, 2015, a "process to determine an appropriate calculation for additional state funds for future local consolidations." 2015 Va. Acts ch. 665, Item 107. It added that such additional funding should be based "primarily on the projected cost of consolidation." *Id.*

In its 2015 report, the Commission recommended, among other things, that state grants be provided to localities to help fund studies of the feasibility of consolidation proposals, that financial incentives for consolidation be limited in duration to five years, and that the method used to compute the amount of school funding incentives be redesigned. [Commission Report on Local Government Consolidation Incentives](#) (Nov. 24, 2015). The Commission concluded that calculating incentives to cover the “cost of consolidation” was not practical, given the varying local political decisions that drive the details of consolidation proposals. Instead, it recommended that the General Assembly provide extra funding for the public schools of consolidating localities based on a new formula that would direct such monies primarily to smaller localities with low measures of wealth. Specifically, it endorsed an approach that would not use local composite indices, but instead would be tied to the Commission’s annual determination of “fiscal stress” scores for Virginia cities and counties. Those scores seek to measure the fiscal stress of localities based on averaging the calculations of revenue capacity per capita, revenue effort, and median household income for each city and county. To qualify for the incentive payments, at least one of the two consolidating localities would need to have an above-average fiscal stress score. An “incentive factor” would be calculated for qualifying localities that would be based on the extent to which their fiscal stress scores exceeded the statewide average and the difference between the scores of the two localities. For the locality with the smaller number of students, the state “basic aid” school payment would be increased by a percentage equal to the incentive factor, subject to a specified maximum number of students.

Generally, these proposals would result in a smaller amount of incentive payments from the state as a result of the reduction in the duration of this entitlement from fifteen to five years, as well as the cap placed on the amount of additional funding and the different distribution formula. For a few poorer localities, the new approach would increase the overall financial benefit.

As of January 2024, the General Assembly had not yet taken any action on the Commission’s 2015 recommendations. However, at its 2016 session, the legislature directed the Secretary of Education to undertake a related study of possible financial incentives for “joint contracting” between two adjacent school divisions. 2016 Va. Acts ch. 780, Item 130(D). The report by the Secretary of Education endorsed some of the recommendations made by JLARC and the Commission but suggested modifications. [Study on School Division Joint Contracting Incentives](#) (Oct. 15, 2016). Specifically, the Secretary first supported the provision of planning grants of up to \$100,000 to assess the feasibility of any proposal “to contract or consolidate localities or school divisions, or revert to town status,” with the state and localities sharing costs based on the local composite index. Second, she recommended that the Commission’s proposed incentive formula for “full joint contracting of school divisions” be amended by using local composite indices rather than fiscal stress scores, with eligibility for monetary incentives requiring that at least one of the two school divisions have a composite index below a threshold of 0.45. A lower index indicates a lesser ability to pay for educational services. Third, to prevent high costs to the state and to help small school divisions, she proposed restrictions on such financial incentives, including a requirement for at least one division to have less than 4,000 students in average daily membership, a limit of five years on the duration of the incentives, and a cap on the total funding available each year from the state. The ultimate response by the General Assembly to these varying recommendations from JLARC, the Commission, and the Secretary of Education is uncertain, but the current lack of a definite incentive structure may have the practical effect of discouraging or delaying consolidation efforts.⁶

⁶ Proponents of such efforts may be encouraged by the General Assembly’s incentive funding related to the consolidation of the Alleghany County and Covington City school divisions pursuant to

A second financial incentive for consolidation is found in Va. Code § 15.2-1302, which originally provided that state funds were to be distributed for five years to localities involved in a city-to-town transition at the same level as if the city-to-town transition had not occurred. 1994 Va. Acts ch. 437. An amendment in 2000 extended the so-called “hold harmless” period to fifteen years, if the reversion results in the consolidation of constitutional officers and the consolidation of school divisions and local school boards. 2000 Va. Acts ch. 708; see 2001 Op. Va. Att’y Gen. 63 (provisions of Va. Code § 15.2-1302 operate to maintain the same level of school funding if the localities operated a “joint school system” prior to reversion to town status, but not if they already had “consolidated” their school systems). However, the Commission in its 2015 report recommended that the duration of the “hold harmless” period be restricted to its original five years, finding that a fifteen-year period is far above the norm for incentives provided in other states. As of January 2024, the General Assembly had not yet accepted that recommendation.

Over the years, the General Assembly has adopted provisions in its biennial appropriation acts to implement its “hold harmless” incentives. See, e.g., 2022 Va. Acts ch. 1, Item 75(L), Item 145(A)(4)(e), and Part 4, § 4-1.03(c)(8) (special session I). For example, the State Compensation Board must provide to the county, in accordance with Va. Code § 15.2-1302, the same total funding for constitutional officers that the county and former city would have received if reversion had not occurred. In addition, in reallocating the constitutional officer positions from the former city, the Board must first allocate those positions to the county constitutional officers without applying the Board’s “priority of need” ranking that it uses in deciding which localities are given additional positions. See, e.g., 2022 Va. Acts ch. 1, Item 75(L).

The city-to-town reversion process has sometimes created confusion as to the imposition of property taxes where the transition was effective in the middle of a county’s tax year. The former City of Clifton Forge became a town in Alleghany County on July 1, 2001, which was the middle of the county’s tax year. The county collected personal property taxes from the new town residents for the entire 2001 tax year, including the six months when Clifton Forge was still a city. In 2002, the General Assembly adopted a bill providing that the county could retain only those taxes imposed on vehicles and other personal property for the six months following the effective date of town status. 2002 Va. Acts ch. 78. The Supreme Court upheld this special legislation as constitutional. *Alderson v. Cnty. of Alleghany*, 266 Va. 333, 585 S.E.2d 795 (2003). See 2013 Va. Acts ch. 384 (authorizing special arrangements for imposition of property taxes where the former City of Bedford made a transition to town status effective as of the middle of Bedford County’s tax year).

