

---

**Historical and Legal  
Context for  
Regionalism**

**2010**

COUNCIL ON VIRGINIA'S FUTURE

---

# INTRODUCTION AND TABLE OF CONTENTS

## INTRODUCTION

One of the Council’s important roles is to maintain a focus on long-term issues vital to Virginia’s future, including the four foundations of Virginia’s prosperity and quality of life: a vibrant economy, a well-educated citizenry, being the best-managed state, and maintaining an informed and engaged citizenry.

This draft material was developed as part of a Council initiative in 2010 to better understand the drivers of economic growth, particularly from a regional perspective. Research and dialog with national, state, and regional experts and economic development leaders made clear that Virginia’s economic future depends on the vibrancy of each of its diverse economic regions. It was thus determined that it was necessary to more fully understand the current status of intra-regional collaboration along with state-local intergovernmental relationships.

*Issue Insight #7: Government Funding and Service Delivery Relationships* provides an overview of intergovernmental issues. This document provides a historical and legal context to deepen our understanding of the current state of inter-locality relationships.

## TABLE OF CONTENTS

Background	2
Independent Cities and Annexation	3
Hahn Commission	4
Stuart Commission	6
Michie Committee/VML-VACo Task Force	6
Commission on Local Government	7
Local Government Advisory Council	8
Grayson Commission	9
Economic Competitiveness	10
The Urban Partnership	10
The Regional Competitiveness Act	11
Legal Relationships	13
Constitutional Underpinnings	13
Broad Statutory Authority	14
Dillon Rule	16
Mandates	17

# Historical and Legal Context for Regionalism

## Background

Article VII of the 1971 Virginia Constitution establishes in general terms the state’s local government structure and it has been more fully developed in legislation, regulations, and judicial interpretation. The constitution defines four types of local government units in Virginia: counties, cities, towns, and regional governments (Figure 1). One important point regarding Virginia’s local government classifications is that by defining city’s as independent, the Constitution sanctions the state’s unique tradition of city-county separation, ensuring that every city in the commonwealth is a distinct political entity with its own population, tax base, and geographic area, and is not part of any county. Compared with other states, Virginia’s system represents fewer local government units and more clearly delineated lines of authority, a framework that reduces the fragmentation and overlapping responsibilities that often cause confusion and other problems elsewhere. At present, Virginia has 95 counties, 39 cities, and 190 towns, but no regional governments.

Figure 1

Virginia’s Units of Local Government			
Counties	Cities	Towns	Regional
<ul style="list-style-type: none"> <li>Unrestricted by population size and geographic area</li> <li>Unincorporated administrative subdivisions of the state</li> <li>Governed by an elected board of supervisors</li> <li>Includes the counties in existence when the 1971 Constitution was adopted, and later created by law</li> </ul>	<ul style="list-style-type: none"> <li>Independent</li> <li>Must have 5,000 residents</li> <li>Incorporated communities</li> <li>Governed by elected city councils</li> <li>Includes the cities in existence when the 1971 Constitution was adopted and those later created by law</li> </ul>	<ul style="list-style-type: none"> <li>Constituent part of counties</li> <li>Must have 1,000 residents</li> <li>Incorporated communities</li> <li>Governed by town councils</li> <li>Includes the towns in existence when the 1971 Constitution was adopted and those later created by law</li> </ul>	<ul style="list-style-type: none"> <li>Units of general government established within defined boundaries and legal parameters</li> <li>Must be authorized by the General Assembly</li> </ul>

## Independent Cities and Annexation

Virginia is the only state in which all cities are independent entities. In fact, aside from Virginia's 39 independent cities, the United States has only three others: Baltimore, Maryland; St. Louis, Missouri; and Carson City, Nevada. Originally intended to protect the interests of powerful cities in the state in the late 19<sup>th</sup> century, Virginia's independent-cities system served to intensify interlocal tensions in the latter half of the 20<sup>th</sup> century as metropolitan counties became more urbanized and population and influence began to shift from cities to suburbs. New highways enticed residents away from older central cities to up-and-coming developments in neighboring counties that promised larger homes for the money, safer neighborhoods, and better schools. As this trend continued, businesses characteristically followed residential development, abandoning downtown business districts and generating greater wealth for the suburbs. Core cities that tried to expand their boundaries often met fierce resistance from neighboring counties. Among other things, county residents did not want responsibility for costly municipal services or for problems associated with city life: poverty, high crime rates, troubled race relations, and blight. Metropolitan tensions like these were not unique to Virginia, but the state's independent-cities system exacerbated them, because increasing a city's land area in this state necessarily meant taking territory, tax base, and residents away from the affected county. Yet, cities seemed to have few other options. Expanding municipal boundaries to capture some of the economic growth outside its corporate limits was considered a matter of economic survival.

