

**CONSOLIDATION OF LOCAL GOVERNMENTAL UNITS:
ARTICLE 2, CHAPTER 35, TITLE 15.2**
(Incorporates changes through 2015 General Assembly session)

I. Eligibility

(Secs. 1-252 and 15.2-3520, Code of Va.)

This article authorizes (1) any adjoining county and city, or any combination thereof, to consolidate into a single county or city, (2) any adjoining county and city to consolidate into a county or city containing new dependent units of general government, and (3) any county and all incorporated towns located entirely therein to consolidate into a single county or city. However, consolidation as a city requires that the resulting consolidated entity meet specified population and population density criteria or, alternatively, encompass an existing city.

II. Initiation of Consolidation Effort

Consolidation efforts can be initiated by two means:

- A. By Act of Governing Bodies
(Sec. 15.2-3529, Code of Va.)

The governing bodies of jurisdictions interested in governmental consolidation may, with the assistance of advisory committees, negotiate for the development of a consolidation agreement for their respective localities.

- B. By Citizen Initiative
(Sec. 15.2-3531, Code of Va.)

The residents of any county, city, or town may initiate a consolidation effort on behalf of their jurisdiction by filing a petition, signed by not less than 15% of the registered voters in that jurisdiction as of January 1 of the year in which the petition is filed, with the governing body of their locality requesting it to develop a consolidation agreement with a specified adjoining jurisdiction. A copy of the citizens' petition is concurrently filed with the circuit court of the locality. If the petitioned governing body fails to develop a consolidation agreement within one year of the filing of the petition, the judge of the circuit court shall appoint a committee of five representative citizens of that locality to act for and in lieu of the governing body for the purpose of developing a proposed consolidation agreement.

III. Mandatory Provisions of Consolidation Agreement

(Secs. 15.2-3529 and 15.2-3532, Code of Va.)

Every consolidation agreement must contain the following provisions:

- A. The names of the localities proposing to consolidate;
- B. The name of the proposed consolidated entity or a provision calling for a subsequent referendum to select a name prior to the effective date of the proposed consolidation;

- C. A statement listing the real and personal property belonging to each jurisdiction proposing to consolidate and the fair market value thereof;
- D. A statement providing for the disposition of all property and debt of the jurisdictions proposing to consolidate;
- E. Provisions assuring the continuance of towns within the consolidated jurisdictions in those instances in which such towns are not parties to the consolidation agreement; and
- F. The date proposed consolidation agreement is effective or the date the charter for the consolidated city to be issued.

IV. Optional Provisions of Consolidation Agreement

(Sec. 15.2-3534, Code of Va.)

General law authorizes jurisdictions to develop consolidation agreements encompassing the following provisions:

- A. Property Assessments
[Sec. 15.2-3534(1), Code of Va.]

Property assessments in any part of a proposed consolidated city or county may be held constant, except for permanent improvements made after the consolidation, for a period not to exceed five years.

- B. Diminished Tax on Real Property in Qualifying Areas
[Sec. 15.2-3534(2), Code of Va.]

The tax on real property in specified portions of the consolidated entity may be lower than in other areas for a period of five years. The difference in such tax rates, however, must bear a "reasonable relationship" to the differences in non-revenue-producing governmental services provided to the areas in question.

- C. Debt Retirement Districts
[Sec. 15.2-3534(3), Code of Va.]

Special debt retirement districts may be established encompassing any area of a proposed consolidated entity within which a special tax on real property may be levied for a period not to exceed twenty years for the purpose of repaying the debt incurred by such areas prior to consolidation.

- D. Service Districts
[Sec. 15.2-3534(10)(13)(15), Code of Va.]

Special service districts may be created in either consolidated cities or counties for the purpose of providing additional or a higher level of governmental services (e. g., water,

sewerage, solid waste collection and disposal, lighting, street maintenance, sidewalks, storm drains, fire suppression services, and intensified security). The consolidated government may impose additional taxes on the property within such areas with the proceeds being segregated for use solely therein. Such special service districts may not be established and taxed for the creation of separate police forces, educational programs, or other basic governmental services to which all citizens are entitled.

