
Jack Spain Jr.
THE GENERAL ASSEMBLY AND LOCAL GOVERNMENT: LEGISLATING A CONSTITUTION 1969-70

Jack Spain, Jr.*

I. INTRODUCTION

Counties, cities, towns, sanitary districts and authorities—these are the building blocks of the Commonwealth of Virginia. The operations of these units directly affect the day-to-day activities of every Virginian. The Virginia Constitutional Revision Commission (the Commission), in proposing its recommended changes to the Virginia Constitution of 1902, therefore, considered the area of local government most carefully. Its recommendations contained in Article VII of the proposed Revised Constitution of 1971, set forth in the Commission’s Report.1 When the proposed Constitution was considered by the General Assembly in the special session of 1969 before its final adoption by the General Assembly and approval by the voters as the Revised Constitution of 1971, certain key sections of the Article were rewritten as extensively as any sections in the Constitution. An editorial in the Washington Post, written shortly after the special session, was typical of the criticism of the General Assembly’s work in the area of local government:

In the area of local government, where the Harrison Commission had proposed major forward progress, the General Assembly has not done well . . . . Its action, or rather inaction, in this area means that Virginia will not try to regain the premier position it once had as a leader among states in modernizing local government unless the Gen-

---

* Member of the law firm of Hunton, Williams, Gay & Gibson, Richmond, Virginia; Member of the Richmond, Virginia and American Bar Associations; A.B., University of North Carolina, 1960; J.D., Harvard Law School, 1963. Mr. Spain served as counsel to the Virginia Constitutional Revision Commission’s Committee on Local Government and as counsel to both the House of Delegates and the Senate Committees on Counties, Cities and Towns during the General Assembly’s consideration of the proposed Revised Constitution of 1971.


For consideration of the prior history of local government in Virginia, see C. BAIN, A BODY INCORPORATE: THE EVOLUTION OF CITY-COUNTY SEPARATION IN VIRGINIA (1967); A. PORTER, COUNTY GOVERNMENT IN VIRGINIA: A LEGISLATIVE HISTORY 1607 TO 1904 (1947); R. Pinchbeck, Origin and Evolution of County Government in Virginia (unpublished paper in University of Richmond Institute for Business and Community Development).
eral Assembly uses its powers more wisely in the future than it has in the past.²

Such criticism is both unfair and inaccurate. The purpose of this article is to examine in detail, before too much time fades the writer's first-hand knowledge, the General Assembly's revisions of the Local Government Article in the Commission's proposed Constitution, in order to provide background for future interpretation and to show the valid reasons for some of the revisions. As in any legislative history, there is only a history of those issues and sections actually discussed. Other provisions, not discussed, may be just as, or more important as those which were discussed.

A. Commission Report

The constitutional revision process began January 10, 1968, when Governor Mills E. Godwin, Jr., asked the General Assembly to establish a commission to study the revision of the Virginia Constitution of 1902 and make recommendations to him and to the General Assembly. One of the goals mentioned by Governor Godwin in his address was flexibility to "pave the way for calm, cooperative action in the future on the vexing problems surrounding Virginia's rapid urban growth."³ These problems had been highlighted by the study and report of the Metropolitan Areas Study Commission.⁴

The General Assembly followed through by establishing a Commission, the Governor named able members and the Commission's Report, dated January 1, 1969, was formally delivered to the Governor at ceremonies in Williamsburg on January 11, 1969. On January 16, the Governor called the General Assembly into special session, to commence Wednesday, February 26, 1969, to consider the proposed revisions.

The Report the General Assembly received was not a radical report. The Commission itself was a thoughtful, generally conservative group. The Commission's Local Government Committee was made up of Hardy C. Dillard, the Dean of the Law School of the University of Virginia and presently a judge of the International Court of Justice, the Hague, and Albert V. Bryan, Jr., then a judge on the Circuit Court of Fairfax County and presently a Federal judge for the Eastern District of Virginia.

---

⁴. METROPOLITAN AREAS STUDY COMMISSION REPORT (Richmond, 1967).
The Commission noted in its Report that Virginia's independent city/county structure had avoided many of the difficulties of multi-layered government, which plagued other states. In fact, much of the literature which the Commission examined on the subject of local government dealt with problems of multi-tax systems not existing in Virginia, where each city council and county board of supervisors already levied all taxes in its own jurisdiction for all purposes. Further, the Commission found there was "a tradition of strong and responsible local government" in Virginia with sufficient powers in city councils and county boards of supervisors to finance and provide services for their citizens. The Commission Report stated that it proposed "no radical change in the structure of local government in Virginia."

The Commission did propose some changes designed to increase the efficiency of local government by providing more flexibility in meeting the pressure of present and future needs. The Commission's recommendations included: (a) more uniform constitutional treatment of counties and cities; (b) a new "charter county" concept to coincide with a "city"; (c) self-amendment of charters by charter counties and cities to eliminate the need for some special acts in the General Assembly; (d) reversal of the Dillon Rule, which requires a strict interpretation of the powers conferred by law on municipal corporations; (e) revisions in city and county borrowing limitations; (f) the constitutional recognition of a new unit of general government—the regional government; (g) the constitutional recognition of a State Commission on Local Government; and (h) an increase in the minimum population required for the creation of new cities to cut down on fragmentation of local government units.

B. The 1969 Special Session

Shortly before the session of the General Assembly convened, the Executive Assistant to the Governor prepared a fifteen-page summary of the Commission Report. In a two page discussion of the Article on Local Government, the summary stated:

This article would loosen some of the legislative reins on local government and treat cities and counties more alike, principally by reversing the present constitutional philosophy.\(^9\)

The summary further stated:

The General Assembly is directed to start from scratch and outline by statute the organization, government, powers, changes of boundaries, consolidation and dissolution of counties, cities, towns, and regional governments.\(^{10}\)

This summary was erroneous. The reversal of the Dillon Rule involved only a rule of statutory construction, and statutory construction was not a key part of the Article. Thus, this proposal should not have been described as bringing about a loosening of legislative reins “principally by reversing the present constitutional philosophy.” Secondly, the language in the Article which directed the General Assembly to provide for the organization, powers, change of boundaries, consolidation and dissolution of local governments was taken principally from Section 117 of the 1902 Constitution. Nowhere was there any indication in the Commission Report that the General Assembly had been directed by the Commission to “start from scratch” and outline by statute specific provisions for all areas of local government.\(^{11}\) By the wide distribution of this summary immediately prior to the session, the chances of the Local Government Article being adopted without substantial amendment were greatly damaged. A close examination was obviously in store for the Local Government Article when the General Assembly met.

Governor Godwin addressed the General Assembly at its first meeting. Devoting a good part of his speech to the Commission’s recommendations on local government, he recommended that the General Assembly be authorized, but not required, to establish a Commission on Local Government at such time as it might be needed with its specific powers and duties defined by legislation.

\(^9\) Summary of Recommendations, prepared at the direction of Governor Mills E. Godwin, Jr., by John H. Wessells, Jr., Executive Assistant (Commonwealth of Virginia, Department of Purchases and Supply, Richmond, 1969), p.8.

\(^{10}\) Id.

\(^{11}\) Both A. E. Dick Howard, the Executive Director of the Commission, and the writer wrote letters to the Governor pointing out the flaws in the summary.
Governor Godwin also endorsed the concept of regional government, not as a solution to any immediate problem, but as a mechanism to promote better inter-governmental relations. Saying he would not attempt to pass judgment on other important proposals such as the self-amendment of charters by cities, a higher population minimum for the creation of cities and the concept of charter counties, the Governor did note that further fragmentation of local government in Virginia could not continue unabated without serious consequences.\textsuperscript{12}

The Commission's proposed Article VII was introduced in both the House of Delegates and the Senate by the senior members of the House and Senate Committees on Counties, Cities and Towns as House Joint Resolution No. 13 and Senate Joint Resolution No. 13, respectively. Because of the wide-spread interest in the Local Government Article, the two Committees proposed a joint hearing. The hearing was held on March 6th, and attracted a sizeable attendance. Spokesmen for the Virginia Municipal League, representing the cities and towns in the state, opposed the revision of the Dillon Rule and the provision for self-amendment of city charters. This was surprising, because these localities were the intended beneficiaries of these proposals. Some of the smaller counties, also surprisingly, opposed the Commission's proposal that counties be allowed to borrow money without a referendum. In all, the hearings elicited statements from 28 witnesses.\textsuperscript{13}


A. E. Dick Howard, Executive Director of the Commission, began the testimony with a brief explanation of the Article and answering questions from members of the committees. The Chairman of the Fairfax County Board of Supervisors supported the provisions creating charter counties, reversing the Dillon Rule, and allowing counties to borrow money as cities do, but opposed creation of a Commission on Local Government and the 25,000 population minimum for new cities. He was one of the few witnesses favoring the Commission's proposal on charter counties and the Dillon Rule.

The Virginia Association of Counties, representing most of the counties in Virginia, strongly opposed the reversal of the Dillon Rule and generally favored extending the proposed charter option for counties with a population of 28,000 or more to include all counties. The Association also supported allowing counties to borrow money without an election, as cities could
After the hearing, a list of the “issues” raised at the public hearing was prepared for use by the Committees. 14


The list of “issues” raised at the public hearing of March 6, 1969 included the following questions:

Section 1. Definitions. Should the definition of “charter county” be deleted? Should it be amended to include counties, or a county and all the towns therein, which consolidate but contain less than 25,000 people as an incentive for consolidation? Should a population density requirement be added? Should some provision be added to impose on “charter counties” the financial burdens now imposed on cities?

Should the definition of “city” be amended to reduce the 25,000 minimum contained in the proposal? Should population be the sole criterion for city status? Should the General Assembly or some other body be given the power to consider population and other factors in deciding whether to allow a town to become a city? If the population minimum is raised from the present minimum of 5,000, should there be a cut-off date in the grandfather clause for existing cities below the minimum?

Should there be a “regional government?” Is it necessary to change the definition to give the General Assembly authority to specify standards for the formation of regional governments?

