

COMMISSION ON LOCAL GOVERNMENT STRUCTURES AND RESPONSIBILITIES



OCTOBER 1, 2003

Commonwealth of Virginia

COMMISSION ON LOCAL GOVERNMENT

Structure and Responsibilities

I

Establishment

The Commission on Local Government (the Commission) was created as a permanent body by Chapter 85 of the Acts of Assembly of 1979 and formally began operation in January 1980. In July 2003 the Commission was merged with the Virginia Department of Housing and Community Development.

II

Composition of the Commission

The Commission consists of five members who are appointed by the Governor and confirmed by the General Assembly. Members are appointed for staggered five-year terms, with one member's term expiring each year. Members are eligible for reappointment. (Section 15.2-2901, Code of Virginia.)

III

Membership Qualifications

To serve on the Commission, members must be qualified voters under the Constitution and laws of Virginia, both at the time of appointment and throughout their terms of office. They must also be qualified by knowledge and experience in local government and may not hold any other elective or appointive public office. Further, a member is prohibited by statute from participating

in the discussion, deliberation, drafting, or approval of any report or finding required of the Commission by the Code of Virginia, if such action affects a political subdivision in which the member presently resides or owns an interest in real property or, within the preceding five years, has resided or has owned any interest in real property. (Sections 15.2-2901 and 15.2-2906, Code of Virginia.)

IV

Duties Related to Interlocal Issues

A. Review of Boundary Changes and Governmental Transitions

1. Generally

The Commission is charged with reviewing petitions and proposals for a variety of actions involving boundary changes and other governmental transitions. These include annexation, the immunization of county areas from city-initiated annexation and from city incorporation, the transition of towns and counties to city status, the transition of cities to town status, and consolidations proposing the creation of new cities. The Commission is also charged with reviewing interlocal agreements proposing settlement of these issues (see paragraph IV.D.) and interlocal agreements that involve revenue sharing. In addition, the Commission may be requested by the court to review proposals for the establishment of new towns under the authority of Chapter 36, Title 15.2 of the Code of Virginia.

2. Review Procedure

In each case brought before the Commission, the initiating party must file formal notice of the proposed action with the Commission and must submit documents and exhibits to support the proposal. After receiving the notice and other filings, the Commission undertakes an investigation of the proposed action based upon statutorily prescribed criteria applicable to the specific action proposed. During the Commission's investigation, the parties are given an opportunity to amplify their written submissions orally, to present arguments for or against the proposed action, and to respond to questions from the Commission. In addition, the

Commission holds a public hearing on the matter at a site convenient to residents of the affected jurisdictions in order to receive comment from interested citizens.

3. The Commission's Report

The Commission then writes a report with findings of fact and recommendations about each proposed action, based on the evidence submitted by the parties, testimony offered by the public, and data independently compiled by the Commission's staff. This report, which is advisory and non-binding in nature, is submitted to the affected local governments and to any court that may ultimately consider the case. The Commission is required to submit its report within eight months after it receives official notice from the local government initiating the action. The Commission, or any party to the case, may petition the court to extend the time for filing the report, but, unless the parties agree otherwise, an extension may not exceed ninety days. No court action may be filed in the case before the Commission has made its findings of fact. (Section 15.2-2907, Code of Virginia.)

B. Mediation Activity

The Commission has statutory authority to mediate interlocal disputes and to promote negotiated settlements. The Commission may become involved in such mediation of interlocal concerns either through its own initiative or by request of the parties.

1. Mediation by Commission Initiative

The Commission is authorized to mediate all boundary change and governmental transition issues referred to it for formal review. Such negotiations may be conducted by Commission members and staff or, with the agreement of the parties, by an independent mediator appointed by the Commission. The Commission or its appointed mediator may conduct these negotiations in executive session. No offers or statements made in negotiations may be reported by the Commission in its findings of fact or introduced as evidence in any subsequent judicial proceeding. (Section 15.2-2907, Code of Virginia.)

In addition to mediating issues brought before it formally as a result of notice of a proposed boundary change or governmental transition, the Commission in some cases may also mediate emerging issues in advance of formal notice of a proposed action. The Commission is authorized to undertake such mediation if it determines that the negotiations would be timely and appropriate. (Sections 15.2-2903 and 15.2-2907, Code of Virginia.)