Not less than thirty nor more than 180 days after the date of the special court order granting town status, and at least thirty days prior to the effective date of the transition, an election must be held to select the town council and other officers of the town. Va. Code § 15.2-4115.⁷ The reversion to town status also serves to terminate the terms of office of the former city’s constitutional officers and their deputies and employees. *Id.*; see 1995 Op. Va. Att’y Gen. 46. In any court action pending by or against the city at the time of the transition, the town is substituted in the place of the city, and all court actions pending in the courts of the city are automatically removed to the concurrent courts of the county. Va. Code §§ 15.2-4118, 15.2-4119.

Virginia Code § 22.1-25. See 2019 Va. Acts ch. 854, § 135(II); 2020 Va. Acts ch. 1289, § 42; 2021 Va. Acts ch. 552, § 42 (special session I).

⁷ Passage of the 2021 amendment referenced in the footnote 3 may mean that the special election should be held at the time of the November general election. See 2021 Va. Acts ch. 103 (special session I) (adding Va. Code § 15.2-1400(E)).

An issue not specifically addressed by the transition statutes is whether a city may become a town located within two counties or must choose only one county within which it will be located. A number of towns in the Commonwealth have part of their territory located in one county and the rest located in a second county, and there are cities with reversion-eligible populations that border more than one county. The original bill introduced in the General Assembly allowed only cities “surrounded entirely by one county” to petition for town status. The version enacted by the legislature deleted that requirement. See Senate Bill No. 56 (1988 Session, No. LD1055114). There are no judicial or Attorney General’s opinions addressing whether the current law authorizes a reversion to a town located in more than one county. The statutes contemplate that the “adjoining county *or counties*” be “made party defendants to the proceedings.” Va. Code § 15.2-4106(A)(2) (emphasis added); see *also* Va. Code § 15.2-4102 (citizen petition for town status required to be served on “the chairman of the board of supervisors of the adjoining *counties*” (emphasis added)). However, the statutes elsewhere refer only to “the adjoining county,” Va. Code §§ 15.2-4101(B), 15.2-4102, 15.2-4103, 15.2-4106(3), and the provision addressing library aid after reversion references “a former city and the county surrounding it.” Va. Code § 15.2-4116.

15-11 TRANSITION OF COUNTIES TO CITIES

15-11.01 Overview

Chapter 39 of Title 15.2 of the Code of Virginia (Va. Code §§ 15.2-3900 through 15.2-3919) authorizes a county to become an independent city by complying with certain procedures. These provisions were added in 1979 and, as of January 2024, have never been used.

The prohibitions in the annexation moratorium statute also encompass a county transition to city status. Va. Code § 15.2-3201. The statute bars the filing of any suit to secure a city charter and prohibits any city charter, with the exception of one for a proposed consolidated city, from coming into force until July 1, 2032, or the July 1 following any biennium during which the General Assembly fails to appropriate the total amount of money for local police departments required by Va. Code § 9.1-169 (except for the fiscal biennia between 1998 and 2032), whichever occurs first. Because it is commonly believed that the General Assembly will continue the moratorium indefinitely, it is not likely that this procedure will be available to counties for many years.

15-11.02 Procedure for a County to Obtain City Status

Prior to filing a transition court proceeding, a county must notify the Commission of the proposed transition. The Commission will hold hearings, make investigations, analyze local needs, and make findings of fact and recommendations concerning the proposed transition. Va. Code § 15.2-2907(A).

After the Commission issues its report, the county by ordinance petitions the circuit court of the county for an order granting city status. Va. Code § 15.2-3901. The ordinance and notice must be served on appropriate parties and published as required by law. Va. Code § 15.2-3903. A hearing is held before a special court which must make certain findings to grant city status. Va. Code § 15.2-3906. Any qualified voter or property owner or person having an interest in the county may petition to become a party. In addition, any political subdivision “having a common boundary” or any other “affected” person may intervene as a party. Va. Code § 15.2-3904.

If the court finds that the standard for city status has been met, it orders an election to be held in accordance with Va. Code § 24.2-684 to determine if the qualified voters of the county desire that the General Assembly be requested to grant the county a proposed charter. Such an election must be held no earlier than 180 days and no later than 300 days

after the entry of the order of election. Va. Code § 15.2-3907(B). If a majority of the voters reject the proposed charter, further elections seeking a change in the county government are barred for three years. Va. Code § 15.2-3914.

The court's authority is limited to granting or denying eligibility for city status, and it has no authority to impose terms and conditions with respect to a grant of city status. Va. Code § 15.2-3907. If the court determines that a county is eligible for city status, the governing body appoints a charter commission to assist it in the preparation of a charter for the new city. Va. Code § 15.2-3910. After completion of the proposed charter, and the holding of a public hearing as required by law, the governing body must adopt the charter with such revisions as it "may accept." Va. Code § 15.2-3913.

If the proposed charter is adopted by a majority vote of those voting in the election, the court must enter an order so certifying. One or more members of the General Assembly representing the county must introduce a bill in the General Assembly to grant the charter, Va. Code § 15.2-3914, and such charter becomes effective on July 1 in the year of the enactment by the General Assembly. Va. Code § 15.2-3911.

15-11.03 Standard for City Status

A county petitioning for city status must present evidence showing the court that three criteria have been met:

1. The county has a minimum population of 20,000 and a density of at least 300 persons per square mile, or a minimum of 50,000 persons and a density of at least 140 persons per square mile;
2. The county has the fiscal capacity to function as an independent city and to provide appropriate services; and
3. A grant of city status is warranted based on a consideration of the best interests of the parties and the interest of the State in promoting (1) State service policies (including environmental protection, public planning, education, public transportation, and housing) and (2) strong and viable units of government.