When the first statute establishing a judicial process for resolving annexation disputes was enacted in 1904, clear distinctions between cities and counties made the determination about whether to approve a city-initiated annexation relatively straightforward for Virginia's courts.<sup>1</sup> Cities' densely populated areas called for a higher level of urban services such as police and fire protection or water and sewer lines while counties' more sparsely populated rural areas did not require higher service levels. Population per square mile in the area to be annexed and the relative service delivery capabilities of the two localities were key factors in the court's decision. As a result, until about 1950, cities won annexation cases most of the time. However, with the rapid urbanization of certain metropolitan counties after World War II, urban-rural dynamics changed radically, and annexation in growing communities became a controversial zero sum game between service-providing entities of comparable stature. For example, in

---

<sup>1</sup>Virginia Acts of Assembly, 1904, ch. 99, p. 144-48. For a more comprehensive history of boundary change disputes in Virginia, see Jack D. Edwards, *Neighbors and Sometimes Friends: Municipal Annexation in Modern Virginia* (Charlottesville, Va.: University of Virginia Center for Public Service, 1992).

1961 Richmond filed a petition to annex parts of Chesterfield and Henrico Counties that resulted in litigation in state and federal courts, including the U. S. Supreme Court, spanning a period of more than fifteen years. Such court battles made it abundantly clear that annexation policies based on outmoded assumptions about urban-rural distinctions between cities and counties were no longer adequate.

## Hahn Commission

The General Assembly began a long and grueling search for solutions to contentious annexation disputes. Numerous legislative study committees from the 1940s to the mid-1960s examined the issue but essentially either reaffirmed the existing approach to annexation or otherwise did little to advance the process. In its 1967 report, though, the Metropolitan Area Studies Commission, which was chaired by Senator Marshall Hahn and known as the Hahn Commission, took a new tack.<sup>2</sup> Stressing the importance of cooperation in growing metropolitan areas, it called for the creation of a new state entity, the Commission on Local Government, to oversee an administrative process for settling boundary disputes and recommended other sweeping proposals, such as a well-financed statewide system of planning district commissions; state assistance with regional planning; the collection of data on local concerns; and a new unit of government, the service district, to help address regional problems. In addition, the Commission weighed the costs and benefits of reforming Virginia's system of city-county separation but concluded that the resulting disruption would outweigh the benefits and advocated no change. Unfortunately, the Hahn Commission encountered strong resistance in the legislature, which rejected its major recommendations.

However, one Hahn Commission innovation that was implemented immediately was the creation of a system of planning district commissions (PDCs) throughout the state. In 1968 the legislature approved the Virginia Area Development Act,<sup>3</sup> which authorized local governments to establish PDCs as voluntary regional organizations to “encourage and facilitate local government cooperation and state-local cooperation in addressing on a regional basis problems greater than local significance.”<sup>4</sup> Other purposes assigned to PDCs include serving as a venue for regional forums, developing regional strategic plans, and identifying and analyzing regional

---

<sup>2</sup> Metropolitan Area Study Commission, *Report of the Metropolitan Areas Study Commission*, 1967, S. Doc. 16.

<sup>3</sup> Modified in 1995 by the Regional Cooperation Act, now codified as Code of Virginia (1997) §15.2-4200*ff.*

<sup>4</sup> *Code of Virginia* (2009) §15.2-4207.

opportunities in planning and implementing public policies and services. Currently, the state is divided into a network of 21 planning district commissions, each of which reports annually to the Department of Housing and Community Development. Commission boards are comprised primarily of local elected officials, local professional staff, and citizens. PDCs provide a variety of technical and program services to their member local governments and the state, such as managing grants, mapping, and planning in a broad spectrum of functional areas, including, among others, land use, transportation, public utilities, economic development, housing, environment, and emergency services. PDCs are supported by federal, state, and local resources, but principally by its localities and federal grants. A 1995 JLARC report noted that just over 16 percent of its funding came from the state; today the total is closer to 12 percent.<sup>5,6</sup>

According to evidence from the interviews and independent research, a few PDCs have been successful in facilitating regional agreements, developing regional strategic plans, and otherwise promoting regional collaboration as the Hahn Commission envisioned, but for a variety of reasons, the PDCs' overall success in fostering regional cooperation has been uneven. JLARC noted a high degree of variability among PDCs in fulfilling its mission as regional entities and concluded that, among other things, a likely reason for its mixed track record was its heavy reliance on local and federal funding skewed its priorities more toward local service provision and federal grant management.<sup>7</sup> JLARC questioned whether PDCs were the best vehicle to address regional problems, noting that state officials repeatedly bypassed them in favor of other means for promoting statewide or regional policies, such as statutory economic development authorities or gubernatorial regional economic development councils created.<sup>8</sup> Observing that the state lacks a coherent policy on the use of PDCs, JLARC offered state decision makers three distinct choices: (1) reduce or eliminate the state's commitment to PDCs; (2) maintain and strengthen PDC operations; or (3) redirect PDC priorities

---

<sup>5</sup>Joint Legislative and Audit Commission, *Review of Regional Planning District Commissions in Virginia*, H. Doc. 15 (Richmond, Va., 1995), p.8: available from [http://jlarc.virginia.gov/pubs\\_90.htm](http://jlarc.virginia.gov/pubs_90.htm)

<sup>6</sup> See Virginia Association of Planning District Commissions, *Cooperative Planning Solutions for Virginia* [online brochure], p. 4; available from [www.tjpd.org/pdf/brochure\\_vapdc.pdf](http://www.tjpd.org/pdf/brochure_vapdc.pdf).