2. **Statutorily Invoked Mediation by Parties in Annexation and Partial Immunity Issues**

Mediation may also be initiated by the parties involved in certain cases under review by the Commission. Either before or after the filing of any annexation or partial immunity petition with a court, any local government involved in such action may notify the Commission of its desire to negotiate a resolution of the issue with the other affected party or parties. The Commission, which is charged with overseeing the progress of these locally initiated negotiation efforts, must be kept advised by the affected localities of the status of the negotiations. If the parties agree, the Commission or its designated mediator may assist in these negotiations. All suits for annexation or partial immunity are stayed while these negotiations are in progress. However, the Commission is directed to declare such negotiations terminated, if it determines that none of the parties is willing to continue to negotiate or that three months have elapsed with no substantial progress toward settlement. In any event, these locally initiated negotiation efforts must terminate within twelve months after commencement unless the parties agree to continue them. [Section 15.2-2907(E), Code of Virginia.] The agreements that result from interlocal negotiations require State review under statutory provisions cited in the following sections of this document if they encompass provisions that relate to any issue otherwise subject to State oversight.

C. **Agreements Defining Town Annexation Rights**

The Commission is also charged with reviewing town-county annexation agreements developed pursuant to Article 2, Chapter 32, Title 15.2 of the Code of Virginia.

These agreements, authorized in Virginia since July 1, 1979, permit a town to annex periodically by ordinance in exchange for permanently renouncing its authority to become a city. The statute directs the Commission to review these proposed agreements to determine whether they (1) provide for the orderly and regular growth of the town and county together, (2) provide for an equitable sharing of the area's resources and liabilities, and (3) are in the best interests of the community at large.

In conducting its review of a proposed town-county annexation agreement, the Commission considers data submitted by the parties and conducts a public hearing within the town or county to receive testimony from all interested citizens. The Commission is required to render a written report of its findings to the governing bodies of the affected localities. However the governing bodies of the town and county may adopt the proposed agreement even if the Commission's findings are "unfavorable" to the proposed agreement, provided they conduct an additional joint public hearing before adopting the agreement.

If the town and county are unable to reach a voluntary annexation agreement, the town is authorized to petition the Commission for the entry of an order establishing the town's annexation rights in exchange for its renouncing the authority to become a city. In such instances, the Commission is directed by law to enter an order establishing the town's annexation rights following an appropriate review and public hearing. Such orders by the Commission are final, unless they are appealed within thirty days by the town, the county, or five percent of the registered voters of either jurisdiction. (Sections 15.2-3231 - 15.2-3235, Code of Virginia.)

D. Voluntary Settlement of Boundary Change or Transition Issues by Local Governments

Chapter 34, Title 15.2 of the Code of Virginia authorizes any county, city, or town to enter into long-term binding interlocal agreements affecting their authority with respect to specified boundary change and governmental transition issues. These issues include the incorporation of towns, transition of counties or towns to city status, annexation, immunity from annexation, reversion from city to town status, and consolidation. Such interlocal

agreements may include provisions that modify or waive, in whole or in part, any of the above-cited legal prerogatives, as well as provisions regarding revenue and economic growth-sharing, boundary line adjustments, the acquisition of real property, the joint exercise or delegation of powers, and land use control.

Such agreements must be submitted to the Commission for review prior to formal adoption by the local governing bodies. The Commission is required to hold hearings on each agreement and to submit a report containing recommendations and a finding on the issue of whether the proposed agreement is "in the best interest of the Commonwealth." (Section 15.2-3400 Code of Virginia.) Only after receipt of the Commission's report may the local governing bodies formally adopt the agreement. After receiving the Commission's report, the affected local governing bodies may adopt the original or a modified version of the agreement by ordinance following properly advertised public hearings.

Before the adopted agreement may be implemented, however, it must be presented to the court for review. The court must consider the Commission's report but is not bound by its recommendations and findings. The court may either affirm or deny the agreement but may not impose changes in its terms or conditions. However, unless the court finds that the agreement is contrary to the best interests of the Commonwealth or is not in the interest of each of the parties, it is required to affirm it. If the court approves the agreement, it is binding on future governing bodies of the localities. (Section 15.2-3400, Code of Virginia.)