Va. Code § 15.2-3907.

15-11.04 Charter Provisions Generally

The charter for the new city must provide for an orderly transition from a county to a city, for the transfer of assets, and for the assumption by the new city of all debts owed by the former county and all towns therein. Such charter may provide for a different property tax rate in portions of the new city for a period of five years as long as the difference in rates bears a reasonable relationship to differences in non-revenue-producing services of an urban nature performed in such areas. Va. Code § 15.2-3912(1). Provisions for a special tax on real property may also be made in certain areas for a period not to exceed twenty years to repay debt chargeable to that area at the time of the transition to city status. Va. Code § 15.2-3912(2). Except in the case of constitutional officers, the charter must also provide for a new election of officers for the city unless deemed unnecessary. Va. Code § 15.2-3912(3).

The charter may also provide for the levy of a special tax in addition to all general property taxes to pay for additional services desired by an area of the new city. Proceeds from the special tax must be segregated and used only in the areas in which they were raised. The higher special tax rate cannot be levied for school, police, or general government

services, but only for those services which prior to the transition were not offered in the whole of the former county. Va. Code § 15.2-3912(4).

15-11.05 Effects of Transition

Each town located within any county that becomes a city automatically continues as a “township” within the city, and the charter of such town becomes the charter of the township. Va. Code § 15.2-3916. The laws governing the relationship of the town to the county continue in effect. The township continues to exercise the same powers previously exercised under general law except it does not have the authority (1) to become a city pursuant to Va. Code § 15.2-3800 et seq.; (2) to annex pursuant to Va. Code § 15.2-3200 et seq.; or (3) to exercise any extraterritorial authority granted to towns pursuant to Va. Code § 15.2-2200 et seq. Townships continue to receive state aid in the same manner as towns. Va. Code § 15.2-3916(A). Therefore, a “town” and a “township” have essentially the same legal meaning, and except as indicated above, the transition of a county to city status would not affect the existing charter of such a town. 2009 Op. Va. Att’y Gen. 46. Furthermore, a transition to city status would not affect the charter powers of, or limitations upon, an adjoining city that was formerly a town within the transitioned county. *Id.*

Any town with a population of 5,000 or more in 1979 and that was situated in a county that had the appropriate population density to seek city status retains, as a township, the right to seek city status under Va. Code § 15.2-3801. If such a township seeks to become a city, the court must grant it upon the limited finding under Va. Code § 15.2-3809 that the township has a population of at least 5,000 and a density of at least 200 persons per square mile. Va. Code § 15.2-3916(B).

Any county that becomes a city may, by ordinance, elect to continue receiving full services of the Department of Transportation for a period up to ten years from the date of granting a city charter. If such an election is made, the city will be treated as a county in all respects, including the funding for the maintenance and construction of streets and with respect to control of the streets. Va. Code § 15.2-3918. At any time prior to the expiration of the ten-year period, the governing body can place its streets or a portion of them in the urban system of highways and receive funds as provided by law for cities. Va. Code § 15.2-3918.

15-12 VOLUNTARY SETTLEMENT OF ISSUES

15-12.01 Background

Chapter 34 of Title 15.2 of the Code of Virginia (Va. Code §§ 15.2-3400 through 15.2-3401), which was enacted in 1983, authorizes localities to enter into agreements with other localities to settle annexation, immunity, incorporation, city-to-town reversion, or town-to-city transition proceedings. 1983 Va. Acts ch. 523. In such agreements, localities may waive or modify rights provided by such statutory procedures and may include a long list of other terms. Virginia Code § 15.2-3400 also requires court approval of such settlement agreements and prescribes the mechanism for such judicial review.

Prior to the adoption of Chapter 34, efforts to negotiate settlements of annexation and immunity proceedings were sometimes hindered because of concerns about the authority of localities to enter into such agreements. Moreover, some raised questions as to the obligation of a court to accept the provisions of such an agreement when deciding whether the statutory standards for annexation or immunity had been met.

Virginia Code § 15.2-2907, enacted in 1980 as part of the chapter specifying the duties of the Commission, authorizes localities to “negotiate an agreement with one or more adjacent localities relative to annexation or partial immunity.” This section does not,

however, specify the permissible terms of such an agreement. The Attorney General opined that the statute, by implication, permitted a city to waive its annexation rights. See 1982–83 Op. Va. Att’y Gen. 151 (opining that Va. Code § 15.2-2907 is part of a remedial statute designed to encourage cooperation in inter-local affairs, and that it can be fairly implied from the wording of Va. Code § 15.2-2907 that the City of Fredericksburg may relinquish its rights to annex for twenty-five years). Nevertheless, questions remained as to the scope of the power granted in this general statute prior to the adoption of Va. Code § 15.2-3400.

In addition, prior to 1983, there was no statutory direction as to the weight that a court should give to the provisions of a settlement agreement between the parties. For example, in *City of Fredericksburg v. County of Spotsylvania* (Spotsylvania Cnty. Cir. Ct. Feb. 14, 1983), the court ordered the annexation of an area different from that agreed upon by the city and county. It commented, “it is entirely appropriate to receive the Agreement as a stipulation of evidence between the city and the county with regard to the factual findings which we are required to make. It is not binding on the Court as there are other interests in the case.” By enacting Va. Code § 15.2-3400 in 1983, the General Assembly established a special statutory procedure for such settlement agreements that clarified the permissible terms of such settlements and prescribed the weight to be accorded them.