Should the definition of “general law” be amended by deleting the references to “fewer than two counties, towns, etc.”? Should there be added to this section or to the schedule a provision authorizing counties which have a “special optional” form of government to continue as such without obtaining a charter?
After the Committees had completed their joint hearing, they met separately to consider their respective joint resolutions. Shortly after the public hearing was completed on March 6, a new development took place. On March 10, the Commission to Study the Problems of the Expansion of the Boundaries of the City of Richmond, chaired by George S. Aldhizer II, filed an interim report recommending that the General Assembly be given power to enlarge from time to time the boundaries of the City of Richmond, in such man-

Section 2. Organization and government. Do the requirements for general laws prevent passing of special acts unless special acts are specifically authorized? Should there be an election prior to the formation of a regional government? Should the provision for self-amendment of charters by cities and charter counties be deleted? Should the authority of the General Assembly to provide by general law or special act for the amendment of charters be made mandatory? Should the authority of a regional government to tax be limited?

Section 3. Powers. Should the first paragraph, reversing the Dillon Rule, be deleted? Should it be extended to towns? Should it be modified to restrict the exercise of powers of taxation without prior action of the General Assembly?

Section 4. County and city officers. Does the mention of certain court clerks in Section 4 prevent the General Assembly from providing others? Should the second paragraph be amended to authorize the terms of clerks of courts to begin in January or February of the second year after their election, rather than January of the first year after their election? Should the third paragraph be amended so that an incumbent officer in a county could be removed prior to the expiration of his term, if the county has a complete reorganization?

Section 5. County, city, and town governing bodies. Should Section 5 be amended to require the 1971 redistricting six months prior to the election? Is there a discrepancy between the last sentence of the section and the last sentence of the comment in the Commission’s report as to whether it is necessary to change election dates by “general law”?

No issues were raised in connection with the Section 6 Multiple Offices and Section 7 Procedures. In connection with Section 8, Consent to use public property the only question raised was should the section be expanded to include counties?

Section 9. Sale of property and granting of franchises by cities and towns. Should the section be amended to include “county”? Should the section be amended to except short-term leases from the requirements of the section?

Section 10. Debt. Should counties be given the powers that cities now have to incur debt; if so, should town and sanitary district debt be included in computing the county debt limit? Should the 18% debt limit for cities and towns be increased? Should the obligations of a county, city or town to a regional project be excluded from the computation of indebtedness of the county, city or town? Does the second full paragraph permit the General Assembly to require an election as a constituent part of a regional government prior to the issuance of bonds? Should the last paragraph be applied to cities? Is there a discrepancy in the use of “bonds and other interest-bearing obligations” in some places and only “bonds” in others? Does the use of the term “capital project” restrict the issuance of bonds to provide “cash contributions” to redevelopment projects? Does the requirement of a sinking fund prevent the issuance of “serial bonds”? If not, should a sinking fund be required for “serial bonds”? Would the section prevent the issuance of refunding bonds or bond anticipation notes?

Section 11. Commission on Local Government. Should the section be deleted? Should the word “shall” be changed to “may”? Should language be added to spell out the Commission’s duties and powers?
ner as the General Assembly might prescribe.\textsuperscript{15} This report presented both the House and Senate Committees with a new controversial problem. Both Committees held separate hearings on this proposal, but it was dropped by the General Assembly prior to its submission to the people.\textsuperscript{16}

Beginning March 18, both Committees met in daily session. Article VII was reviewed section by section, and testimony and amendments were considered on each section. The Committees kept in communication and were able to report resolutions which were not altogether irreconcilable. The Senate Committee reported to the Senate its completed version of the Article on Friday, March 26. The Senate considered and adopted the Committee's version on Wednesday, April 2 by a vote of 35-2.\textsuperscript{17} The House committee reported its version on Tuesday, April 1, and the House adopted it on Thursday, April 3 by a vote of 86-0.\textsuperscript{18} Each house relied heavily on its respective committee's work, and there was little debate on the Article except for the Aldhizer Commission's proposal concerning the City of Richmond.\textsuperscript{19} The Senate version was much closer to the Commission proposal than the House version.\textsuperscript{20}

After the Article had been passed by both the House and Senate, committee counsel prepared, as on the other articles, a section-by-section comparison of the Article detailing the differences between the House and Senate versions of each section.\textsuperscript{21} A joint committee

\textsuperscript{15} \textit{Interim Report of the Commission to Study the Problems of the Expansion of Boundaries of the City of Richmond} (March 10, 1969), Senate Document No. 2.

\textsuperscript{16} \textit{House Debates}, at 515-46; Proceedings and Debates of the Senate of Virginia pertaining to amendment of the Constitution (Extra Session 1969, Regular Session 1970) [hereinafter cited as \textit{Senate Debates}], at 314-38. Since this section was dropped by the General Assembly, it will not be discussed further in this article.

\textsuperscript{17} \textit{Journal of the Senate of Virginia}, at 156 (Extra Session 1969) [hereinafter cited as \textit{Senate Journal}].

\textsuperscript{18} \textit{Journal of the House of Delegates of the Commonwealth of Virginia}, at 234 (Extra Session 1969) [hereinafter cited as \textit{House Journal}].

\textsuperscript{19} \textit{Senate Debates}, at 312-14, 338-40; \textit{House Debates}, at 504-11.

\textsuperscript{20} One reason for this was that the House Committee started with a draft prepared by Delegate Lewis A. McMurran, Jr., former Chairman of the House Committee on Counties, Cities and Towns, which extensively revised Sections 1 and 2. Thus part of the "compromise" between the House and Senate versions was to pull the House version closer to the Commission's recommendations and the Senate version.

of both the House and Senate Committees on Counties, Cities and Towns met on April 8 and 9 to seek agreement on the differences between the two versions. An agreement was reached, and compromise amendments were prepared to change House Joint Resolution 13 as adopted by the House of Delegates. These amendments were considered and adopted by the Senate on April 10.22 When the same amendments were considered by the House, some members of the House Committee expressed reservations about certain of the amendments. These reservations resulted in the House on April 14 rejecting some of the compromise amendments and requesting a conference.23 The conference committee of the two houses met. On April 15 the committee reported, and the Senate and House agreed to the conference report.24 The Conference Committee made only two perfecting amendments in addition to those recommended by the joint committee.25 The recommendations of both the joint committee and the conference committee will be discussed as those of the joint conference committee (the Joint Conference Committee).

Thereafter, a select committee on style met to assemble all of the resolutions as adopted on the separate articles, to iron out inconsistencies in language, and to prepare groups of amendments to be submitted to the people. The final version was included in the general amendment to the Constitution, designated Senate Joint Resolution 23. Only two linguistic changes were made in Article VII, both in Section 10. Both houses adopted S.J. Res. 23 on April 25.26

C. Guides to Interpretation

The revisions of the Constitution can most easily be explained in a section-by-section analysis. Most of the changes in Article VII were made in Sections 1, 2 and 3, the key sections of the Article. For purposes of understanding the legislative history which follows, these three sections are reproduced at the end of this article in three forms, (1) as recommended by the Commission, (2) as reported by the Senate Committee on Counties, Cities and Towns, and (3) as passed by the House of Delegates with the conference

26. Senate Debates, at 576-602; House Debates, at 733-68. In the 1970 regular session, the same resolution was readopted as House Joint Resolution 13. Senate Debates, at 645; House Debates, at 782.
amendments indicated. One should refer to and read these sections along with the following detailed discussion.

In attempting to describe and interpret the meaning to be given to the Local Government Article, certain principles of construction must be kept in mind. All of these principles were mentioned at one time or another in the committee sessions or in the floor debates in the consideration of the constitutional revision. First, and foremost, Section 14 of Article IV states, as did the Constitution of 1902, that the General Assembly has all powers not denied it by the Constitution, that the mention of one power or authority is not intended to foreclose the exercise of others and that the omission of previously mentioned grants should not be construed to deprive the General Assembly of authority or to indicate a change in policy.

Second, the admonition to the General Assembly in Section 2 of the Local Government Article to provide by general law or special act for county, city or town and regional governments is restricted by the more specific limitations in other parts of the Article. For example, the General Assembly cannot authorize counties to borrow without an election as set forth in Section 10, cannot authorize cities and towns to borrow without an election in excess of eighteen per cent of the assessed value of real estate and cannot authorize cities and towns to adopt ordinances without a recorded vote as set forth in Section 7.

Third, in carrying out Article VII, the General Assembly may impose limitations on the exercise of powers by local governments which are more restrictive than those contained in the balance of Article VII. For example, the General Assembly may (a) require an election on all borrowing by cities and towns, (b) permit an election in each county, city or town for a regional government to incur indebtedness, rather than in the entire region as set forth in Section 10, and (c) impose in a charter a voting requirement in excess of a majority of all members elected to the governing body as set forth in Section 7.

Fourth, as set forth in the last sentence of Section 1, whenever the Article authorizes or requires the General Assembly to act by general law, no special act for that purpose shall be valid unless the Article so provides.
II. SECTION-BY-SECTION ANALYSIS

The Commission's proposals most discussed by the General Assembly involved Sections 1 and 2, the first paragraph of Section 3, and Sections 10 and 11. Section 1 is the definitional section. Section 2 and the first paragraph of Section 3 contain the operative provisions for establishing a system of local government in Virginia. These three provisions are interwoven and will be discussed together.

A. Sections 1, 2 and 3

The major issues in Sections 1, 2 and the first paragraph of Section 3 involved "charter counties," the population minimum for cities, self-amendment of charters, change of boundaries of cities and counties, the definition of general law and the concept of regional government.


The Commission had recommended that all counties with a population of 25,000 or more be authorized to become "charter counties" and that new cities be required to have a population of 25,000 or more. Then "charter counties" and cities (i.e., existing cities and those municipalities over 25,000 becoming cities) were to be treated the same under the Constitution. Each would have the right to amend its own charter or to request the General Assembly to adopt for its benefit a special act approved by a majority of the General Assembly. Counties which were not "charter counties," i.e., those with a population of less than 25,000 or those over 25,000 which did not choose to have a charter, would be given powers by general law adopted by the General Assembly.