<sup>7</sup> Joint Legislative and Audit Commission, *Review of Regional Planning District Commissions in Virginia*, p. 25.

<sup>8</sup> *Ibid*, p. 58.

to focus on regional work. To date, state lawmakers have opted for the first choice, although the Department of Housing and Community Development concluded in 2010 that PDCs are fulfilling the overall intent of the Regional Cooperation Act.<sup>9</sup>

## Stuart Commission

Annexation continued to dominate the General Assembly's agenda throughout the 1970s. In 1971 a new constitution took effect with provisions incorporating the Hahn Commission's vision of regional governments. In the same year the General Assembly imposed the first moratorium on city-initiated annexations for cities with populations over 125,000. A year later it was extended to all new city-initiated annexations until 1976 and later extended again until 1980. At the same time, the General Assembly created a new study commission in 1971 to explore possible changes to Virginia's annexation laws. Officially named the Commission on City-County Relationships, it was chaired by Delegate G. R. C. Stuart and informally known as the Stuart Commission. After four years of study, the Stuart Commission issued its final report in 1975,<sup>10</sup> in which it recommended, among other things, immunity from annexation for urban counties that met specific population and density criteria and a new system of regional revenue-sharing funds to compensate affected cities. Facing high stakes in a system that seemed to have clear winners and losers, city and county advocates lined up on opposing sides, making a serious attempt at reform impossible. A bill in 1977 to implement the Stuart Commission plan passed the House but was narrowly defeated in the Senate.

## Michie Committee and VML-VACo Task Force

The following year the General Assembly tackled the issue once again through two new bodies, the Commission on State Aid to Localities and the Joint Subcommittee on Annexation, which later merged and elected Delegate Thomas J. Michie as their chair. The Michie Committee endorsed the Stuart Commission's approach in principle but offered a package of three new bills in 1978: HB 599, HB 602, and HB 603. With complex formulas based on need, effort, and ability to pay, the first two bills provided

---

<sup>9</sup> Virginia Department of Housing and Community Development, *Fiscal Years 2009 and 2010 Biennial Report to the Governor and General Assembly on Virginia's Planning District Commissions* [online report] (Richmond, Va., September 2010); available from <http://dhcd.virginia.gov/CommissiononLocalGovernment/pages/PDC.htm>.

<sup>10</sup> Commission on City-County Relationships, *City-County Relations, 1975*, H. Doc. 27; available from [http://leg2.state.va.us/DLS/h&sdocs.nsf/Search options?OpenForum](http://leg2.state.va.us/DLS/h&sdocs.nsf/Search%20options?OpenForum)

additional state aid for cities that relinquished the right to annex and emphasized economic growth as a consideration in annexation cases more than service delivery. HB 603 offered complete immunity for counties that met specific population and density tests and introduced the concept of partial immunity for counties that otherwise could not meet the standard for total immunity. Partial immunity allowed counties to file for immunity for certain areas within their boundaries that did reach the population and density threshold for eligibility. HB 603 also created the Commission on Local Government based on the Hahn Commission's earlier proposal, whose job would be to advise the court on boundary change disputes, interlocal agreements, and related cases. The state's two local government associations, the Virginia Municipal League (VML) and the Virginia Association of Counties (VACo), long-time rivals in annexation cases, reached a tenuous agreement about the proposed legislation. A joint VML-VACo task force recommended establishing the Commission on Local Government, providing complete or partial immunity for counties, and state aid to ensure equal treatment of all localities. The bills were carried over to the next year.

### Commission on Local Government

The next session simpler funding formulas in HB 599 and HB 602, and VML-VACo support for interlocal agreements rather than state aid to compensate cities that gave up the right to annex made a difference to the bills' passage. One of the most important outcomes of the 1979 legislation was the creation of the Commission on Local Government (CLG), which began operations in 1980 without precedent elsewhere in the country. The Commission itself was a body of five local officials with extensive local government experience appointed by the governor and approved by the General Assembly to five-year terms. It was staffed by a small, new state agency of the same name. CLG's charge generally was to assist the Commonwealth in maintaining the viability of its counties, cities, and towns. Its primary duties were to encourage negotiated settlements between local governments and to investigate, analyze, and make findings of fact concerning the likely effect of boundary actions, including annexation, immunity, incorporation, and town-city transitions. It developed into the unofficial arbiter of annexation cases, but it also became the focus of controversy, perhaps inevitably, as on-going and new boundary change cases worked their way through its advisory review process. As a quasi-judicial body, it held formal hearings that required legal representation, site visits, engineering and other detailed analyses which added time and expense to a process that was already protracted, costly, and contentious.