15-12.02 Nature of the Agreement

Chapter 34 of Title 15.2 of the Code of Virginia creates a special statutory cause of action for approval of agreements that resolve disputes involving annexation or any of the governmental status proceedings authorized in other chapters of Subtitle III of Title 15.2. Under Va. Code § 15.2-3400, any two local governments are expressly granted the power to enter into an agreement to settle matters involving any annexation or governmental status proceedings.

In a report involving the Town of Front Royal and Warren County, the Commission concluded that this statute “does not permit private parties to enter into a voluntary settlement agreement.” See [Commission Report on the Town of Front Royal-County of Warren Voluntary Settlement Agreement](#) (Jan. 2014). However, a special court subsequently approved the agreement between those two localities and a private party. See *In re Petition of Town of Front Royal, Cnty. of Warren, & Front Royal Ltd. P’ship, for Order Affirming Voluntary Settlement Agreement for Annexation of 604 Acres into Town of Front Royal*, No. 14000708 (Warren Cnty. Cir. Ct. Sept. 30, 2014).

As originally enacted, the statute granted authority to include the following specific terms:

1. Waiver or modification of annexation, transition, immunity, or other rights, including an agreement to oppose petition-initiated annexations;
2. Fiscal arrangements;
3. Revenue and economic growth sharing;
4. Dedication of all or any portion of tax revenue to a revenue and economic growth sharing account;
5. Boundary line adjustments;
6. Acquisition of real property and buildings; and
7. Joint exercise or delegation of powers.

Subsequent amendments broadened the scope of such agreements by also permitting localities to include provisions regarding land use, zoning, proffers, subdivisions, and infrastructure arrangements, as well as “such other provisions as the parties deem in their best interest.” In its present form, the statute gives localities virtually unlimited authority as to the types of provisions they may include in a settlement, subject to the court’s determination that the agreement is in the best interests of the parties. The ultimate scope of the catch-all category for “other provisions” is uncertain, particularly if two localities sought to exercise a power that the General Assembly has not otherwise granted to local governments.

Virginia Code § 15.2-3400 also permits the parties to provide for “subsequent court review” by a special court. This language authorizes a mechanism to enforce the terms and conditions of the order approving the agreement, or to allow the court to amend or modify the agreement in the future when one of the parties believes certain terms are no longer equitable. See *In Matter of Voluntary Settlement of Annexation & Immunity Agreement*, No. 23100 (Fairfax Cnty. Cir. Ct. May 16, 2000) (validating amendments by Manassas and Prince William County to previously approved settlement agreement).

Virginia Code § 15.2-3400 is also one of the statutory sources of authority for revenue-sharing agreements between localities. If an agreement obligates a county to make payments of tax revenue in future years, then such an arrangement must first be approved by the qualified voters of the county at a special referendum election to satisfy the debt limitation requirements of Article VII, § 10(b) of the Virginia Constitution. Va. Code § 15.2-3401. Even if the source of the payments by a county is limited to specific tax revenue from specific parcels of real property, such an arrangement does not constitute a “special fund” that would exclude such indebtedness from the application of the constitutional limitation on local debt. See 1990 Op. Va. Att’y Gen. 48. Likewise, a continuing waiver of a city’s right to seek annexation would not constitute the provision of a public service under the “service contract doctrine” that exempts from the constitutional debt limitations those county financial obligations payable in future installments as a service is rendered. See 1984-85 Op. Va. Att’y Gen. 96. In some voluntary settlements, the parties have avoided the referendum requirements by making county payments subject to annual appropriations and by providing an alternative arrangement in the event the county declines to appropriate funds.

Virginia Code § 15.2-3400 does not contain any provision allowing the intervention of additional parties in the court proceeding. Accordingly, a special court denied a petition to intervene on the ground that the statute does not provide for intervention of third parties. *In re Petition of Clifton Forge to Revert from City to Town Status*, No. 00-101 (Alleghany Cnty. Cir. Ct. Jan. 2, 2001).

Separate statutory authority for revenue-sharing agreements is found in Va. Code § 15.2-1301, but that section permits localities to enter into a revenue, tax, or economic growth sharing agreement only if it is *not* a part of an annexation or transition settlement. The agreement must be reviewed by the Commission, which must investigate, analyze, and make findings regarding the effect of the agreement on people residing in the affected areas. Unlike a revenue-sharing arrangement that is part of an annexation or transition settlement, an agreement authorized by Va. Code § 15.2-1301 does not require court approval. Instead, once the Commission has issued its report, the agreement can be adopted and implemented as soon as each locality conducts an advertised public hearing.

The Attorney General opined that if a town is not a party that is assuming obligations that affects its rights regarding revenue, tax base or economic growth, then it is not an “affected locality” that is required to be party to a revenue-sharing agreement between a

county and a city. For example, a town is not a necessary party to a county/city agreement providing for the sharing of certain property tax revenue, where the town will continue to possess the legal right to tax property within its boundaries and to retain such tax revenue. 2017 Op. Va. Att’y Gen. 226.

In its initial proceeding under Va. Code § 15.2-1301, the Commission recommended adoption of a “growth sharing” agreement by which the Town of Christiansburg agreed to provide water and sewer services within a forty-eight acre area previously incorporated into the Town; and for a period of twenty years, it generally agreed to pay to Montgomery County 35 percent of the meals and lodging tax revenue collected within that territory. [Commission Report on the Montgomery County-Town of Christiansburg Joint Economic Development and Growth Sharing Agreement](#) (Jan. 2009); *see also* [Commission Report on the City of Covington-County of Alleghany Voluntary Economic Growth-Sharing Agreement](#) (May 2017) (addressing joint obligations and revenue sharing for to-be-determined development areas).