The summary in the preceding paragraph describes what became the most controversial issues in the discussions of Article VII. Those issues were: (a) the concept of counties over 25,000 population being singled out as "charter counties" with special powers; (b) the population minimum of 25,000 for new cities (the old minimum had been

---

(c) the power to be given “charter counties” and cities to amend their own charters; and (d) the provision in the first paragraph of Section 3 giving “charter counties” and cities all powers not denied them by the Constitution or the General Assembly, i.e., the constitutional reversal of the Dillon Rule of strict construction of local government powers.

The House and Senate Committees found that opposition to these recommendations of the Commission came from the representatives of organizations whose members, or some of whose members, were the intended beneficiaries of the recommendations. For example, representatives of the Virginia Municipal League, composed of most cities and towns in the state, opposed the higher minimum for the formation of new cities, obviously out of deference to the town members of the League, while ignoring the additional powers which would be given to the new cities. Surprisingly the League also opposed the reversal of the Dillon Rule and the provision on self-amendment of charters. Its spokesmen explained that municipalities had been well treated by the General Assembly and desired no change in this area. The Association of Counties opposed the application of the “charter county” concept only to those counties having a population of 25,000 or more. With this kind of opposition it took neither the House nor Senate Committee long to propose changes in these Commission proposals.

The special definition of charter county was one of the first proposals to go. The Senate Committee deleted the special definition but was willing, and so recommended, that the General Assembly be given the authority to provide charters for counties which would parallel the authority the General Assembly had for cities and towns under the 1902 Constitution. Substitute Resolution No. 13 of the Senate Committee permitted special charter acts for all counties, cities and towns “either by a recorded vote of a majority of all members elected to each House upon the request of the respective governing body or by a recorded vote of two-thirds of the members elected to each House.” The Senate Committee simultaneously deleted the provision in Section 2 for the “self-amendment” of county and city charters.

In discussing the Senate Committee’s proposals on special acts for counties, cities and towns on April 2 before the Senate, Senator
William B. Hopkins, Chairman of the Senate Committee, noted that the General Assembly had for years passed special acts. They had constituted from 25 to 50 per cent of the committee’s business, including many with population brackets around them to get around the constitutional prohibition against special acts for counties. He explained that his committee had determined it was better to permit the adoption of special acts than to continue to pass statutes of doubtful constitutionality. Once his committee had made this change, Senator Hopkins said the Committee determined that the “charter county” concept would be dropped, because the General Assembly could achieve the same result through a “special act” for any county.

Senator Hopkins also noted that the provision for the self-amendment of charters had been rejected by the Committee and that “representatives from the counties, cities and towns were unanimously in agreement with the committee.”

The House Committee’s action closely followed the Senate’s action. It dropped the “charter county” definition and authorized each county to seek “special acts.” It then added a new definition of “special acts,” those adopted by a two-thirds vote of each house of the legislature. It deleted the provisions on self-amendment of charters in Section 2. On the House floor, the Committee Chairman, R. Maclin Smith, stated:

The committee has not accepted the Revision Commission’s recommendation of a charter county as a completely new type of government. It has recommended in Section 2 that any county be permitted to seek special acts from the General Assembly just as cities and towns now do. In effect this conforms the Constitution to existing practice.

28. Senate Debates, at 312.
29. Senate debates, at 314. Senator Robert Fitzgerald reiterated the same point stating: “I have been convinced by the arguments of my colleagues on the Committee that by providing that the General Assembly can by special act provide for the form and powers of government of any county we have achieved the same thing by another name.” Senate Debates, at 339.
30. Senate Debates, at 312.
31. House Debates, at 505.
Delegate Smith was obviously referring to the existing statutes which had sought to provide special acts by population categories. In discussing Section 2, Smith pointed out that the section continued the authority of the General Assembly to provide by special act for the organization and government of cities and towns and extended this authority to counties.

With regard to the provision for self amendment of charters, Delegate Smith stated:

The committee does not support the recommendation of the Revision Commission that cities be empowered to amend their own charters by election in the city. At the committee hearing, representatives of the Virginia Municipal League itself told the committee it was against this change because as a matter of experience it felt the General Assembly had granted the cities the power they needed and desired.32

The only substantive difference between the House Committee and the Senate Committee on the deletion of the "charter county," self-amendment of charter provisions and the inclusion of counties within the General Assembly's charter power was the Senate's authorization of special acts for the organization, government and powers of any county, city or town by a majority vote of each House, if requested by the locality.

When the versions adopted by the House and Senate were reconciled by the Joint Conference Committee, the Senate adopted the House version, which would permit amendments to county charters by special acts passed by two-thirds of the members elected to each house of the General Assembly. The Joint Committee deleted the authority of the General Assembly to pass a "special act" by majority vote of the General Assembly upon the request of a county, city or town.33

2. Population Minimum For Cities

Both the House and Senate also quickly discarded the 25,000 minimum which the Commission had recommended for the creation of new cities. The version adopted by the Senate was closer to the

32. House Debates, at 505.
33. Senate Debates, at 429.
recommendation of the Commission that the version adopted by
the House. The Senate Committee continued a minimum of 5,000
for the creation of new cities, and added that city status would be
granted a community of 5,000 or more only upon a showing, as
provided by law, that

. . . [I]t has the ability, alone or by agreement, to provide for its
inhabitants the services required by law of a city, unless the county
from which the city is to be formed shows that its ability to provide
for its remaining inhabitants the services required by law of a county
will be unreasonably impaired. . . .31

Also included by the Senate was a savings clause which would per-
mit fifteen named towns to become cities within five years of the
effective date of the new constitution without meeting the new
constitutional standards. The Committee had received information
that all of these towns already had a population of at least 5,000 and
thus had a right to become a city under the old Constitution. The
Senate Committee retained the Commission's recommended lan-
guage which authorized the General Assembly to raise the popula-
tion minimum by statute.

In explaining these provisions on the population minimum for
new cities, Senator Hopkins stated:

Again, we did not agree with the Revision Commission on the re-
quirement of 25,000 minimum population for a city. Instead, we
adopted the present figure of 5,000, but eliminated the language that
makes 5,000 mandatory. We adopted the principle of the bill that
Senator Fitzgerald introduced in the House last year pertaining to
transition. We felt that if a town desires to become a city it should
show that it has the ability to provide for its inhabitants the services
required by law of a city. This was arrived at after many consulta-
tions with representatives from the cities and towns and county gov-
ernments, who were all in agreement.35

The Senate language also defined a city to include any "existing
city." The Commission had recommended that any incorporated
community which on January 1, 1969, held a valid city charter be

34. S. J. Res. 13, § 1, as reported by the Senate Committee.
35. Senate Debates, at 312.
permitted to continue as a city without regard to the population minimum in the section.\textsuperscript{36}

The House Committee reverted to the 5,000 minimum for the creation of new cities, but did not set forth any other standards in the Constitution, and left such standards to be established by the General Assembly. Chairman Smith explained:

The committee also does not agree with the Constitutional Commission’s recommendation that 25,000 minimum population be established for the incorporation of new cities because it finds this figure both arbitrary and harsh. The committee realizes that the present mandatory provision for the creation of a city whenever the community reaches five thousand is bad because it promotes needless fragmentation. It therefore recommends that the existing Constitution be changed so that an incorporated community of five thousand or more could become a city if it meets the standards presented by the General Assembly.\textsuperscript{37}

The House Committee had also deleted the language, recommended by the Commission and the Senate, specifically permitting the General Assembly to raise the 5,000 population minimum. The House

\textsuperscript{36} It is interesting to speculate whether the Constitutional amendment adopted in 1972 to assure city status for the City-Town of Norton would have been necessary if the Senate version containing the savings language for any “existing city” had been retained. It is doubtful that the Senate language would have been sufficient. Under the 1902 Constitution, a city was defined as any incorporated community which has a population of 5,000 or more and which has become a city as provided by law. There was a savings clause for cities which were cities in 1902 and which had a population of less than 5,000. Norton became a city in 1954. Under the 1902 Constitution it would appear that Norton lost its city status when the 1970 census showed that its population dropped below 5,000. Therefore, it would not have been “an existing city” when the new Constitution became effective in 1971. [For what little authority there is, see C. Bain, A Body Incorporate supra, note 1.] The only information available to the Senate Committee in 1969, supplied by the Bureau of Economic Research in Charlottesville, was that Norton had a population in excess of 5,000. Only the savings clause which was in the Commission Report and keyed the definition to January 1, 1969, could have saved Norton’s city status.

At least one practical problem resulting from this definitional dilemma bedevilled the writer’s firm when called on to give an opinion on the validity of bonds to be issued by Norton in 1970. When it became apparent that Norton’s population had dropped below 5,000, the firm was unwilling to give an opinion which could be construed as attesting to the city status of Norton. On the other hand, the “City-Town” fathers were unwilling to accept a “town” designation. Since the debt limits were then and remain now identical for cities and towns, all of the bond papers were rewritten shortly before the closing, and they were re-adopted, deleting all reference to “city” or “town”, making the bonds simply the bonds of Norton. This less wordy approach will probably never be used again.

\textsuperscript{37} House Debates, at 505.
version would have allowed the General Assembly to set standards for the creation of cities in addition to the 5,000 population minimum. The House Committee also deleted the reference to "existing cities" because it was thought no grandfather clause would be needed since the population minimum was not being changed.

When the Joint Conference Committee met to reconcile the differences between the two versions, the Committee deleted the detailed standards concerning the ability to perform as a city, spelled out in the Senate version's definition of a city. The House version was used, which granted the General Assembly the authority to formulate by legislation the standards to be used in forming cities. Also retained was Senate language, identical to that of the Commission, which specifically authorized the General Assembly to raise the population minimum above the 5,000 minimum set forth in the Constitution.\(^{38}\)

It should be noted that the House version referred to "independent" cities in the definition and that this language was finally adopted. No special significance was attributed to this language at the time. Under general municipal law, the General Assembly can create, alter or abolish political subdivisions and this reference to cities as being "independent" should not change that power.\(^{39}\) It should also be noted that the House version, which deleted the savings clause for "existing cities," was finally adopted.