E. Referral of Optional Form of Government to Voters
[Sec. 15.2-3534(14), Code of Va.]

A consolidation agreement may include a provision by which the choice of a city or county form of government, including the selection of optional forms of county government, is referred to the voters.

F. Detachment of Territory Following Consolidation
[Sec. 15.2-3534(17), Code of Va.]

A consolidation agreement may provide that, following a favorable vote on consolidation, a second referendum may be held, by which the voters of all or part of one or more of the consolidating jurisdictions may express their views regarding detachment from the consolidated jurisdiction and attachment to a locality not part of the consolidated government. The consolidation agreement may include the terms and conditions by which such a detachment may occur. If the jurisdictions agree to the principle of detachment but are unable to agree on the terms and conditions of such detachment, the terms and conditions may be determined by the Commission on Local Government. However, the jurisdiction to which the area would subsequently be attached has the right to reject the terms and conditions established by the Commission and to refuse to accept the area in question.

G. Optional Provisions Applicable Only for Proposed Consolidated City

General law authorizes the following optional provisions only for proposed consolidated cities:

1. Charter of Consolidated City
[Sec. 15.2-3534 (11), Code of Va.]

The agreement, when proposing the creation of a consolidated city, may incorporate in a proposed charter, subject to the subsequent approval of the General Assembly, any provisions of any charter previously granted by the General Assembly for any of the localities proposing to consolidate. (This statement of general law is designed to reflect the intention of the General Assembly with respect to the authority which it is prepared to grant to consolidating jurisdictions.)

2. Officers of Consolidated City

(a) Governmental Officers
[Sec. 15.2-3534 (9 a, b), Code of Va.]

A consolidation agreement may call for the election of new officers for the consolidated city, or it may exclude from such new election "such elective officers as is deemed desirable." The agreement may also include a provision permitting the constitutional officers of the consolidating jurisdictions to select from amongst their number those individuals who shall serve initially as constitutional officers for the consolidated city, with the other constitutional officers becoming assistants or chief deputies of the officers selected to serve the consolidated locality. The agreement may also provide that if the constitutional officers of the jurisdictions proposing to consolidate are unable to agree on a selection by a date specified in the consolidation agreement, the circuit court shall designate the individuals to serve as the constitutional officers for the consolidated jurisdiction and shall name the other officers to serve as assistants or deputies. The agreement may provide that the selected constitutional officers and their assistants and deputies may complete the terms for which they were elected at not less than their salaries in effect at the time of consolidation.

(b) Superintendent of School Division
[Sec. 15.2-3534 (9 c), Code of Va.]

The consolidation agreement may include a provision by which the consolidated city school board shall designate one of the superintendents serving one of the consolidating jurisdictions as superintendent for the consolidated city and that it may designate others as associate superintendents. The agreement may also provide that in the event the consolidated city school board fails to designate an individual as division superintendent, such designation shall be made by the circuit court serving the consolidated city. The agreement may also provide that all the individuals serving as school superintendents in the jurisdictions proposing to consolidate may continue in office at no less than their salaries at the time of consolidation for the terms to which they were appointed.

3. Subsequent Merger with Surrounded City
[Sec. 15.2-3534 (18) (19), Code of Va.]

A consolidation agreement may include provisions which authorize a city which would be completely surrounded by the proposed consolidated city to effect unilaterally a subsequent total merger with the consolidated city or to merge and become a township within the consolidated city. Such provisions, however, must require that the subsequent merger be approved by referendum within the surrounded city.

H. Optional Provisions Applicable Only for Proposed Consolidated County

General law establishes the following optional provisions which are available only to proposed consolidated counties:

1. Powers of Consolidated County
[Sec. 15.2-3534 (12), Code of Va.]

The consolidation agreement may incorporate the provisions of any charter of any of the jurisdictions proposing to consolidate and any provision applicable to any of the optional forms of county government established by general law.