Although Va. Code § 15.2-1301 authorizes localities to “enter into binding fiscal arrangements for fixed time periods, to exceed one year,” it requires, as does Va. Code § 15.2-3400, that a board of supervisors hold a special referendum election to approve any agreement that creates a debt pursuant to article VII, section 10(b) of the Constitution of Virginia. *See* [Commission Report on the City of Covington-County of Alleghany Voluntary Economic Growth-Sharing Agreement](#) (May 2017) (conditioning tax increment revenue sharing provisions on annual appropriations by the board of supervisors and city council to avoid classification of the payments as long-term debt subject to the requirements of Article VII, Section 10 of the Virginia Constitution).

15-12.03 Procedure With Respect to Voluntary Settlement Agreements

15-12.03(a) Presentation to the Commission

The proposed settlement agreement must be presented to the Commission for review. Va. Code § 15.2-3400(3). The Commission determines whether the proposed settlement is in the “best interests of the Commonwealth,” but its findings and recommendations are only advisory in nature. The [reports](#) may be accessed on the Commission’s website. After the Commission report has been issued, the localities may adopt the original agreement or a modified agreement after required public notice and hearing. Va. Code § 15.2-3400(4).

In reviewing proposed voluntary agreements, the Commission has recommended court approval of such settlements in almost every case, although it often suggests that localities make minor modifications to their agreements. However, in its [Report on the Town of Hillsville-County of Carroll Voluntary Settlement Agreement](#) (Mar. 1995), the Commission concluded that a proposed annexation settlement should be rejected unless the parties made substantial revisions. While relying on a number of factors, the Commission found that the compromise annexation area would provide the Town of Hillsville with only a negligible increase in revenue and that the agreement should have included the area around an interstate highway intersection that threatened to “siphon” commercial activity from older portions of the town. It also criticized the exclusion of one parcel of industrial land that would be completely surrounded by the area annexed to Hillsville. In addition, the Commission historically has expressed reservations as to provisions waiving a municipality’s annexation rights for a lengthy period of time. *See* [Report on the Town of New Market-Shenandoah County Voluntary Settlement Agreement](#) (July 2010) at 26 (recommending twenty-year ban on contested town annexations for approval, where voluntary settlement authorized 2.08-square-mile town to incorporate by ordinance 1,000 acres of vacant land as it developed, which was sufficient to accommodate the town’s growth for forty years); [Report on the Town of Hillsville-Carroll County Voluntary Settlement Agreement](#) (Jan. 2011) at 29 (finding forty-year waiver of contested annexation rights acceptable under the

“specific circumstances” of that case including, among others, the existence of a large inventory of vacant land in the existing town that exceeded that available in similar towns, the lack of an imminent need for additional land based on growth trends, and the inclusion within the town by boundary adjustment of the most valuable existing commercial development around the town).

15-12.03(b) Petition to a Special Court

Upon adoption of the agreement, the localities must petition the circuit court for one of the localities for an order establishing the rights of the parties as set forth in the agreement. The Supreme Court appoints a special court that is directed to affirm the agreement unless it finds either (1) that the agreement is contrary to the best interests of the Commonwealth, including the State’s interest in promoting the orderly growth and continued viability of local governments, or (2) that the agreement is not in the best interests of each of the parties. Va. Code § 15.2-3400(5).

This legal standard is different than the requirements for individual annexation, immunity, incorporation, or transition actions. The specific requirements for such actions apparently do not have to be met in proceeding under Va. Code § 15.2-3400, because the agreement as a whole may be in the best interest of the Commonwealth and each locality, even if it would not satisfy the legal standard applicable to an action under other chapters of Subtitle III of Title 15.2. For illustration, the annexation court did not fully accept a 1983 Fredericksburg-Spotsylvania agreement, because it concluded that a certain area was not reasonably adapted to city improvements, which was a specific requirement of an annexation granted under Chapter 32 of Title 15.2 of the Code of Virginia. If the voluntary settlement statute had been in effect at that time, however, the court may well have approved the annexation of the entire area based on a finding that the agreement as a whole was in the best interests of all parties. In practice, settlement courts have deferred heavily to the judgment of local officials when reviewing such settlement agreements.

The court has the authority either to affirm or deny the agreement in its entirety, but it may not amend or alter the terms or conditions without express approval from each of the parties. Va. Code § 15.2-3400(5). The settlement agreement is not binding on the parties until affirmed by the court, and the entry of a court order affirming an agreement makes it binding on future local governing bodies. Va. Code § 15.2-3400(6). The provisions of Chapter 34 are deemed to have been met by certain agreements entered into prior to July 1, 1990. Va. Code § 15.2-3400(7).

Municipalities that annex land pursuant to Va. Code § 15.2-3400 are subject to the same requirements for conducting a special election for council members as apply to annexations that occur by means of a contested proceeding under Va. Code § 15.2-3200 et seq. Specifically, a special election is required if the annexation increases the municipality’s population by more than 5 percent. Va. Code §§ 15.2-3226, 15.2-3400(8). Any annexation provided for in such a settlement agreement becomes effective on the first day of the month following court approval, unless the agreement states otherwise. Va. Code § 15.2-3400(5). In 2013, the General Assembly permitted the Town of Bedford to delay the holding of a post-annexation special election beyond the date specified in Va. Code § 15.2-3226. 2013 Va. Acts ch. 471. Because the annexation was combined with the transition of the former City of Bedford to town status, the application of Va. Code § 15.2-3226 would have dictated multiple special elections within a short period of time.