3. The Dillon Rule

Both the House and Senate Committees deleted what was the first paragraph of Section 3 as recommended by the Commission. This provision authorized each "charter county" and city to exercise all powers not denied it by the Constitution or the General Assembly. The Chairmen of both the House and Senate Committees explained that the local government representatives told them this

---

\(^{38}\) Senator Hopkins, in explaining these amendments to the Senate, stated that the Senate Committee had agreed to delete what it considered "legislative" language on this point. *Senate Debates*, at 429. In explaining these amendments to the House Chairman Smith stated:

Additional language contained in the Senate bill was added to make clear that the General Assembly had power to determine the criteria for new cities, including population minima . . . . *House Debates*, at 655.

\(^{39}\) See the comments of Delegate Willis M. Anderson on this general subject. *House Debates*, at 692.
power was not needed by the local governments. In the Senate, Senator Hopkins told his colleagues:

We also felt that we should adhere to the rule of strict construction of the laws pertaining to localities. There again we negated the recommendation of the Revision Commission. On [this point] . . . representatives from the counties, cities and towns were unanimously in agreement with the committee. They felt that we should continue to have charter rights granted by the General Assembly under strict construction of the law.40

In the House, Chairman Smith reported:

The committee does not recommend a constitutional provision proposed by the Commission to reverse the so-called 'Dillon' rule of strict construction of municipal powers. The first sentence of Section 3 as introduced, therefore, has been deleted. The Municipal League also told the committee it was against this change because, as a matter of experience it felt the General Assembly had granted to cities the powers they need and desire.41

This explanation apparently decided the question, since there was no further discussion in either the House or Senate on the deletion of this paragraph.

4. Towns

The Senate Committee recommended what was essentially the Commission's definition of "town" in Section 1, although the Committee inserted the words "existing town" in the definition rather than having a general savings clause at the end of the section. The House Committee inserted the language "within one or more counties," since some towns could be and were located in more than one county. When the Joint Conference Committee reconciled these differences, the House language (with an added reference to "existing towns") was retained.

40. Senate Debates, at 312. The lack of support among local governments for this Commission proposal was also noted on the Senate floor by Senator Robert C. Fitzgerald. Senate Debates, at 339.
41. House Debates, at 505-06.
5. General Law

Another definition in the Commission’s Section 1 was that of "general law." As defined, a general law would apply either to all counties, cities, towns or regional governments, or to a class thereof which (1) was reasonable and (2) contained a minimum number of units in each class. The operative provisions of the Article were intended to require the General Assembly to act by "general law," as so defined, unless authority to adopt a special act on the subject was specifically provided. The Senate Committee recommended, and the Senate adopted, the definition as recommended by the Commission.

The House Committee and the House completely obliterated the effectiveness of this definition by deleting all limitations on classification. Chairman Smith explained that this was a change in existing law, since the courts had required that classifications be "reasonable." The House also defined a "special act" as an act adopted by a two-thirds vote of each house. Such a definition would be completely unnecessary given the proposed broad definition of general law. When the Joint Conference Committee met, the Senate requirement for a minimum number of units in any class was deleted, but the word "reasonable," which had been deleted by the House, was reinserted.

When Delegate Smith first reported for the Joint Conference Committee, he stated that the House members had agreed to the inclusion of the word "reasonable," since "every locality may obtain a special act, if it desires, by a two-thirds vote of the General Assembly." When the House considered the report further, Delegate John D. Gray, gave "reasonable classification" too broad a construction. In answer to the question of Delegate Archibald A. Campbell as to whether a "general law" could be one with "population brackets applying to only one locality," Delegate Gray said, "We feel it possibly could."

This error was corrected by Delegate Willis M. Anderson when he took the floor shortly thereafter and asked to reply to the matter

---

42. *House Debates*, at 505.
43. *House Debates*, at 655.
44. The error in interpretation is made more apparent when Delegate Archibald A. Campbell asked how to reconcile such a definition of general law with the definition of "special act" and a sufficient answer was not forthcoming. *House Debates*, at 689.
raised by Delegate Campbell. Delegate Anderson said:

First of all, as to the distinction between general law and special act. Of course, we recognize that "general law" in its full application means a law which applies to every county, city and town in Virginia. But we recognize that in every instance it would not be appropriate or desirable for this to be the case so we have to provide for some classification. The revisors in their report attempted to define in some detail what type of classification would be permitted. We felt this was unduly restrictive. There has been considerable court treatment of this section and the term "reasonable classification" has become something of a word of art. We felt that that was the most appropriate expression here. We provide for special acts and the methods by which they may be approved in order to avoid general law with population brackets. In other words, if a city can come to the General Assembly and ask for a charter or if the county can come and ask for an optional form of government or what amounts to a county charter, and that can be granted by special act, there would be no need to resort to the rather archaic population classifications. I believe that these terms will provide the General Assembly with the flexibility that we have lacked in the past. I think it will be of considerable benefit to the local governments.  

In the Senate, the interpretation of the words "reasonable classification" was similar to that of the House. Chairman Hopkins noted that a classification, such as a county having a population of more than 21,000 but less than 23,000, would have to be passed by two-thirds vote as a special act. Otherwise it would be considered an unreasonable classification.

In order to eliminate any problem of the application of these rules to existing counties and the "optional forms of government" adopted for them, a savings clause, added by the Senate as a last

46. Senate Debates, at 429. Senator William F. Parkerson, Jr. asked if a bill would be a "general law" if it were written to apply to a county that has a population of 117,000 but adjoined a city that had a population of 220,000 and if there were but one county in Virginia that would meet such a test. Senator Hopkins replied that such a bill would be a special act. Senate Debates, at 429-30, 32. In reply to a question from Senator Fitzgerald, Senator Hopkins agreed that the "House" version did carry the requirement that for a class to be considered a general law, it had to have two or more units in the class and we would substitute "reasonable classification" for that. Senate Debates, at 430. This was obviously in error, because the House provision only had the word "class." Senator Fitzgerald apparently was thinking of the language passed earlier by the Senate.
sentence to Section 1, was adopted to protect laws which may previously have been passed legitimately for counties, but might now be classified as special acts.

The Senate also added the last sentence of Section 1 to provide that if the Article authorizes or requires the General Assembly to act by general law, a special act for such purpose could not be valid unless the Article so provides. This provision was added to clear up any inconsistency between Article VII and the admonition of Section 14 of the Legislative Article that the elaboration of one power does not imply lack of power on the same subject. This sentence was finally agreed to after deletion of the somewhat redundant language "which conflicts with other sections of this Article specifying that general laws be enacted or" was deleted from the second paragraph of Section 2.\footnote{House Debates, at 655.} In explaining this deletion to the Senate, Senator George Warren emphasized that it did not bring about a substantive change because of the last sentence in Section 1.\footnote{Senate Debates, at 531-32. For instance, there could be no special act on borrowing for county debt, unless that county opted to be treated as a city. Remarks of Delegate John D. Gray, House Debates, at 689.}

6. Regional Government

The Senate Committee adopted the Commission's definition of "regional government" as a "unit of general government" encompassing at least two cities or counties, with a proviso that if any part of a city, county or town were included, the entire city, county or town would be included. The Commission had also recommended in Section 2 that the organization of a regional government could be provided for by general law and that powers could be conferred on a regional government by special act. This language was expanded to provide that the General Assembly could provide for the organization, government and powers by either general law or special act. The Senate Committee then restricted the General Assembly's exercise of these powers to those occasions where the organization of the regional government had been approved in each participating county or city. In his explanation to the Senate, Senator Hopkins noted that no county or city would join a regional government, unless it was authorized to do so by referendum. He explained that the Committee had turned down a suggested amendment to
require similar approval in every town. "... [I]t was felt that the town would vote with the county and should not be a separate unit within the concept." The General Assembly could authorize those units of government voting in favor to proceed with the organization of the regional government if they chose to do so.

It is significant that in the final version only the "organization," i.e., the initial creation of a regional government, had to be approved by referendum. It was explained in the Committees that this provision should be construed in the same manner as the old constitutional requirement on the formation of optional forms of government by counties and that once the formation of an optional plan of government had been approved by referendum, the General Assembly could thereafter authorize amendments to the "optional form" statute without voter approval.

Struggling with the concept of regional government, the House Committee amended the definition of "regional government" in Section 1 by deleting the requirement that it should contain at least two local units. The House amendment gave to the General Assembly the power to determine the boundaries of each regional government if it should desire to do so. The House thus left the definition of "regional" to future legislation, subject only to whatever limits courts might find inherent in the constitutional use of the word "regional." The Committee did finally keep the basic definition that the regional government should be a "unit of general government," although the deletion of even that part of the definition was proposed. The House also inserted the words "if established by the General Assembly" after "regional government" in Section 2. Further, the House Committee added to Section 2 a rather peculiar requirement which provided that before one county could be included with another county in a regional government, there must be an election in each county. There was to be no election required in cities at all and none in counties unless more than one county was involved.

49. Senate Debates, at 314.
51. The Chairman explained that the Committee had changed the definition "so that the General Assembly would determine the boundaries of each regional government rather than leaving the fragmentation [sic] of regional governments to general law, so long as two or more whole counties or cities were included." House Debates, at 505. A copy of the typed report
The Joint Conference Committee recommended the House version of the definition in Section 1, while agreeing on a slightly modified Senate version of Section 2. The modification in Section 2 deleted the language "if established by the General Assembly." The modification also allowed a referendum in a part of a county or city where only a part was to be included, since under the House version of the definition the General Assembly could include in a regional government a part of a city or county if the General Assembly saw fit to do so.

7. Annexation and Consolidation

The Commission had provided that the General Assembly could provide for annexation and consolidation of cities, towns and counties by general law without any constitutionally required election. This provision was a continuation of existing law, except that the 1902 Constitution had required an election in each county on the consolidation of two counties. In addition, the Commission carried forward in the last paragraph of its Section 2 language from the 1902 Constitution on the minimum size of new counties which was more "legislative" than "constitutional."

The General Assembly kept this basic plan (while deleting the last paragraph of Section 2), but not without a struggle. The Senate retained the Commission's language in Section 2, derived from Section 126 of the 1902 Constitution, that no special act could provide for the extension or contraction of boundaries of any county, city or town.