In the late 1980s and throughout the 1990s, the role of the CLG diminished as the moratorium on city-initiated annexation cases remained in place. Following the recession of 2001-2002, the CLG lost its status as an independent state agency and was incorporated into the Department of Housing and Community Development in 2003. Among its other duties, the CLG continues to review town-county and citizen-initiated annexation cases, voluntary settlement agreements, economic growth-sharing agreements, other revenue-sharing agreements, the reversion of cities to town status, and the creation of new cities through consolidation or other transitions. It is also responsible for analyzing and reporting annually the fiscal impact on localities of proposed legislation and the relative revenue capacity, revenue effort, and fiscal stress of the state's counties and cities. In addition, the Commission oversees the process by which state agencies assess mandates on local governments, and it compiles an annual catalog of state and federal mandates on Virginia's localities.

### Local Government Advisory Council/Advisory Commission on Intergovernmental Relations: A Forum

In another effort to diffuse intergovernmental tensions and to find practical solutions to long-standing problems, the governor issued an executive order in 1977 to create a new body, the Local Government Advisory Council (LGAC), which was later established by statute.<sup>11</sup> Its primary purpose was to serve as a forum where state and local officials could confer about a broad range of common concerns. Chaired by the governor, the LGAC also included 22 locally elected officials and the executive directors of the VML and VACo. In addition, the LGAC routinely invited legislators, cabinet secretaries, department heads and other senior state officials to participate in its proceedings. For more than a decade the Council deliberated about subjects ranging from federal block grants and state aid to voter registration and land use. In all, it issued some 30 resolutions, but during the turbulent period of the late 1970s and 1980s it became marginalized as other entities took the lead addressing urgent intergovernmental issues. In 1988 the legislature approved a study resolution to restructure the LGAC and to clarify its role.<sup>12</sup> As a result, in 1989 the LGAC was reconstituted as the Advisory Commission on Intergovernmental Relations (ACIR), staffed by the Commission on Local Government, with a smaller and more diverse membership.<sup>13</sup> Ultimately it included six legislators, eight

---

<sup>11</sup> *Code of Virginia* §2.1-335.2.

<sup>12</sup> Virginia Acts of Assembly, 1998, HJR119.

<sup>13</sup> The Secretary of Administration, *The Establishment of a State Intergovernmental Relations Commission*, 1989, H. Doc. 37; available from [http://leg2.state.va.us/DLS/h&sdocs.nsf/Search options?OpenForum](http://leg2.state.va.us/DLS/h&sdocs.nsf/Search%20options?OpenForum). and *Code of Virginia* §2.1-335.2.

locally elected officials, three state executive agency representatives, two citizen members, and a representative of a regional planning district commission, all appointed by the governor and confirmed by the General Assembly. In addition to serving as a forum, the ACIR concentrated on conducting research, offering educational programs, resolving specific issues, and making various policy recommendations. Among other studies, the ACIR conducted research on town-county fiscal relations and the issues of double taxation<sup>14</sup> and the impact of aesthetics on Virginia's state and local economies.<sup>15</sup> However, the state suffered a severe economic downturn that dictated deep budget cuts, and as a result the ACIR lost funding and was abolished in 2004.

### Grayson Commission: Renewed Turmoil and Frustrated Reform Efforts

By 1986, even with the new annexation law in effect, the furor over annexation had once again gathered enough momentum to support a moratorium on city-initiated annexations. Amid the controversy, the legislature created the Commission on Local Government Structures and Relationships, chaired by Delegate George Grayson and generally referred to as the Grayson Commission. Its far-reaching charge was to study problems related to annexation, city-county separation, interactions among all Virginia's localities, and state-local relationships. Early in its proceedings, the Commission disposed of the lingering question about the independent-city system, determining that, despite its flaws, the independent-city system should not be abolished. The Commission also agreed to hear from a new VML-VACo joint task force, which found common ground, at least at first, on the value of regional cooperation in service delivery, equal city-county powers and responsibilities, a mechanism for regional revenue-sharing and planning, and the need for more state incentives for interlocal agreements. The Commission ultimately recommended abolishing the annexation process, ending judicial oversight of boundary adjustment and transition cases, providing state incentive funds for consolidation, encouraging cities with populations of fewer than 125,000 to revert to town status, and raising the standards for towns to become cities. However, the 1990 bill to implement the Commission's recommendations failed. Ironically, the Commission's lasting legacy may be the moratorium on city-initiated annexation, passed in 1987 to prevent a "run on the courthouse" while the study was under way. Since then, the moratorium has been extended routinely as each new deadline

---

<sup>14</sup> Advisory Commission on Intergovernmental Relations, *Town-County Fiscal Relations: The Issue of Double Taxation*, 1993, H. Doc. 81; available from [http://leg2.state.va.us/DLS/h&sdocs.nsf/Search options?OpenForum](http://leg2.state.va.us/DLS/h&sdocs.nsf/Search%20options?OpenForum).