E. Voluntary Economic Growth-Sharing Agreements

The Code of Virginia permits any county, city, or town or group of such localities to enter into long-term binding voluntary agreements with any other county, city, or town or group of localities to share in the benefits of their economic growth. The governing body of each participating locality must approve these growth-sharing agreements after specific notice and public hearing requirements have been met. However, before a public hearing may be held, any such revenue, tax base, and economic growth-sharing agreement must be submitted to the Commission for review. The Commission's investigation is undertaken in the same manner as any other proposed action it evaluates. However, voluntary growth-

sharing agreements are not thereafter subject to a second level of scrutiny by a court. If a growth-sharing agreement creates a debt on behalf of any county or regional government or any district within either of them, the voters of the political subdivision in a special referendum must also approve it. (Section 15.2-1301, Code of Virginia.)

F. Review of Continued Eligibility for City Status

The Commission is charged with undertaking an investigation to determine the "population, assets, liabilities, rights and obligations" of any city which, based on the most recent United States census, may not meet the requirements for city status established by Article VII, Section 1 of the Constitution of Virginia. The report produced by the Commission is presented to the governing body of the affected city. If the Commission's report concludes that the city does not meet the constitutional requirements for city status, the city is required to petition the circuit court for the convening of a special court to determine the issue. (Sections 15.2-4001 and 15.2-4002, Code of Virginia.)

V

Other Duties

A. Analysis of Fiscal Impact of Legislation

The Commission is charged with analyzing the fiscal impact of certain bills introduced in the General Assembly that would impose net additional expenditures on one or more local governments in the Commonwealth or a net reduction of revenues. Such bills are identified by the Division of Legislative Services and referred to the Commission for review and analysis. The Commission assesses the prospective fiscal impact of each bill referred to it and prepares a statement summarizing the likely effect the bill would have on localities. These fiscal impact statements are forwarded to the Clerk of the House of Delegates for transmittal to the patrons of the bills and to the legislative committees reviewing the proposed legislation. In preparing its fiscal impact estimates, the Commission has authority to request assistance from all departments and agencies of the Commonwealth, the Division of Legislative Services, and all local governmental units. (Sections 30-19.03 - 30-19.03:1.1, Code of Virginia.)

B. Annual Comparative Analysis of Local Fiscal Conditions

At the request of the Joint Legislative Audit and Review Commission, the Commission assumed responsibility in 1986 for a continuing analysis of local fiscal capacity, revenue effort, and fiscal stress in Virginia. To fulfill this obligation, the Commission annually produces statistical tabulations comparing the fiscal condition of Virginia's local governments. Although these annual reports are intended to provide general information about the comparative fiscal viability of Virginia's local governments, they are also used by various State agencies in the distribution of State funds.

C. Overview of State and Federal Mandates on Localities

Legislation enacted in 1993 charged the Commission on Local Government with new responsibility for assisting the General Assembly in monitoring the effect of State and federal mandates on Virginia's localities. The agency is required to issue an annual catalog of such mandates and to establish a schedule for the administering agency's periodic assessment of them.

1. Annual Catalog of State and Federal Mandates

The Commission annually updates a catalog of all federal and State mandates imposed on the Commonwealth's localities. The catalog includes, where available, a summary of the fiscal impact of new mandates on the State's counties, cities, and towns. (Section 15.2-2903, Code of Virginia.)

2. Scheduling of Assessment of Mandates

The Commission also establishes a schedule, subject to the approval of the Governor and the Secretary of Administration, by which State executive agencies critically assess the mandates on local governments that they administer. The purpose of these assessments is to identify any State or federal mandates that might be altered or eliminated without interruption of local service delivery and without undue threat to the health, safety, and welfare of the residents of the Commonwealth. When the assessments indicate that a mandate might be safely

altered or eliminated according to these standards, the Commission notifies the Governor and General Assembly. Assessments may not be scheduled more than once in any four-year period. (Section 2.2-613, Code of Virginia and Executive Memorandum 1-98.)

D. Advisory Commission on Intergovernmental Relations

The staff of the Commission on Local Government also provides staffing assistance to the Virginia Advisory Commission on Intergovernmental Relations (ACIR), whose statutory duties and authority are set forth in Sections 2.2-2506 through 2.2-2507 of the Code of Virginia. The primary function of the ACIR is to serve as a forum for identifying and addressing areas of mutual concern to local and State officials.