The House Committee, after debate over whether or not the General Assembly should have power to expand the boundaries of cities, towns and counties by special act, reached substantially the same result as had the Senate. The House Committee inserted the words "initial boundaries" into the language of Section 2, which authorized the General Assembly to enact legislation for counties, cities and towns by special act. Chairman Smith explained that special acts could be used only for initial boundaries, not for a change of boundaries. Delegate Willis M. Anderson agreed, stating that after

from which Delegate Smith read and now in the writer's files uses the word "formation," instead of "fragmentation," an obvious reporter's error in recording the Debates.

52. House Debates, at 505.
the initial boundaries were fixed "any expansion or contraction of boundaries would be subject to general law, as presently required by Section 126."53

Both Houses adopted the Joint Conference Committee’s recommendation that the Senate language be retained.

The House Committee also included a provision in Section 2 requiring a referendum in each county before two counties could be consolidated. A similar provision was in the old Constitution but had been deleted in the Commission’s recommendation. When the question was raised whether to extend this provision to the consolidation of cities and counties, it was explained that the old Constitution limited the election to counties. This apparently satisfied the members since there was no further discussion of the question in the House.54

The Joint Conference Committee recommended the adoption of the Senate version, which, while requiring action in this regard by general law, deleted the requirement of a referendum in the event of the consolidation of two counties.55 Speaking for the Committee, Delegate Willis M. Anderson stated that the conferees had been persuaded that there was no need to single out county consolidation for a referendum requirement, when it was not constitutionally required for other consolidations. Noting that the referendum requirement had the effect of foreclosing the availability of choices to the General Assembly in this area, Delegate Anderson stated:

Yet, we are saying that you might have a situation in which one or two counties in Virginia might dwindle away to the state where there are virtually no people there, but the few who remain can insist that they remain a county, that they have this constitutional protection and that the General Assembly, whatever the circumstances or whatever the conditions in the years ahead, is forever barred from doing anything by general law about this type of situation . . . . We are, in effect, being told that the General Assembly has created the counties but once they are created they are forever beyond our reach.56

53. House Debates, at 507.
55. House Debates, at 655, 689. Delegate D. French Slaughter, Jr., protested the deletion of the referendum on the consolidation of two counties, which he pointed out had been in Section 61 of the 1902 Constitution. House Debates, at 690.
Both House and Senate adopted the language recommended by the Conference Committee.

8. Joint Exercise of Powers

Since the first paragraph of Section 3, which purported to reverse the Dillon Rule of strict construction, was deleted by the House and Senate Committees, the second paragraph, dealing with the joint exercise of powers by public bodies, became the only paragraph of Section 3. Both House and Senate Committees endorsed this language as recommended by the Commission.

Answering a question of interpretation that had been raised before his Committee, Chairman Smith explained to the House of Delegates that the "General Assembly’s power to authorize joint exercise of powers or transfer of property to other units of government under Section 3, of course, would not be limited by the requirements of Sections 8 and 9, which apply to the sale or franchise of city property to private persons."

Section 3 passed both houses without further comment. The Joint Conference Committee added the words "or special act" in the first sentence. This amended form was passed by both houses without comment.

B. Section 4

The Commission’s recommendations on the "constitutional officers" of counties and cities had sought to continue existing provisions. There were to be five officers—a treasurer, a sheriff or sergeant, a commonwealth’s attorney, a commissioner of revenue and a clerk of the court. Following the existing Constitution these officers were to be elected in November for a term of four years, except the clerk was to have a term of eight years.

The Commission’s recommendations further authorized cities and counties either to delete the requirement of having any such officer or to change the method of his selection (e.g., by making the position an appointed one), provided an election is held in the locality on such a change. Counties had previously had this same flexibility under their optional forms of government. Under the Commis-

sion's proposal, the General Assembly could pass a general law (e.g., making the treasurer a non-elective position, or abolishing the office) to become effective in any county or city which opted by referendum to avail itself of the provisions of such law. Or, if a referendum had been held in the county or city either on a specific question as above or on an optional plan of government, then the General Assembly could adopt a special act authorizing the change. The Commission proposed to "grandfather" officers incumbent when the proposed change was to take effect. The Commission also included a provision which protected cities and counties which either had eliminated officers or, usually in the case of cities of the second class, did not have them at all.

When the General Assembly considered the provision, it was faced with several special-interest groups who either saw hidden motives behind some of the language or simply demanded special treatment.

It appears reasonably clear that the general rule that specific mention of an item, such as the naming of certain officers in Section 4, does not foreclose the General Assembly's authority to adopt additional provisions on the same or similar subjects. Section 14 of Article IV specifically provides that "... a specific grant of authority in this constitution upon a subject shall not work a restriction of its authority upon the same or any other subject." Nevertheless, to quiet unjustified fears that the provision would abolish specific offices, the Senate committee added the following sentence to the section: "The General Assembly may provide by general law or special act for additional officers and for the terms of their office."

The addition is redundant, but harmless.

Responding to the same problem, the House expanded the first sentence to read:

There shall be elected by the qualified voters of each county and city a treasurer, a sheriff or sergeant, an attorney for the Commonwealth, a clerk, who shall be clerk of the court in the office of which deeds are recorded, and all such additional clerks of courts for cities as the General Assembly may prescribe or as are now authorized by law, so long as such courts shall continue in existence, a commissioner of revenue, and such other officers as may be provided for by law. (Additional language italicized.)

58. H.J. Res. 13, § 4, as reported by the House Committee.
This additional language would appear to make "constitutional officers" of all additional clerks of court existing on the date of enactment of the Constitution and thus expand the old constitutional requirements. The Joint Conference Committee dropped the House language in favor of the more appropriate Senate language.

The House version would also have authorized the General Assembly to establish for the commencement of terms of constitutional officers, a date different from the January 1 date set out in Section 4. The words "unless otherwise provided by law" were inserted in the second paragraph of the section, but this insertion was omitted by the Joint Conference Committee.

Another change made by the General Assembly centered on the original reference to "sheriff or sergeant." In the 1902 Constitution, and historically in Virginia, counties have had sheriffs and cities have had sergeants, both elected constitutional officers. Some cities, including Richmond, had both with the elected sheriff being an additional officer authorized by statute. The Commission, in combining the provisions of the 1902 Constitution dealing with counties and cities, had simply provided that each county or city could elect a sheriff or a sergeant, thus providing each locality with the right to do whatever it desired. The Sheriffs and Sergeants Association, however, lobbied strongly to eliminate any reference to sergeants in the Constitution. The delegates were told that the Sheriffs and Sergeants Association proposed to lobby against the entire Constitution if the reference to sergeant was not removed. The sheriffs, however, were not required to carry out their bold threat. When the Sheriffs and Sergeants Association showed that only one sergeant preferred the title "sergeant" to "sheriff" the General Assembly eliminated the reference to "sergeant." 60

59. Under the new Constitution a locality could still have two officers, one — the sheriff, a "constitutional officer," the second — an officer provided by statute.

60. Senator Hopkins explained his Committee’s recommendations as follows:

You will notice we have eliminated the city sergeant. This was done by request of the city sergeants and sheriffs association. Every city sergeant in Virginia, with the sole exception of the one in Fredericksburg, desired to be named sheriff rather than city sergeant and addressed a letter to me to this effect. We adhered to their wishes. Senate Debates, at 313.

The House Committee and the House of Delegates itself did not eliminate "sergeant," hoping to leave the choice to statute or to each locality, but the reference to sergeant was finally eliminated by the Joint Conference Committee.
The last change in Section 4 dealt with the sharing of constitutional officers by two units, counties or cities. In paragraph 3 of Section 4, the Commission had recommended language, similar to language in Section 111 of the 1902 Constitution applicable to counties, which would authorize any city or county to eliminate its constitutional officers or alter the methods of their selection. Both Committees approved amendments expanding this proposal to allow these localities to share the same constitutional officers with another locality. The Commission had not recommended this change because a similar proposal had been defeated in 1960 by referendum. The General Assembly, on the other hand, evidently still had this topic much in mind. The House Committee included the following sentence in the third paragraph of Section 4: “The General Assembly may also provide that two or more units of government may share the services of the same county or city officers.” The House approved the language in this form. Although the earlier 1960 proposed amendment had required an election in each county, no local election was now to be required.

The Senate Committee recommended a more subtle approach, inserting the phrase “including permission for two or more units of government to share the officers required by this section” in the first sentence of the third paragraph of Section 4. This established the same procedure for changing the application of the initial requirements of Section 4 on constitutional officers, whether by direct elimination, by changing the method of selection or by sharing. The Senate also added language at the end of the sentence to provide for a separate election in each county or city affected.

The final version reported by the Joint Conference Committee adopted the Senate language. The Committee also deleted the words “notwithstanding the provisions of this section” from the first sentence of the third paragraph as redundant, since the words “without regard to the provisions of this section” were also in the sentence. It also added the words “in each such county or city” to the end of the phrase numbered (1) of that paragraph to make absolutely clear that an election would be required in each county or city affected.

C. Section 5

Section 5, on county, city and town governing bodies, was approved by both House and Senate Committees as recommended by the Commission and was adopted by both the House and Senate without debate or change. The Section applies to the elections of governing bodies of cities, counties and towns and extends to counties certain provisions formerly applicable only to cities and towns. In particular, the provision allowing city councils whose members are elected by district to reapportion themselves was extended to county government. Courts had reapportioned counties under statutory power. The Commission thought that reapportionment was a legislative decision, more appropriately made by a legislative body than by a court.

This Section also provides that the dates of election may be changed “by law,” but it does not make clear whether a general law or special act is intended. Section 1 provides that when Article VII authorizes or requires the General Assembly to act by general law, it may not adopt special legislation for the same purpose unless specifically permitted to do so, but Section 2 authorizes special acts for the organization and government of cities, counties and towns. It is arguable that the date of an election is covered under the organization and government of a city, county or town. The Commission Report states, however, that a general law is intended but gives no basis for that conclusion. It was noted in the House Debates that many charters (i.e., special acts) provided for election dates different from the one specified in Section 5 for cities and towns.62

D. Section 6

With regard to multiple officers, the Commission had recommended that two provisions, one formerly applicable to cities and towns, and the second formerly applicable to counties, be continued in the new constitution and made applicable to “units.” The Commission and the General Assembly intended that Section 6 and the word “units” apply only to counties, cities and towns and not to other bodies, since this Section follows Sections 4 and 5, which also deals with county, city and town officers. Consistent with the interpretation of the similar provision in the old Constitution the first

sentence would apply to the five constitutional officers and the governing bodies of counties, cities and towns. It was not intended by the first sentence to prevent a member of council from being named to a regional government (if authorized by general law) because the officers of regional governments are not named in the constitution.