15-13 CONSOLIDATION OF LOCALITIES**15-13.01 Background**

Chapter 35 of Title 15.2 of the Code of Virginia (Va. Code §§ 15.2-3500 through 15.2-3550)

establishes the procedures for the consolidation of localities into a *single* county, city, or town. A partial consolidation of a county and city into a county containing a town is governed by the city-to-town transition process in Chapter 41 of Title 15.2 of the Code of Virginia (Va. Code §§ 15.2-4100 through 15.2-4120). See section 15-10. Prior to the recodification of Title 15.1 in 1997, the Code of Virginia contained five procedures for the consolidation of localities. The Virginia Code Commission recommended that the former five methods be reduced to just two. Three of the former methods dealt with the consolidation of “like units” of local government and were consolidated into one procedure. A number of substantive changes were enacted to create standard terminology and a uniform procedure, although the requirement of a referendum for county mergers, but not for city or town mergers, was retained.

The procedure for consolidation of “unlike units” of local government has been used relatively more frequently since the 1980s, and its provisions were reenacted with a minimum of change. The remaining procedure in former Title 15.1 dealt with the division of a county and the merger of such parts with two or more cities. It was of limited applicability and had not been used in over twenty-five years. Therefore, it was repealed as part of the recodification process.

Although there have been many consolidation efforts among Virginia localities, merger efforts have been rarely successful except in the Tidewater area, where the threat of city annexation produced several county mergers.

15-13.02 Consolidation of Like Units of Local Government

15-13.02(a) Scope of Consolidation Authority

Article 1, Chapter 35 of Title 15.2 of the Code of Virginia (Va. Code §§ 15.2-3500 through 15.2-3519) authorizes an agreement between “like units of local government” to merge into a consolidated like unit of local government. As like units, two or more counties may merge into a single consolidated county, two or more cities into a consolidated city, or two or more towns into a consolidated town. Va. Code § 15.2-3500.

The governing bodies of two or more counties desiring to consolidate may enter into an agreement containing provisions that set forth the proposed form of county government for a consolidated county and “other terms of the agreement.” Va. Code § 15.2-3502. If two cities or two towns seek to merge, the governing bodies may identify the charter of one of the municipalities if the merged locality is to use one of the existing charters. *Id.* For consolidating counties, no merger can become effective unless approved by referendum, while for cities and towns, the governing bodies have the option of including a provision requiring approval by referendum, but are not required to do so. *Id.*

The consolidation statutes authorize merger agreements. Therefore, the statutory procedure does not grant the governing body of one locality a unilateral right to seek a merger over the objection of the other governing body except in one situation. If a governing body has not taken the initiative to negotiate a consolidation agreement, a requisite number of voters in the locality can initiate the process. Voters equal to 10 percent or more of the registered voters of the locality may file a petition with the governing body requesting the members to effect a merger. Va. Code § 15.2-3503. A copy of the petition must be filed with the circuit court of the locality. *Id.* Such a petition must also satisfy the additional procedural steps required by Va. Code § 24.2-684.1, which applies whenever a referendum election on any issue is initiated by voter petitions. See section 15-13.03(c). If the governing body for any reason is unable to reach a consolidation agreement within six months, then the circuit court is directed to appoint a committee of five representative citizens of the locality to “act for and in lieu of the governing body” in reaching a consolidation agreement. Va. Code § 15.2-3503.

15-13.02(b) Procedure for Consolidation

If the localities reach a consolidation agreement, they are required to petition the circuit court for an order scheduling a referendum on a proposed merger into a county form of government, and if provided by agreement, on a proposed merger into a city or town. Following newspaper publication, the court is directed to enter an order requiring the holding of a referendum, if appropriate, on whether the localities should consolidate. If a majority of the voters in each locality who vote in the referendum are in favor of the consolidation, then the merger becomes effective. Va. Code §§ 15.2-3505, 15.2-3507.

15-13.02(c) Effect of Consolidation

Following the referendum approval of a consolidation, an election must be held at the next regular November election for all county officers provided by general law for the consolidated county. Va. Code § 15.2-3508. Similarly, at the next regular May election, an election must be held for officers for the consolidated city or town. Va. Code § 15.2-3509.⁸

Until changed by law, all school districts, election districts, and voting places in the localities prior to consolidation continue in the consolidated locality. Va. Code § 15.2-3513. In addition, those ordinances enforced in the localities at the time of the merger continue in effect within the limits of those localities insofar as they are not in conflict with the consolidation agreement. Va. Code § 15.2-3517.

The General Assembly has provided certain financial incentives for the consolidation of localities. See section [15-13.03\(d\)](#).

15-13.03 Consolidation of Unlike Units of Local Government**15-13.03(a) Scope of Consolidation Agreement**

Article 2, Chapter 35 of Title 15.2 of the Code of Virginia (Va. Code §§ 15.2-3520 through 15.2-3550) authorizes the consolidation of any one or more counties or cities having a common boundary, or any county and all incorporated towns. The localities can merge into either a single county or single city. Va. Code § 15.2-3520.

The localities proposing to consolidate must agree upon the disposition of all property and debts of the affected localities. Any town within a county which proposes to consolidate with another county or city into a merged city must continue as a “township” if it is not a party to the consolidation agreement. Va. Code § 15.2-3532. Any town located within a county that proposes to consolidate with another county or city into a merged county continues as a town within the consolidated county, if it is not a party to the consolidation agreement. *Id.*

Most proposed mergers in recent decades have involved “unlike localities.” To facilitate such merger efforts, the General Assembly has authorized a wide variety of optional consolidation provisions intended to meet the need for flexible and unique conditions in various localities. Among many other provisions, localities may include the following provisions:

1. In a consolidated city, there will be no increase in property assessments for a period of not more than five years, except for permanent improvements made after consolidation;
2. The rate of real property tax shall be lower than in other portions of the

⁸ Passage of the 2021 amendment referenced in the footnote [3](#) may mean that the election should be held at the time of the November general election. See 2021 Va. Acts ch. 103 (special session I) (adding Va. Code § 15.2-1400(E)).