The ACIR is a 22-member body with a diverse membership. By statute, eight members serve in the General Assembly, with three appointed by the Speaker of the House of Delegates and three appointed by the Senate Privileges and Elections Committee. The Governor appoints the remaining fourteen members as follows: three members from the executive branch of state government; four elected local government officials on the recommendation of the Virginia Association of Counties; four elected municipal officers on the recommendation of the Virginia Municipal League; one representative of a planning district commission on the recommendation of the Virginia Association of Planning Commissions; and two citizen members who have no current government affiliation. Members from the executive branch serve at the pleasure of the Governor. All other members serve four-year terms. The Chairman is elected annually from the membership. The ACIR meets at least four times a year.

E. Survey of Proffered Cash Payments and Expenditures

The Commission annually prepares a report on local government revenues and expenditures resulting from the acceptance of cash proffers. In general, cash proffers are any money voluntarily proffered in writing, signed by the owner of property subject to rezoning, and accepted by a locality as part of a rezoning. Not all localities in Virginia, however, are authorized by statute to accept cash proffers. The Commission's report is

required to be transmitted to the Senate Local Government Committee and the House Committee on Counties, Cities and Towns no later than November 30 of each year. (Section 15.2-2303.2, Code of Virginia.)

F. Other Assistance to Local Governments

The Commission accepts requests from local governments for other investigations, analyses, and determinations it deems appropriate and feasible. Requests for such assistance should be addressed to the Commission's offices in Richmond and should include evidence that the governing body of the locality initiating the request supports the proposed activity. [Section 15.2-2903(5), Code of Virginia.]

G. Repository of Information Relevant to Virginia's Local Governments

The agency maintains a library with relevant information about Virginia's local governments, including data on State activities that affect Virginia's local governments and the demographic, economic, fiscal, and governmental attributes of the Commonwealth's localities. This information is available to assist local governments, State officials, and the public with questions or concerns about local government in Virginia.

VI

Rules of Procedures

Pursuant to authority granted by Section 15.2-2903(1) of the Code of Virginia, the Commission has adopted Rules of Procedure that govern its administrative activities and the conduct of its hearings and investigations. These rules are published in the Virginia Administrative Code at 1 VAC 50-20. The last revision of the Commission's Rules became effective November 1, 1984. In addition, the Commission has adopted guidance documents for the review of City-to-Town Transitions, Voluntary Economic Growth-Sharing Agreements, and Annexations Initiated By Voters or Property Owners.

VII Offices and Meetings

The Commission's offices are located at

501 North 2nd Street
Richmond, Virginia 23219-1321
Telephone: (804) 786-6508
FAX: (804) 371-7090
Email: tmccormack@dhcd.state.va.us.
Internet: www.clg.state.va.us

Messages may be left for the Commission's attention through the above telephone number after normal working hours.

The Commission is required by law to hold regular meetings at least once every two months. Such meetings are generally held in January, March, May, July, September, and November. In addition, the Commission schedules special meetings as necessary for the conduct of its business. (Section 15.2-2904, Code of Virginia.)

VIII

Members of the Commission

James J. Heston Chairman Initial Appointment: January 1995 Term Expires: December 31, 2004	Former County Administrator, Westmoreland County; former Member, Northern Neck PDC; former Member, Westmoreland County Planning Commission.
Frank Raflo Vice Chairman Initial Appointment: January 1987 Term Expires: December 31, 2006	Former Chairman, Loudoun County Board of Supervisors; former Mayor, Town of Leesburg; former President, Virginia Association of Counties.
James E. Kickler Initial Appointment: January 1999 Term Expires: December 31, 2003	Former Administrative Manager, Virginia Department of Taxation; former Commissioner of the Revenue, Essex County; Chief Deputy Sheriff, Essex County.
John G. Kines, Jr. Initial Appointment: January 2003 Term Expires: December 31, 2007	Former County Administrator, Prince George County; former Secretary-Treasurer and Director, Appomattox River Water Authority; former Planning and Zoning Administrator, Town of Culpeper.
Geline B. Williams Initial Appointment: January 1996 Term Expires: December 31, 2005	Former Mayor, City of Richmond; former Member, City Planning Commission, City of Richmond; former Member, Richmond Regional PDC; former Chair, Richmond Metropolitan Transportation Planning Organization.