<sup>15</sup> Advisory Commission on Intergovernmental Relations, *The Impact of Aesthetics on the Economy and Quality of Life in Virginia and Its Localities*, 1998, H. Doc. 90; available from [http://leg2.state.va.us/DLS/h&sdocs.nsf/Search options?OpenForum](http://leg2.state.va.us/DLS/h&sdocs.nsf/Search%20options?OpenForum)

approached. The last city-initiated annexation took place in the mid-1980s. The moratorium is currently set to expire in 2018.

## **Economic Competitiveness: A Regional Approach**

### **Urban Partnership: A Statewide Initiative to Promote Regional Collaboration**

The Urban Partnership ranks as one of the most successful statewide attempts in recent memory to foster greater regional cooperation for economic development. The initiative grew out of a series of meetings that the mayor of Roanoke held in 1993 with fellow mayors from Richmond and Norfolk to discuss economic problems common to their three cities. Over the course of the next two years the partnership expanded and gathered momentum, drawing in the mayors, managers and administrators of 18 of the state's largest localities, local attorneys, policy experts, CEOs of large corporations and banks headquartered in the state, other private stakeholders, the Virginia Chamber of Commerce, the Secretary of Commerce, and a former governor. In 1994 the Urban Partnership became an independent entity with its own staff. Through research, dialogue, policy development, and a savvy political campaign the Partnership promoted the idea that economic competitiveness is a regional, rather than a local, phenomenon and that the economic strength of metropolitan regions is directly related to the economic and social vitality of their constituent jurisdictions, including their neighborhoods. An early goal of the Partnership was to introduce legislation in 1996 to increase Virginia's long-term economic competitiveness by offering localities incentives to work together to solve regional problems and at the same time bridge the divides between neighboring localities and between business and government. Toward that end, members of the Partnership adopted a measurable definition of competitiveness as follows:

[Economic competitiveness is] the ability of a metropolitan area to achieve higher rates of income and job growth, and lower economic disparity between its central and suburban sectors than its major competitors by providing an attractive business climate and quality of life.<sup>16</sup>

---

<sup>16</sup> Roger Richmond, and Jim Oliver, Jr. "The Urban Partnership and the Development of Virginia's New Regional Competitiveness Act," *The Regionalist*, 2, no.1 (Spring 1997), p. 9.

The Partnership commissioned research comparing Virginia metropolitan areas to others in the South and across the country using these standards and learned that regions in this state were clearly lagging in competitiveness. For example, the evidence indicated that no Virginia metropolitan area could be found in the top ten southern regions based on percentage increases in private sector employee income.<sup>17</sup> Similarly, the data showed that only two Virginia regions out of six beat the Southeastern average for earnings per private sector job growth in 1988.<sup>18</sup> Such research was a key element in the Partnership's effort to craft a "framework for competitiveness" that could serve as the basis of an urban policy agenda to address the state's economic competitiveness problem. The process of reaching agreement on a legislative program involved eighteen intense months of research, meetings, regional work groups, analyses of case studies and previous legislative packages, white papers, two large urban summits, and finally a two-day retreat where consensus at last emerged. In 1996 the legislature approved five Urban Partnership bills, the most important of which was the Regional Competitiveness Act.<sup>19</sup>

### Regional Competitiveness Act: A Nationally Recognized Model

With funding incentives and regional autonomy as its hallmarks, the new legislation represented a significant departure from traditional attempts to accomplish major state or federal policy objectives through local governments. It established the Regional Competitiveness Program, administered by the Department of Housing and Community Development (DHCD), which provided funding over a period of five years for qualifying regional partnerships that adopted regional action plans and then made steady, demonstrable progress toward their implementation. What made the program unique were features such as predictable and consistent incentives for regional cooperation, a long time horizon, voluntary participation, flexibility to identify shared regional priorities and to develop tailor-made strategies to address them, recognition of existing collaborative efforts, a local voice in defining regional boundaries for purposes of the program, self-rule in the governance of new regional entities, leveraging opportunities, authority to modify regional strategic plans as needed, and an emphasis on the quality of the collaboration as much as on the nature of the projects to be funded.

---

<sup>17</sup> Ibid, p. 10.

<sup>18</sup> Ibid.

<sup>19</sup> *Code of Virginia* (2002) §15.2-1309.