Both the House and Senate Committees added a reference to Section 4 to the Commission’s reference to Section 3, since they had amended Section 4 to allow sharing of constitutional officers. This was to clarify that sharing under Sections 3 or 4 would not violate the prohibition against dual-office holding.

The second sentence of Section 6, formerly applicable to cities and towns, was extended by the Commission to counties, so as to prohibit the appointment by the governing bodies of any of their members to other bodies unless authorized by general law. The Commission had recommended the old constitutional language which prohibited such appointment during the time he held his office and for “one year after his tenure.” The House Committee changed this provision to prohibit such appointments “during the term of office for which he was elected or appointed.” The Committee felt that smaller communities especially lost the services of valuable people by the operation of this prohibition. It would appear under the new language that a member could not resign and be appointed immediately to an office but could only be appointed after the term for which he was elected or appointed had expired.

E. Section 7

This Section on procedure, like Sections 5 and 6, was intended to apply only to counties, cities and towns. Both the House and Senate Committees and the House and Senate approved the Commission recommendation without amendment or discussion.

F. Sections 8 and 9

Unlike most of the provisions of Article VII, which apply alike to counties and cities, Sections 8 and 9 apply only to cities and towns. The Commission would likely have eliminated these sections as

63. Also, this was stated to be similar to a rule for members of the General Assembly. Remarks of Delegate Russell M. Carneal, House Debates, at 508.
"legislative" but did not believe that was politically feasible, since the local franchise right had become an important "constitutional right" to many municipalities. On the other hand, since the two Sections dealt with cities' and towns' right to control their own streets, the Commission did not believe that the provisions should be extended to counties because Virginia counties (except in the cases of Arlington and Henrico) did not control their own streets. Therefore, the Commission recommended retention of these provisions in substantially the same form as had been set forth in the 1902 Constitution.

The General Assembly made two changes, both in Section 9. Although the Commission had recommended that the bidding procedure on leases and franchises to private persons be continued, the Virginia Municipal League argued, as it had before the Commission, that leases of five years or less should be exempted because of the cumbersome statutory bidding procedure. This was not necessary because the cumbersome procedure was in the statutes, not the Constitution, which only required some type of public bid on the lease or franchise of public property. Because it allows private persons to occupy public facilities by leases or other franchises which may be renewed every five years without public bidding, this type of provision is potentially detrimental. But the Municipal League had the votes and the change was made to exempt leases or other franchise rights of five years or less. This provision was included by both the House and Senate Committees and by both the House and Senate. The Senate also extended to forty years the period for leasings generally, although still requiring the bidding procedure. This was agreed to by the House after the Joint Conference. The prohibitions of Sections 8 and 9 were intended to apply to leases or other agreements with private persons, not those with public bodies pursuant to Sections 1, 2, 3 and 4.64

Proposing another change, the Senate Committee would have added the following language at the end of Section 9:

The General Assembly may by general law extend the provisions of Sections 8 and 9 of this Article to those counties which own, control, maintain and have jurisdiction over the public streets and roads in such counties.

64. See text supra at note 57.
Behind the proposal was a request by the Association of Counties and the Counties of Henrico and Arlington, which sought to maintain more control over their streets. The language added nothing in light of the specific reference in Section 14 of Article IV that the grant of authority upon a subject does not work a restriction of the General Assembly's authority upon the same or any other subject. The inclusion of this language was opposed by various utilities as possibly detrimental to the statewide utility service regulated by the State Corporation Commission because the predecessors of Sections 8 and 9 had been construed to require all utilities to obtain franchises from cities and towns in addition to necessary licenses and approvals from the State Corporation Commission.

This same battle was waged in the House Committee. The House Committee did not insert this language in the House Resolution, and the Committee version was adopted by the House after an attempt on the House Floor to insert such language was defeated. It was explained to the House that this additional language was unnecessary. When the Conference Committee met, the language added by the Senate was deleted.

The Senate rejected an amendment proposed by Senator Henry E. Howell, Jr., to Section 8, which would have required that any sale of recreational and certain other properties by a city or town be approved by referendum. When another senator pointed out that the proposal arose out of a local dispute in Norfolk, the amendment was defeated by a vote of 1-32.

G. Section 10

Since the debt provisions are important ones to local government, the Commission had spent a good portion of its time in preparing its proposal. It recommended that the debt limit provisions applicable to cities and towns remain substantially the same as before and that these same provisions be applied to counties. The Commission also recommended requiring three "procedural safeguards":

---

66. Chairman Hopkins explained to the Senate that it was felt that the General Assembly had this power under other sections. *Senate Debates*, at 429.
(a) a hearing, (b) a sinking fund and (c) a requirement that bonds be issued, with certain exemptions, only for capital projects.

The Commission recommended that cities and towns be allowed to borrow up to eighteen per cent of the assessed value of their real estate in the locality without an election. It excluded from the computation certain types of debt, such as bonds to finance revenue producing undertakings which were not expected to be paid out of taxes on property in the locality.

The Municipal League accepted retention of the old standard but argued vigorously against the three new "safeguards" as unnecessary restrictions on the ability of cities and towns to borrow money. Testimony before the joint hearing argued that the sinking fund provision required all bonds to be term bonds, but this was obviously in error because the language was taken from and identical to the language of Section 127(b) of the 1902 Constitution. Under that language cities and towns for years had issued serial bonds which had met the constitutional test with an annual amortization of bonds. In any case, the vocal opposition of the Virginia Municipal League led to the deletion of these "procedural safeguards" by both the House and Senate Committees.68

Chairman Smith stated that the Committee agreed with the Commission's proposal to authorize cities and towns to issue without an election "pure revenue bonds" which would not be included in the calculation of the locality's debt limit. He noted that all other governmental units of the Commonwealth, including the state, could issue revenue bonds without an election and that cities and towns should be treated similarly. Moreover, this might help alleviate the need for formation of single purpose authorities.69 The Chairman's statement was intended to and should lead to the conclusion that revenue bonds could be issued by cities and towns under Section 10(a)(3) for any revenue producing undertaking just as the state could issue such bonds. This point had previously been made by the Commission.70 The Virginia Supreme Court had pre-

---

68. Chairman Smith told the House that it was the belief of the Committee that the details of the "procedural safeguards" could best be handled by statute. Moreover, he pointed out the borrowing power of Virginia cities and towns had not been abused. House Debates, at 506.
69. House Debates, at 506.
70. COMMISSION REPORT, at 242.
viously ruled that revenues of new facilities financed with the bonds and revenues of existing facilities could both be pledged to the issuance of "revenue bonds" without violating the debt limit of the State.\textsuperscript{71}

At the urging of the Northern Virginia Transit Authority, both the House and Senate Committees inserted language dealing with "contract obligations" of an interstate or regional entity. This proposal was originally intended to solve the problem confronting Alexandria and Fairfax, which were being asked to make contracts for payments to the Washington Metropolitan Transit Authority for the construction of a transit facility.\textsuperscript{72} These were not the so-called "contracts for services," which were approved by the Virginia Supreme Court as not being "debt" within the meaning of existing provisions,\textsuperscript{73} but were outright guarantees of payments on an annual basis to support construction or the bonds of the authority. It was initially thought that if the city debt provisions were applied to Fairfax County, it would have a debt limit problem with its contract obligations. During the Committees' discussions it was pointed out that because many Fairfax County bonds were for a revenue producing undertaking approved at an election and thus qualified under both old Section 127(b) and the new Section 10(a)(3), these obligations would be excluded from the computation of the county's debt limit. Nevertheless, the Northern Virginia representatives persisted, even after the counties were taken out of the debt limit provisions applicable to cities, and this exception for contract obligations for regional projects was retained in the city-town debt limit provisions.

This provision, of course, is potentially a large loophole in the debt limits of cities and towns should the General Assembly see fit to designate a large number of "regional projects." This exclusion will allow cities and towns to make unconditional commitments to such projects and not have them counted in the locality's debt limit, although such commitments might ultimately be payable from the locality's tax funds. On the other hand, most "regional projects"

\textsuperscript{72} House Debates, at 506. Referred to as "compact" obligations. The typed text Chairman Smith read from used the word "contract" obligation, just as in the text of the section.
have been revenue producing, so the levy of taxes to pay such a commitment would only be called for in the event such revenues were inadequate. In the interim, these commitments should reduce the cost of funds needed to finance regional projects and should foster regional cooperation.

With the exception of the "revenue bond" and "regional project" exclusions, the General Assembly reverted to language very close to that of the old Section 127 pertaining to cities and towns. Prior case law should continue to apply in the interpretation of Section 10(a). As stated by Chairman Hopkins:

> On the sections pertaining to debt we rejected the Constitutional Revision Commission’s recommendation, and we adopted that of the old constitution, merely updating the language and eliminating some of the verbiage that was kept in the transition of 1902. This was done after consultation with an attorney representing all the cities and after he had made representation that bonding counsel had approved this, and this is what they wanted. We understand that what we have done is exactly what every city in Virginia wants on this score.\(^7\)

Therefore, the existing interpretation of these provisions, e.g., that "bonds" means "debt" and that certain obligations, such as the entire obligation on a "service contract," are not debt, should continue to apply.\(^7\)

The Commission’s recommendations on county debt provisions did not fare so well. The Commission had recommended that counties be given the right already held by cities to borrow up to eighteen per cent of the assessed value of their real estate without a referendum, with certain types of obligations excluded from the computation. The Committees heard at the joint hearing from numerous small counties who did not want, or thought it unwise for the General Assembly to recommend, authority for their governing bodies to issue bonds without an election for up to eighteen per cent of their assessed valuation. Other counties were unwilling to raise the ratio of assessed value to true value to increase the debt limit and proportionally reduce the tax rate, even if this change meant the same tax

---

74. Senate Debates, at 313.
for most taxpayers. Others did not want to raise their assessment ratio to above forty per cent because utilities' property historically has been assessed by the State Corporation Commission at a forty per cent ratio and thus carried a disproportionate share of the tax burden in counties assessing at less than forty per cent. The General Assembly had previously passed statutes to eliminate this disparity over a period of twenty years, but this remained a consideration to some counties.