consolidated locality for a period of five years, provided that the difference in taxes shall bear a reasonable relationship to differences in non-revenue-producing governmental services;

3. A special tax on real property for a period not exceeding twenty years can be levied in an area for the purpose of repaying existing indebtedness chargeable to that area prior to consolidation;
4. A merger into a single county may include a tier-city that shall have the same rights and obligations as a town plus such other rights, powers, and obligations as may be given to it by general or special law;
5. The agreement can include special arrangements to permit the constitutional officers and school superintendents to continue in office with one of the officers designated as the principal officer and the others as assistants or chief deputies;
6. For a consolidated city, the agreement may incorporate a proposed charter, subject to the approval of the General Assembly; and
7. For a merger into a consolidated county, the area of any former town or city may be designated as a special service district in which additional property taxes are levied to provide for additional or more complete governmental services.

Va. Code § 15.2-3534. The recodification of Title 15.1 eliminated several options that previously existed, such as the creation of a “shire” within a consolidated city. Va. Code § 15.1-1135 (1989 Repl. Vol.), *repealed by* 1997 Va. Acts ch. 587. However, by charter, the General Assembly from time to time has continued to prescribe special features for consolidated localities, when requested by local officials to gain the support of voters. In 2011, for instance, it granted a charter for the proposed City of Alleghany Highlands that contained some requirements for the consolidated city that are normally associated with counties. 2011 Va. Acts ch. 338. Among other things, that charter provided that law enforcement services in the new city could be furnished only by an elected sheriff rather than an appointed chief of police, and that certain types of debt could be incurred only with referendum approval of qualified voters, as is the case for most counties. *Id.* In referendums in 2011, however, the voters of Covington and Alleghany County rejected the proposed merger.

15-13.03(b) Procedure for Consolidation

The General Assembly created a fundamental distinction in the procedure and requirements for a merger into a consolidated city as compared to a merger into a consolidated county. A merger into a consolidated county requires no administrative or judicial review as to the merits of the proposal. By contrast, a merger into a consolidated city requires a review by the Commission and review of a special court.

If governing bodies reach an agreement to merge unlike localities into a consolidated *county*, they must petition the circuit court to request that a referendum be held on the consolidation proposal. Va. Code § 15.2-3529. After newspaper publication of the consolidation agreement, or a descriptive summary thereof, the chief judges of the circuit courts for the county and city must order the holding of a referendum on the merger proposal. If a majority of the voters in each locality voting in the referendum are in favor of the consolidation, then the merger automatically becomes effective on the date prescribed by the circuit court. Va. Code § 15.2-3540. Where a county proposes to consolidate in its

entirety with a city, the referendum does not require a separate vote on the merger issue for towns within the county. *Id.*

Because of certain differences in the treatment of cities and counties under state law, the General Assembly requires a different procedure for the formation of new *cities* by means of consolidation of two unlike localities. After an agreement is reached on the plan for the creation of a consolidated city, the proposal must be reviewed by the Commission to determine whether the localities are eligible for city status. Va. Code § 15.2-2907. Following the Commission review, a hearing on the merits of the proposal is conducted by a special court. Va. Code § 15.2-3526. The court is directed to enter an order for the holding of a referendum on the merger proposal, if it finds the following:

1. The proposed city would have 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; however, where the proposed consolidation includes an existing city, the population and density requirements would not apply;
2. The proposed city would have the fiscal capacity to function as an independent city and would be able to provide appropriate services; and
3. The proposed city would be in the best interests of the parties and would further the interests of the Commonwealth in promoting strong and viable units of local government and in promoting state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies.

Id. The court is limited in its decision to granting or denying city status eligibility and has no power to impose its own conditions as to the proposed merger. *Id.* In practice, the Commission and reviewing courts have found that proposals to create a consolidated city have easily met this legal standard.

15-13.03(c) Citizen-Initiated Agreement

The statutes governing consolidations of unlike localities permit citizens within a locality to seek a consolidation where their governing body has not taken the initiative to do so. Pursuant to Va. Code § 15.2-3531, 15 percent of the registered voters of a locality may petition their governing body to effect a consolidation agreement. All of the signatures on the petition must have been made within twelve months. A copy of the petition must be filed with the circuit court of the locality. *Id.* If the governing body is unable for any reason to reach a consolidation agreement within one year, the circuit court appoints a committee of five representative citizens to “act for and in lieu of” the governing body in perfecting a consolidation agreement.

Such a petition must also satisfy the additional procedural steps required by Va. Code § 24.2-684.1, which applies whenever a referendum on any issue is initiated by voter petitions and which overrides procedural requirements found in other general laws. Prior to circulating a petition for signatures, an individual must file a copy with the clerk of the circuit court along with other information. The clerk must certify, within ten days, that he has received and accepted the copy of the petition. Va. Code § 24.2-684.1. Among other requirements, the Code provision requires that the voters must date their signatures and be validly registered at the time the petition is signed and later when the petition signatures are validated. *Id.* Each signature must be witnessed and the name of any sponsoring organization must appear on the front and back of the petition. *Id.* Further, the petition

must be completed and filed with the appropriate “court or authority” within nine months of the date of certification by the clerk of court, and if the circulators fail to do so, the petitions are “invalid for all purposes.” *Id.*

In a voter-initiated proceeding proposing a merger of the Town of Culpeper and the County of Culpeper, the circuit court dismissed the proceeding for non-compliance with these procedural steps. It initially ruled that the provisions of Va. Code § 24.2-684.1 apply to a voter consolidation petition, that the completed petition must be filed with the circuit court, not the registrar, and that the filing of an unsigned copy of the petition with the circuit court did not satisfy the statutory requirements. See *In re Petition of Registered Voters of Culpeper*, No. CL07000156 (Culpeper Cnty. Cir. Ct., Jan. 26, 2009). The circuit court held that the consolidation petition in question was invalid for all purposes, because the circulators had failed to file the signed petition with the court within nine months of the clerk’s certification. The court further held, as an alternative ground, that the circulators’ failure to file a copy of the signed petition with the court violated the requirements of the consolidation law in Va. Code § 15.2-3531.