In 2002 the National Governor's Association Center for Best Practices recognized the Regional Competitiveness Program as a national model for promoting regional economic development.<sup>20</sup> Such success can probably be attributed to several key elements of the program's design. One is the requirement for consensus among multiple stakeholders. To be eligible for state funding, a partnership had to include area business leaders, educators, civic leaders, and local officials from a city within the region and at least one other neighboring locality. A second major element is the program's endorsement of an array of issues, including some that involve more complex kinds of collaboration. A partnership plan could address any combination of fourteen issue areas designated in DHCD guidelines, each of which were assigned a specific point value. To be certified for state funding, each plan had to score at least 20 points. In addition, plans were graded according to its potential for greater economic development and improved interlocal relationships, the level of difficulty of the activity, the amount of funds committed, and the number of localities involved.<sup>21</sup> A third important element is the use of data to measure success. To qualify for continued funding a partnership has to meet specific performance benchmarks and issue a regional report card on its progress annually. The fourth critical element is the prospect of adequate resources to support the collaboration over time.

In 1997 the Urban Partnership's initial funding goal for the Regional Competitiveness Program was \$50 million, and its hope was that the total would increase ultimately to \$200 million per year. As it turned out, the legislature provided \$5.8 million in 1997. Due to the recession of 2001-2002 and continuing state budget pressures thereafter, the last year of funding for the program was 2002, when \$10 million was distributed to 19 partnerships. Between 1997 and 2002 the program received just over \$47.5 million.<sup>22</sup> Yet in those five years, the Regional Competitiveness Program was cost effective: every dollar of incentive funds leveraged more

---

<sup>20</sup> Marc A. Weiss, *State Policy Approaches to Promote Metropolitan Economic Strategy* [online article] (Washington, D.C.: National Governors Association, 2002), p. 18; available from <http://www.nga.org/Files/pdf/1002STATEPOLICYAPPROACHES.PDF>

<sup>21</sup> Virginia Department of Housing and Community Development, *Regional Competitiveness Program Guidelines* (Richmond, Va., 2001). The issue areas were weighted as follows: Job creation or economic development (10), regional revenue-sharing or growth sharing agreement (10), education (10), human services (8), local land use (8), housing (8), transportation (5), law enforcement (5), solid waste (4), water and sewer services (4), corrections (3), fire services and emergency medical services (3), libraries (2), and parks and recreation (2).

<sup>22</sup> Secretary of Commerce and Trade, *Report on Re-establishing the Regional Competitiveness Program* (Richmond, Va., 2003), p. 2.

than \$15 in other investments.<sup>23</sup> Although numerous partnerships established through Regional Competitiveness Program still exist, many have languished since 2002 without additional incentive funding. Defunding essentially terminated the program, though it remains in the state code. In 2003 the Secretary of Commerce recommended reactivating it with fresh funding.<sup>24</sup> The same year the Advisory Commission on Intergovernmental Relations recommended “reverse requests for proposals” as an alternative and somewhat broader approach to encouraging regional cooperation than the Regional Competitiveness Program.<sup>25</sup> Currently, however, the state has no other program in place that provides comparable incentives for regional cooperation.

## Legal Relationships

Amid Virginia’s history of inter-jurisdictional collaboration and regional thinking exists a legal context for regionalism that governs and defines approaches, relationships, and parameters.

### Constitutional Underpinnings of Regional Cooperation in Virginia

The Constitution contemplates that local governments should have broad authority to work together. Article VII Section 3 authorizes the General Assembly to allow “ any county, city, town, or other unit of government . . . [to] exercise any of its powers or perform any of its functions and . . . [to] participate in the financing thereof jointly or in cooperation with the Commonwealth or any other unit of government within or without the Commonwealth.” It further states, “[t]he General Assembly may provide . . . for transfer to or sharing with a regional government of any services, functions and related facilities of any county, city, town, or other unit of government within the boundaries of such regional government.” Both of these ideas offer wide latitude for localities to cooperate with one another and authorizes them to collaborate with regional governments that might be created in the future. Although, the 1971 Constitution allows for cooperative approaches, it also incorporates the dualistic view of cities and counties that characterized the pre-World War II era. For example, Article VII Section 10 as amended gives cities and towns the authority, generally, to contract debt up to ten percent of the assessed value of the real estate within their corporate limits without a

---

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Advisory Commission on Intergovernmental Relations, *Condition and Future of Virginia’s Cities*, p 20.

referendum requirement, whereas the same section stipulates that a county may issue bonds only with the approval of a majority of the voters within its jurisdiction and of the legislature. Many county officials view these distinctions as arbitrary and anachronistic. Additionally, some local officials interviewed as part of the study underscored the disparity in the financial tools available to counties and cities as a barrier to inter-jurisdictional cooperation. Several study commissions have recommended giving cities and counties equal taxing authority, including the Commission on Virginia's State and Local Tax Structure for the 21<sup>st</sup> Century<sup>26</sup> and the Advisory Commission on Intergovernmental Relations.<sup>27</sup>

### Broad Statutory Authority to Collaborate

The General Assembly has granted local governments broad power to take joint action. The Code of Virginia gives them express authority for sharing revenue,<sup>28</sup> and constitutional,<sup>29</sup> administrative and executive officers<sup>30</sup>; the joint exercise of powers<sup>31</sup>; the joint

---

<sup>26</sup> Commission on Virginia's State and Local Tax Structure for the 21<sup>st</sup> Century, *Report of the Commission of Virginia's State and Local Tax Structure for the 21st Century*; HJR 579/1999, 2000, p. 33.