Again, the General Assembly was faced with a phenomenon of many counties unwilling to "take" or "receive" the additional powers the Commission thought it would be beneficial to confer on local governments. At this juncture both the House and Senate Committee made an astute political judgment. They sought to allow counties to choose between the benefits of the Commission's recommendation and the existing procedures. The Committees removed counties from mandatory debt limit provisions applicable to cities and put them back under the provisions which were taken from old Section 115 and which became Section 10(b). A new paragraph was added to Section 10(b) which gave to counties the option to choose by referendum to be treated as a city. This allowed counties who desired to comply with the old provisions to do so, while larger urban counties who thought they should be treated as cities could opt to be treated as such.76

Both House and Senate debates clarified the point that once a county elects to be treated as a city, it is an irrevocable act.77

---

76. In reporting the proposal to the House floor, Chairman Smith stated:

The committee found that some counties did not want to be treated like cities for the purpose of issuing bonds, but preferred to continue issuing bonds without a limit, but subject to a referendum. Therefore, the committee recommends that counties be authorized to borrow as they now borrow under § 115-a . . . .

The committee also recommends that any county be permitted, upon approval by the affirmative vote of the qualified voters of the county voting in an election on the question, to elect to be treated as a city for the purpose of issuing its bonds. Once a county so elects, it would thereafter be subject to the benefits and limitations of the section applicable to cities. House Debates, at 506-7.

77. Delegate Alan A. Diamonstein specifically raised the question touched on in the Chairman's opening statement: "Once this election is made, do you believe that the word 'thereafter' will prevent reversion back to the status of a county?" Mr. Gray responded that the Committee had thoroughly discussed the matter "and the only thing we could think of to put after that was 'forever and ever, amen.' We think that 'thereafter' takes care of thereafter." House Debates, at 509. Senator Hopkins agreed that a county's election to be treated as a city was an irrevocable act. Senate Debates, at 314.
Having put back the old requirement of an election before the incurring of most debt by counties, both the House and Senate set out to refine and expand certain provisions which had allowed counties to borrow without an election. The House Committee substituted “school purposes” for “school construction” in one provision. This change was made because of the “restrictive construction that has been applied to the words ‘school construction.’”\(^78\) In addition, the House Committee continued the exceptions for revenue anticipation notes and revenue bonds as the Commission had recommended. These exceptions contained the exemption for short-term revenue anticipation notes which was contained in the 1902 Constitution and were consistent with the Commission’s interpretation that revenue bonds were not to be construed to be a “debt.” In addition, the House added a specific reference excepting “refunding bonds” from the general requirement of an election, although it was generally thought that “refunding bonds” were not subject to debt limit provisions because they involved an extension of an existing debt rather than the incurring of additional debt.

The Senate Committee sought the same result but added some additional refinements. It accepted the exceptions for revenue anticipation borrowing, revenue bonds, and refunding bonds, and provided a somewhat more elaborate exception on borrowing for school purposes. It added the language contained in old Section 115(a) that such borrowing must be “with the consent of the school board and the governing body.” It proposed that borrowing be allowed for “capital projects for school purposes” rather than “school construction” used in the old Constitution or “school purposes” as recommended by the House Committee. Moreover, a county was authorized, without an election, to have a “sale of bonds,” rather than the “loan” authorized in the 1902 Constitution, to the Literary Fund, the Supplemental Retirement System, or “to any other agency prescribed by law.” Previously counties, by court interpretation, had been able to borrow from the Literary Fund,\(^79\) while a constitutional amendment permitted borrowing from the Supplemental Retirement System. The change permitting the sale of bonds to any other agency prescribed by law was intended to allow the General Assembly to substitute the Public School Authority for the Supplemen-

\(^{78}\) House Debates, at 507.  
\(^{79}\) Board of Supervisors v. Cox, 155 Va. 687, 156 S.E. 755 (1931).
tal Retirement System as the State's principal purchaser of school bonds. The Board of Supplemental Retirement System under the old constitutional section had been buying the tax-exempt bonds of localities and then re-selling them, sometimes within two or three weeks of their purchase. The Board had occasionally been forced to hold bonds when it got caught on market shifts. Moreover, as noted by the Commission in its Report, since the Retirement System paid no income taxes, it was not in the best interest of the System to buy tax-exempt bonds when it could obtain a much higher yield on taxable bonds. The language "sale of bonds" and "such other agency as the General Assembly shall establish" was intended to authorize sale to the State School Bond Authority, which would sell its own bonds in order to make such purchases from local subdivisions.80

The House and Senate Committees adhered to the Commission's recommendations on debt of districts and regional governments, set forth in Section 10 of the Commission's proposal. The Commission had suggested continuing the prior constitutional prohibition on county district debt without a referendum and extending it to regional governments, with an election in the entire region prior to the issuance of its bonds. In commenting on this provision, the House Committee Chairman stated:

Section 10 also controls the issuance of bonds by regional governments. Like a county, the regional government's bonds would be subject to the approval of the majority of the voters in the region. The General Assembly could add further restrictions as it sees fit.81

The provisions in Section 10 are minimum ones, and others may

80. Senator Hopkins pointed out:

On the matter of county debt we put in Senator Michaels' language that you could use funds borrowed from the Literary Fund and other borrowed funds for capital projects generally, not just for construction. There has been some doubt whether a county could buy another school or buy a building, because that was not construction. Other than that, we generally adopted the provisions of the old constitution. However, we propose some changes. One of them is that a county by referendum can elect to have the same debt requirement and be treated as a city. But the county has to have a referendum before it can do that. Language is included to allow counties to borrow for school purposes not only from the Literary Fund and the Retirement Fund but from such other agency as the legislature may establish. Senate Debates, at 313.

81. House Debates, at 507.
be added by the General Assembly. For instance, it could add the procedural safeguards recommended by the Commission. The current Public Finance Act itself forbids bonds to be issued to pay current expenses. The General Assembly could require approval of a regional government’s debt in each district in the region, or a referendum on incurring of debt by any governmental unit. A two-thirds vote of a governmental body could be required in a charter.

The committee on style made several minor amendments to Section 10. Beside changing the numbering system of sub-paragraphs, it amended what is now Section 10(a)(3) by changing the language “bonds of a city or town, if the principal and interest thereon” to “bonds of a city or town the principal and interest on which.” Secondly, the Committee changed the language of what is now Section 10(b) by deleting “in the case of debt contracted by or on behalf of a county or district thereof, or to the qualified voters of the region or district thereof in the case of debt contracted by or on behalf of a regional government or district thereof,” and substituting “or the regional government or district thereof, as the case may be.” Finally, in the last paragraph the word “thereof” was changed to “in that county.” None of the changes were intended to be substantive.

H. Section 11

The Commission had recommended language for Section 11 to require the formation of a State Commission on Local Government, a body previously proposed by the Hahn Commission.81.1 This Commission would assist in all phases of local government, including boundary questions, annexation and consolidation. These were thought to be a legislative or poli-centered type of problem, rather than a judicial one. Governor Godwin had recommended that the mandatory “shall” in this section be changed to “may.” The Senate Committee, after considerable debate, followed the Governor’s recommendation, and the Senate passed the resolution in this form.

The House Committee, by an eight to seven vote, decided to delete the provision because, as Chairman Smith told the delegates, it felt “there was no need to include it in light of the adoption of an amended Article III, which clearly authorizes administrative gov-

ernment agencies.\textsuperscript{82} The Joint Conference Committee decided to accept the House version and interpretation.

In reporting to the Senate, Chairman Hopkins stated:

By the last major substantive change, we deleted the section that established the Commission on Local Government on a permissive basis. We did this because it was felt that such a commission could be created by future legislators under other sections of the Constitution, specifically Article III.\textsuperscript{83}

Senator Herbert H. Bateman expressed concern at the deletion of this language but asked if any disagreed they should speak and he would propose an appropriate amendment.\textsuperscript{84}

Senator Robert C. Fitzgerald, a member of the Committee told Senator Batemen it was the Committee’s opinion that such a commission would be formed pursuant to Article III.\textsuperscript{85}

Senator William F. Parkerson, Jr., an opponent of the Local Government Commission and any reference to it in Section 11, agreed that a commission analagous to the State Corporation Commission could be created for local government pursuant to Article III.\textsuperscript{86}

Therefore, no view was expressed which doubted the General Assembly’s authority under the new Constitution to provide for a powerful Local Government Commission similar to the State Corporation Commission.\textsuperscript{87}

III. Conclusion

The thesis with which this article started is that the General Assembly did not, on its own, blunt the recommendations of the

\textsuperscript{82} \textit{House Debates}, at 507.

\textsuperscript{83} \textit{Senate Debates}, at 429.

\textsuperscript{84} \textit{Senate Debates}, at 431-32.

\textsuperscript{85} \textit{Senate Debates}, at 432.

\textsuperscript{86} \textit{Senate Debates}, at 433.

\textsuperscript{87} Later Senator Leslie D. Campbell, Jr. asked whether the Commission on Local Government “could . . . perform or do any duties that would be in conflict of Article VII . . . or violate Article VII.” \textit{Senate Debates}, at 437. Senator Hopkins answered in the only way he could when he stated:

I would say that it is also my understanding. Had we adopted the Senate version which made the creation of such a commission permissive, it could not have done anything in conflict with other sections of this Article. \textit{Senate Debates}, at 437.
Commission in establishing the Article on Local Government. On the contrary in many cases it recommended the same or substantially similar proposals, changed only to more palatable form.