IX

Former Members of the Commission

Peter T. Way
(Jan. 1998-Dec. 2002)

Prior Public Service: Former Member, Virginia House of Delegates; former member, House Committee on Counties, Cities and Towns; former Chairman, Albemarle County Board of Supervisors

William S. Hubard [Deceased]
(Jan. 1980-March 1999)

Prior Public Service: Former Council Member, City of Roanoke; former Chairman, Roanoke Redevelopment and Housing Authority; former Member, Board of Visitors, College of William and Mary.

Harold S. Atkinson [Deceased]
(Jan. 1983-June 1997)

Prior Public Service: Former City Manager, City of Franklin; former Chairman, Southeastern Virginia Planning District Commission; former President, Virginia Municipal League.

Layton R. Fairchild, Jr.
(June 1990-Jan. 1996)

Prior Public Service: Former Chairman, Virginia Minority Business Enterprises Advisory Board; former Member, State Advisory Board to the Virginia Employment Commission.

Mary Sherwood Holt
(July 1985-Jan. 1995)

Prior Public Service: Former Council Member, City of Newport News; former Member, Peninsula Planning District Commission; former President, Virginia Association of Public Transit Officials; Member, Governor's Commission on Virginia's Transportation in the Twenty-First Century.

Alvin J. Schexnider
(Jan. 1989-Feb. 1990)

Prior Public Service: Past President, Virginia chapter, American Society for Public Administration; former Member, Governor's Commission on Virginia's Future; former Member, Board of Visitors, Virginia State University.

Donald N. Johnston [Deceased]
(Jan. 1986-Jan. 1989)

Prior Public Service: Former County Administrator, Washington County, Franklin County, and Campbell County; former President; Virginia Association of County Administrators; former President, National Association of County Administrators.

Benjamin L. Susman
(March 1982-April 1987)

Prior Public Service: Former Chairman, Board of Supervisors, Tazewell County; former Council Member, Town of Tazewell; former Member, Tazewell County School Board; former Member, Tazewell County Planning Commission.

Wendell D. Hensley
(Jan. 1980-April 1986)

Prior Public Service: Former Chairman, Board of Supervisors, Montgomery County; former Member, Montgomery County Planning Commission; former Member, Montgomery County Recreation Commission.

Edward A. Beck [Deceased]
(Jan. 1980-July 1985)

Prior Public Service: Former County Manager, Henrico County; former City Manager, South Boston; former Town Manager, Pulaski, Abingdon, Tappahannock; Past President National Association of County Administrators.

A. George Cook, III
(May 1980-Jan. 1983)

Prior Public Service: Former Council Member, City of Alexandria; former Member, Board of Visitors, George Mason University; Member, Board of Directors, Alexandria Hospital.

Billy W. Frazier [Deceased]
(Jan. 1980-March 1982)

Prior Public Service: Former Council Member, Gate City; former Chairman, Gate City Sanitation Authority; former Chairman, Scott County Board of Supervisors; former President, Virginia Association of Counties; former Member, State Board of Education.

Thomas J. Bliley, Jr.
(Jan. 1980-May 1980)

Prior Public Service: Former Mayor, City of Richmond; former President, Virginia Municipal League; former Board Member, National League of Cities.

X**Staff to Commission**

Ted McCormack
Associate Director

M.S., Planning (Florida State University); former Planning Technician, Division of State Planning, State of Florida; former Planner, Guilford County Planning Department, Greensboro, North Carolina; former Director of Regional Planning, Central Virginia Planning District Commission, Lynchburg, Virginia.

Stephen Ziony
Principal Economist

Ph.D. Candidate, Political Science (Stanford University); M.A., Political Science (Maryland); former Research Assistant, Institute of Political Studies, Stanford University; former Project Manager, Intergovernmental Relations Group, City of New York; former Analyst, Department of Criminal Justice Services, Commonwealth of Virginia.

Larry E. McMillan
Senior Policy Analyst

M.U.R.P., Urban and Regional Planning (Virginia Commonwealth University); former Environmental Technician, Virginia Water Control Board; former Senior Technician, Research and Development, Texaco Experiment, Incorporated.