<sup>27</sup> Advisory Commission on Intergovernmental Relations, *Condition and Future of Virginia's Cities*, p. 27. See also Ellen Davenport, "Tax Restructuring in Virginia: The Time Has Come," *Virginia Issues and Answers*, 9, no. 1 (Fall 2002), p. 28; available from [www.via.vt.edu](http://www.via.vt.edu)

<sup>28</sup> *Code of Virginia* (2006) §§15.2-3400 and (1997) 15.2-3401, (1997) §15.2-1301, and (2009) §15.2-6400 *et seq.*

<sup>29</sup> *Code of Virginia* (1997) §15.2-1602.

<sup>30</sup> *Code of Virginia* (1997) §15.2-1513 §15.2-1516.

<sup>31</sup> *Code of Virginia* (1997) §15.2-1300.

delivery of specified services<sup>32</sup>; joint planning commissions<sup>33</sup>; joint authorities<sup>34</sup>; joint enterprise zones,<sup>35</sup> regional transportation programs,<sup>36</sup> joint schools and superintendents,<sup>37</sup> the provision of services by planning district commissions,<sup>38</sup> consolidation or partial consolidation of local governments;<sup>39,40</sup> the reversion to town status;<sup>41</sup> and special legislation creating specific authorities and districts.<sup>42</sup> In addition, a new 2011 law (HB 2364), authorizes localities to enter into mutual aid agreements by ordinance or resolution under certain circumstances. Virginia's local governments have voluntarily executed agreements with one another in all of these areas, even in those widely considered the most difficult for interlocal collaboration, such as revenue-sharing, and consolidated school districts and local governments. However, some agreements require the approval of a majority of the voters in the affected localities, which can pose a potential political barrier to collaboration.

---

<sup>32</sup> These include jails (*Code of Virginia* §53.1-105), juvenile facilities (*Code of Virginia* §16.1-309.3), libraries (*Code of Virginia* §42.1-37), social services (*Code of Virginia* §§63.2-300, 63.2-306, 63.2-307), mental health services (*Code of Virginia* §37.2-500), solid waste and recycling (*Code of Virginia* §15.2-928), law enforcement (*Code of Virginia* §15.2-1726), emergency services (*Code of Virginia* §44-146.20), and animal shelters (*Code of Virginia* §3.2-6546).

<sup>33</sup> *Code of Virginia* (1997) §§15.2-2218 and (1997) 15.2-2219.

<sup>34</sup> These include public service authorities (*Code of Virginia* §15.2-1502), electric authorities (*Code of Virginia* §15.2-5403), redevelopment and housing authorities (*Code of Virginia* §36-24), transportation districts (*Code of Virginia* §15.2-4504), local transportation improvement districts (*Code of Virginia* §33.1-410), airport authorities (*Code of Virginia* §§5.1-35 and 5.1-36), industrial development authorities (*Code of Virginia* §15.2-4916), public recreational facilities authorities (*Code of Virginia* §15.2-5602), park authorities (*Code of Virginia* §15.2-5702), hospital or health center commissions (*Code of Virginia* §15.2-5200), mosquito control districts (*Code of Virginia* §32.1-187), sanitation districts/tidal waters (*Code of Virginia* §21-141 *et seq.*), sanitation districts/nontidal waters (*Code of Virginia* §21-224 *et seq.*), jail authorities (*Code of Virginia* §53.1-95.2), regional criminal justice training academies (*Code of Virginia* §15.2-1747), regional juvenile detention commissions (*Code of Virginia* §16.1-315 *et seq.*).

<sup>35</sup> *Code of Virginia* (2005) §59.1-542.

<sup>36</sup> *Code of Virginia* (2005) §§33.221.1:3 and (1993) 58.1-815.1.

<sup>37</sup> *Code of Virginia* (2004) §22.1-25.

<sup>38</sup> *Code of Virginia* (1998) §§15.2-4208 and (1998) 15.2-4209.

<sup>39</sup> *Code of Virginia* Title 15.2, Articles 1 and 2.

<sup>40</sup> *Code of Virginia* (2005) §§1-13.28:1 and (1997) 15.2-3549.

<sup>41</sup> *Code of Virginia* (1997) §15.2-4100 *et seq.*

<sup>42</sup> See, for example, Virginia Acts of Assembly, 1986, ch.178. The act created the Richmond Metropolitan Authority for construction and operation of toll roads and parking facilities as well as the construction and operation of a baseball field.