First, and probably foremost, the Commission recommended that the separate articles in the old Constitution for counties and cities be combined into a single article on local government. Substantively this would treat counties and cities more uniformly, while continuing provisions for the strong local government to which Virginia was accustomed. The Commission also recommended deletion of obsolete and statutory material. The General Assembly adopted these recommendations and the approach.

Second, the Commission recommended that counties with a population of 25,000 be allowed the same powers enjoyed by cities, including the power to obtain a charter from the General Assembly. The General Assembly removed the specific reference to “charter counties” as a new definition but added a provision to permit any county to request a special act from the General Assembly. This is the same provision under which cities and towns now receive their charters. Thus, the General Assembly went further than the Commission’s recommendation, while phrasing its change in language familiar to and accepted by the electorate. This latter change would also eliminate the need for population bracket legislation, another goal of the Commission.

Third, as an auxiliary to this charter provision, the Commission recommended that a city or charter county be allowed to adopt by referendum charter amendments without legislative approval. The theory of the Commission was that if the amendment was important enough to require an election, the election would be a sufficient check on what the locality proposed, and that the legislature would be less burdened with requests for special acts. The representatives of the city and town organizations, contrary to their position before the Commission, stated that cities did not desire this power because they had been able to obtain special acts from the General Assembly without undue trouble. Under the circumstances, the General Assembly could not give to the cities powers they did not desire. Furthermore, the members of the Virginia General Assembly did not see their task in adopting special legislation for charter amendments as a burden.
Fourth, the Commission recommended that the so-called Dillon Rule be repealed in the Constitution. The Dillon Rule is a rule of construction that all powers conferred on municipal corporations should be strictly construed. Again the representatives of the city and town organizations told the General Assembly they did not desire this change, and, again, the General Assembly had little choice.

Fifth, in the area of local debt, the Commission recommended that the right to borrow up to eighteen per cent of the assessed valuation of real estate without an election be extended to counties as well as cities. This power was especially needed in the more urban and suburban counties but had drawbacks for some of the rural counties. The General Assembly accepted this recommendation but put it on a local option basis. The Commission itself might have recommended this approach had it considered it.

Sixth, the Commission recommended the constitutional recognition of a new unit of general government, the regional government. While requiring local approval, the General Assembly accepted the recognition of a regional government in the Constitution and authorized future sessions of the General Assembly to pass implementing legislation.

Seventh, the Commission recommended the constitutional recognition of a State Commission on Local Government by mentioning it in the Local Government Article. The Commission also recommended that Article III, on separation of powers, be amended to recognize the General Assembly's power to create administrative agencies. The General Assembly chose to adopt Article III as recommended by the Commission. Each committee chairman rightly stated that, having adopted Article III, there was sufficient authority for the General Assembly to create a Commission on Local Government, without a specific section in the Local Government Article authorizing it.

Eighth, and finally, the Commission recommended a minimum population of 25,000 for the creation of new cities. In the Commission's view, a county has authority to provide all the services of a city and has essentially the same tax sources. When a new city is formed at the present level of 5,000 the new city splits local government into two parts, each usually with a population too low for its government to function efficiently. The General Assembly went back to the present 5,000 figure but gave itself the power, foreclosed
by the old Constitution, to set standards for the formation of new
cities, including the authority to raise the minimum.

It will, of course, remain to be seen whether the General Assembly
takes effective action to remedy the local problems described by the
recent studies of the Metropolitan Areas Study Commission and the
Commission. The Commission's proposals could only give the Gen-
eral Assembly the tools with which to operate. It did not propose one
all inclusive solution. In adopting the Local Government Article, the
General Assembly retained for itself substantially all of the power
and flexibility recommended by the Commission.

In the target area of metropolitan growth the jury is still out on
whether the General Assembly will adopt remedial legislation, but
it certainly has the power to do so. It also has the authority to use
the vehicle of a regional government. If it finally decides that annex-
atation battles have been fought for too long either in the wrong arena
or without sufficient standards, it has ample authority to adopt
more specific standards on annexation and consolidation to be ad-
ministered by either the courts or, more approximately, by a Com-
mission on Local Government. The Revision Commission did not
seek much more than that.
ARTICLE VII
LOCAL GOVERNMENT
As Introduced

Section 1. Definitions.

As used in this Article (1) "county" includes any one of the 96 existing unincorporated territorial subdivisions of the Commonwealth, any such unit hereafter created, or any such unit which becomes a "charter county" as provided by law, (2) "charter county" means a county which has a population of 25,000 or more and which has adopted a charter as provided by law, (3) "incorporated community" means an incorporated community which has within defined boundaries a population of 25,000 or more and which has become a city as provided by law, (4) "town" means an incorporated community which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law, (5) "regional government" means a unit of government organized as provided by law within defined boundaries encompassing at least two counties, or at least two cities, or at least one county and one city, provided that if any part of a county, city, or town be excluded within such boundaries, the entire county, city or town shall be included therein, and (6) "general law" means a law which on its effective date applies alike to all charter counties, noncharter counties, cities, towns, or regional governments or to a class thereof provided that, first, such class shall be based on a reasonable classification and, second, in no event shall a class contain, nor shall a law containing a class exclude fewer than two charter counties, or two noncharter counties, or two cities, or two towns not in the same county, or two regional governments. The General Assembly may increase by general law the population minima provided in this Article for charter counties, cities, and towns. Any incorporated community which on January 1, 1969, held a valid city or town charter may continue as a city or town, respectively, without regard to the population minima in this section.

ARTICLE VII
LOCAL GOVERNMENT
(As Reported by Senate Committee)

Section 1. Definitions.

As used in this Article, (1) "county" means any existing county or any such unit hereafter created, (2) "city" means any existing city or an incorporated community which has within defined boundaries a population of 5,000 or more and which shows, as provided by law, that it has the ability, alone or by agreement, to provide for its inhabitants the services required by law of a city, unless the county from which the city is to be formed shows that its ability to provide for its remaining inhabitants the services required by law of a county will be unreasonably impaired, but no such showing by the county shall apply to any proceeding for transition to city status instituted within five years after the effective date of this Constitution by the towns of Blacksburg, Christiansburg, Culpeper, Farmville, Front Royal, Leesburg, Manassas, Rappahannock, Park, Marion, Poquoson, Pulaski, Richlands, Vienna, Vinton or Wytheville, (3) "town" means any existing town or an incorporated community which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law, (4) "regional government" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, (5) "general law" means a law which on its effective date applies alike to all counties, cities, towns, or regional governments or to a [class thereof and (6) Special act under this article] reasonable classification thereof and (6) "special act" means a law applicable to a county, city, town or regional government and for enactment shall require an affirmative vote of two-thirds of those members elected to each house of the General Assembly.

The General Assembly may increase by general law the population minima provided in this Article for cities and towns. Any county which on the effective date of this Constitution had adopted an optional form of government pursuant to a valid statute that does not meet the general law requirements of this Article may continue its form of government without regard to such general law requirements until it adopts a form of government provided in conformance with this Article. In this Article, whenever the General Assembly is authorized or required to act by general law, no special act for that purpose shall be valid unless this Article so provides.
Section 2. Organization and government.

The General Assembly shall provide by general law for the organization, government, powers, change of boundaries, consolidation, and dissolution of counties, cities, towns, and regional governments, including optional plans of government for counties, cities, or towns to be effective for towns not in the same county, or two regional governments. The General Assembly may increase by general law the population minimum provided in this Article for cities and towns. Any county which on the effective date of this Constitution had adopted an optional form of government pursuant to a valid statute but which does not meet the general law requirements of this Article may continue its form of government without regard to such general law requirements until it adopts a form of government provided in conformity with this Article. In this Article, whenever the General Assembly is authorized or required to act by general law, no special act for that purpose shall be valid unless this Article so provides.

The General Assembly shall provide by general law for the adoption or amendment of a charter by any county having a population of 25,000 or more, or by a city, to be effective if approved by a majority vote of the qualified voters voting thereon in such county or city. The General Assembly may provide by general law or special act for the adoption or amendment of a charter of a county having a population of 25,000 or more, a city, or a town upon the request, made in the manner provided by general law, of any such county, city, or town. No charter or amendment thereto shall be adopted which conflicts with other sections of this Article specifying that general laws be enacted or which provides for the extension or contraction of boundaries of any charter county, city, or town.

The General Assembly may also provide by special act for the powers of regional governments, including

(Continued on next page)
ARTICLE VII
LOCAL GOVERNMENT
[As Introduced]

Section 2. Organization and government.

such powers of legislation, taxation, and assessment as the General Assembly may determine.

No new county shall be formed with an area of less than six hundred square miles; nor shall any county from which it is formed be reduced below that area nor reduced in population below 25,000.

ARTICLE VII
LOCAL GOVERNMENT
[As Reported by Senate Committee]

Section 2. Organization and government.

which is to participate in the regional government.

The Capitol of the Commonwealth of Virginia shall be located within the city of Richmond or within any other city the General Assembly may designate. The boundaries of the city in which the Capitol is located may be enlarged from time to time in any manner the General Assembly shall prescribe and any and every adjacent county, city, or town from which any territory may at any time be taken to so enlarge such boundaries shall be fairly and fully compensated therefor in such manner and in accordance with such judicial procedure, as the General Assembly may prescribe. The power herein granted to the General Assembly to enlarge the boundaries of the Capital city shall not be exercised to reduce the population of any adjacent county or city by more than twenty-five per centum, nor be exercised more often than once in every ten years.

ARTICLE VII
LOCAL GOVERNMENT
(As Passed By House With Joint Conference Committee Amendments Shown)*

Section 2. Organization and government.

but no such special act shall be adopted which provides for the extension or contraction of boundaries of any county, city, or town.

Every law providing for the organization of a regional government shall, in addition to any other requirements imposed by the General Assembly, require the approval of the organization of the regional government by a majority vote of the qualified voters voting thereon in each county and city which is to participate in the regional government and of the voters voting thereon in a part of a county or city where only the part is to participate.

* Bracketed material omitted

Section 3. Powers.

A charter county or a city may exercise any power or perform any function which is not denied to it by this Constitution, by its charter, or by laws enacted by the General Assembly pursuant to section 2.