15-13.03(d) Effect of Consolidation

A concern sometimes raised by localities considering consolidation is whether the terms of the consolidation agreement can be changed by the governing body of the consolidated city or county at a later date. Section § 15.2-3534 of the Code of Virginia strikes a compromise on this issue. The governing body of a consolidated county has the power to make amendments to the consolidation agreement not contrary to general law, but such amendments, except as to the membership of the governing body, are not effective until they have been approved by the General Assembly. Va. Code § 15.2-3534(12). The 1997 recodification of Title 15.1 added a similar provision dealing with amendments to the merger agreement of a consolidated city by the governing body of the new city. Va. Code § 15.2-3534(11).

One significant distinction between cities and counties in Virginia is in the area of transportation. The Virginia Department of Transportation is responsible for the maintenance of roads in most counties, while cities receive road maintenance allocations from the state to perform their own maintenance activities. Under Va. Code § 15.2-3530, a merger into a consolidated *city* does not terminate the services provided by the Department of Transportation. Instead, the Commissioner of Highways is directed to continue the full services of the Department in those areas that were formerly part of a county, and to continue to allocate funding for the maintenance and construction of roads as if such areas were still in the county. However, when in the opinion of the Commissioner the former county area becomes “substantially urbanized,” the Commissioner may, by agreement with the governing body of the city, transfer the streets in any area to the city for construction and maintenance. Va. Code § 15.2-3530.

The General Assembly has provided at least two important incentives for governmental consolidations (e.g., treatment of the composite index in state educational funding and “hold harmless” incentives under Va. Code § 15.2-1302), and these are in the process of being modified. See extended discussion at section [15-10.05](#).

Following the approval of a merger plan into a consolidated city or county, a special election must be held not less than thirty nor more than 185 days after the date upon which

the referendum was held, but at least thirty days before the effective date of the merger, for the purpose of electing the officers of the new county or city. Va. Code § 15.2-3541.⁹

Upon the effective date of the consolidation, title to all property is vested in, and all indebtedness becomes a debt of, the merged city or county, without any further act or deed. Va. Code § 15.2-3533.

Where a merger agreement is approved for a consolidated county, and a town within that area is not a party to the consolidation agreement, then it continues as a town in the consolidated county. Va. Code § 15.2-3548.

Where a merger plan is approved for a consolidated city, and a town is not a party to the agreement, it continues as a township. Such a township exercises the powers of the town under the town charter and such other powers as towns exercise under general law. However, no township may exercise any annexation or town-to-city transition powers or any extraterritorial authority granted towns by Chapter 22 of Title 15.2 of the Code of Virginia, except that a township created subsequent to July 1, 2011, may institute proceedings for annexation if the consolidation agreement permits a township to exercise such authority. *Id.*

15-14 OTHER RELATED ACTIONS

A special court presides over annexation, immunity, voluntary-settlement, consolidation, incorporation, or transition proceedings, and courts have also held that a special court must hear related cases involving other types of actions. Support for such holdings has been found in Va. Code § 15.2-3000 and its earlier versions. The present version of that statute provides that “[n]otwithstanding any contrary provision of law, whenever any matter provided for in Chapters 32 (§ 15.2-3200 et seq.), 33 (§ 15.2-3300 et seq.), 34 (§ 15.2-3400 et seq.), 35 (§ 15.2-3500 et seq.), 36 (§ 15.2-3600 et seq.), 38 (§ 15.2-3800 et seq.), 39, [sic] (§ 15.2-3900 et seq.), 40 (§ 15.2-4000 et seq.), and 41 (§ 15.2-4100 et seq.) of this title, is required to be decided by a court, the court, unless a different intent appears from the context, shall be composed of three circuit court judges appointed by the Supreme Court of Virginia.” Va. Code § 15.2-3000. Accordingly, courts have held that claims for declaratory judgment, injunction, and stay of arbitration belonged before the special court. *Cnty. of Pittsylvania, et al. v. City of Danville*, Nos. 90, 175 (Pittsylvania Cnty. Cir. Ct. Aug. 16, 1983) (holding that competing claims for injunctive relief belonged before a special court because they related to annexation and immunity proceedings); *Pittsylvania Cnty., et al. v. City of Danville*, No. 90 (Pittsylvania Cnty. Cir. Ct. Oct. 29, 1983) (order of special court holding that claim for injunctive relief against annexation proceeding was properly before it), *appeal denied*, No. 840103 (Va. Sup. Ct. Sept. 27, 1984); *Cnty. of Bedford, et al. v. City of Bedford, et al.*, No. 15674 (Bedford Cnty. Cir. Ct. June 20, 1990) (decision of special court recognizing that it was the appropriate forum for a declaratory judgment action relating to an annexation proceeding); *Henry Cnty., et al. v. City of Martinsville*, No. CL22000012-00 (Henry Cnty. Cir. Ct. Apr. 28, 2022) (transferring claims for declaratory judgment, stay of arbitration, and injunction to the special court where those claims disputed the validity of arbitration clauses in a voluntary settlement agreement and related memorandum of understanding).

⁹ Passage of the 2021 amendment referenced in the footnote 3 may mean that the special election should be held at the time of the November general election. See 2021 Va. Acts ch. 103 (special session I) (adding Va. Code § 15.2-1400(E)).