## The Dillon Rule: A Cornerstone of State-Local Relations and a Factor in Regional Cooperation

Whether a case involves a locality's decision to act independently or to collaborate with other jurisdictions, disputes can arise about the extent of local government authority. Because localities are deemed to be "creatures of the state," they derive their power from the state constitution and general or special acts of the legislature. Where no clear grant of authority can be found and the law is subject to interpretation, how should a court decide? Virginia has a time-honored tradition of following the Dillon Rule in determining the scope of local discretionary authority. It is a principle of judicial interpretation that dates to the mid-1860s<sup>43</sup> and restricts local government authority to those powers that are expressly granted, necessary, or implied. All doubts are resolved against the locality. As a result, the local government cannot legally take any action, even in managing its own affairs, without first obtaining state authorization. Not surprisingly, many local officials consider the Dillon Rule burdensome, since it injects an element of uncertainty into local affairs that can require extra trips to Richmond, calling for more lobbyists, lawyers, funding, and time. Some also complain the court's negative presumption is demeaning and see it as an irritant in state-local relations. On the other hand, business leaders typically endorse the Dillon Rule because it promotes uniformity of taxes and regulations throughout the state, making business operations predictable from one jurisdiction to the next. In that light, it may also serve to reduce competition between localities. In practice, though, when localities are unsure of the scope of their powers, many simply circumvent the issue and avoid trying to clarify the matter in Richmond, fearing the risk of a loss. What may be least understood about the effect of the Dillon Rule in Virginia is that the legislature has granted localities considerable autonomy. Although examples of micromanagement can be found, a 2008 study, ranked Virginia in fourteenth place with respect to the extent of discretionary authority its local governments enjoy.<sup>44</sup>

---

<sup>43</sup> Clark v. City of Des Moines, 19 Iowa 199 (Supreme Court of Iowa, 1865).

<sup>44</sup> Hal Wolman et al, *Comparing Local Government Autonomy Across States* [online working paper](Washington, D.C.: George Washington Institute of Public Policy, 2008); available from <http://www.gwu.edu/~gwipp/>. Note that in 1992 a Virginia Dillon Rule Commission recommended that the Dillon Rule be relaxed slightly to give local governments greater authority to manage their own affairs, but legislation introduced subsequently to implement the Commission's recommendations was defeated.

## Mandates

Generally, mandates are requirements or restrictions that a higher level of government in a federal system imposes on a lower one, but the precise meaning of the term is open to debate. Defined broadly, mandates encompass compulsory orders for new services or activities and the standards and procedures by which they are to be implemented, as well as conditional requirements of aid, the regulation of optional activities, and restraints on revenue-raising authority. Local governments are subject to both federal and state mandates but have no authority to impose them on any other level of government. As a result, some local officials view them as onerous. They argue that mandates preempt local decision-making and priorities, impose an inappropriate uniformity on communities with widely varying characteristics and circumstances, undermine accountability by allowing the mandating authority to evade responsibility for its actions, and, if not fully funded, usurp scarce local resources. Some argue that even a reasonable new directive can have an adverse impact by adding to the cumulative weight of the total. Such perceptions can inhibit positive state-local relations and complicate efforts at partnership. Yet mandates can be useful vehicles for implementing state and federal policy. Moreover, some local officials stated in the interviews that their localities often provide a higher level of service than is required or would have provided the service even had it not been mandated. To avoid or mitigate problems associated with mandates, Virginia has adopted a variety of tools, including an annual catalog of state mandates, a process by which state agencies annually assess the need for the mandates they administer; a fiscal note process for evaluating the prospective impact of proposed new mandates on localities; and periodic studies.<sup>45</sup> In all, Virginia identified almost 600 state and federal mandates on localities in 2010.<sup>46</sup>

---

<sup>45</sup> For example, see Joint Legislative Audit and Review Commission, *Local Mandates and Financial Resources*, H. Doc. 40 (Richmond, Va., 1983); Joint Legislative Audit and Review Commission, *State Mandates on Local Government and Local Financial Resources*, H. Doc. 15 (Richmond, Va., 1984); and Joint Legislative Audit and Review Commission, *Intergovernmental Mandates and Financial Aid to Local Governments*, H. Doc. 56 (Richmond, Va. 1992); all available from [http://leg2.state.va.us/DLS/h&sdocs.nsf/Search options?OpenForum](http://leg2.state.va.us/DLS/h&sdocs.nsf/Search%20options?OpenForum).

<sup>46</sup> Virginia Department of Housing and Community Development, *2010 Catalog of State and Federal Mandates on Local Governments* [online report] (Richmond, Va., 2010); available from <http://www.dhdc.virginia.gov/CommissiononLocalGovernment/pages/newcatalog.htm>.