2. Disposition of Municipal Roads and Streets
[Sec. 15.2-3534 (13) and 15.2-3550, Code of Va.]

Unless the consolidation agreement provides otherwise, the streets and roads of former cities and towns shall become and remain a part of the State highway system. (Sec. 15.2-3550, Code of Va.) However, a consolidation agreement may provide that the area of a former municipality may be designated as a special service district wherein the consolidated county shall have the same powers, rights, and duties with respect to public thoroughfares and receive State assistance as did the former municipalities prior to consolidation. The boundaries of such special service districts may be altered by ordinance adopted by the governing body. [Sec. 15.2-3534 (13), Code of Va.]

3. Tier-City Arrangements

A consolidation agreement proposing the creation of a consolidated county may include a provision by which a city is governmentally integrated into such a county and transformed into a tier-city. General law authorizes such agreements to include the following provisions relative to the establishment and operation of a tier-city within a consolidated county:

(a) Charter for a Tier-City
(Sec. 15.2-3535, Code of Va.)

The consolidation agreement may include as a component thereof a charter for the proposed tier-city.

(b) Boundaries of a Tier-City
[Secs. 15.2-3534(16) and 15.2-3549, Code of Va.]

The consolidation agreement may include a provision initially establishing the boundaries of a proposed tier-city, which boundaries may vary from those of the previously existing independent city. (Sec. 15.2-3549, Code of Va.) The boundaries of a tier-city may subsequently be modified in accordance with other terms appearing in the consolidation agreement.

- (c) Intergovernmental Relations
[Secs. 15.2-3534(16) and 15.2-3400, Code of Va.]

The consolidation agreement may include provisions establishing special arrangements between the proposed tier-city and the consolidated county relative to annexation, county immunity from annexation, transition of the tier-city to city status, and transition of the county to city status. Such provisions, however, if included in a consolidation plan, must be reviewed by the Commission on Local Government and subsequently approved by a special three-judge court.

- (d) Powers of a Tier-City
(Sec. 15.2-3549, Code of Va.)

General law provides that a tier-city shall have "all the powers, duties, and responsibilities of a town together with such additional powers as may be granted it by law, general or special." The consolidated county shall exercise such powers in a proposed tier-city as is exercised by counties in towns, except as the consolidation agreement might provide otherwise.

- (e) Fiscal and Service Arrangements
(Sec. 15.2-3549, Code of Va.)

Tier-cities shall receive from the State financial assistance in the same manner and to the same extent as is provided towns. A tier-city, however, may transfer all or part of the revenues it receives, the services it performs, its facilities, or other assets to the county by agreement. The consolidated county may also agree to assume all or part of a tier-city's indebtedness.

- (f) Early Assumption of Office by Governing Bodies
[Sec. 15.2-3542(2), Code of Va.]

A consolidation agreement may include provisions by which the newly elected governing bodies of a consolidated county and a tier-city may assume and hold office prior to the effective date of consolidation for certain limited and specified purposes. This provision enables the newly-elected governing bodies to take the requisite steps to plan for the integration of the city into the county and to make other necessary governmental arrangements prior to the effective date of consolidation.

V. Procedural Requirements to Effect Consolidation

The procedural requirements for consolidation vary depending upon the type of consolidated entity proposed.

- A. Proposed Consolidated City

1. Initiation of Process
(Sec. 15.2-2907, Code of Va.)

After the development of an agreement proposing the creation of a consolidated city, the jurisdictions proposing to consolidate must jointly submit their plan of consolidation to the Commission on Local Government for review.

2. Proceedings of the Commission on Local Government
(Sec. 15.2-2907, Code of Va.)

(a) Upon receipt of notice of the proposed consolidation, the Commission shall meet with representatives of the jurisdictions proposing to consolidate and shall schedule a review of the proposed consolidation. Such review shall include oral presentations by the parties and a public hearing in one of the affected jurisdictions in order to afford all interested citizens an opportunity to offer comment with respect to the proposed consolidation. The Commission's review of the proposed consolidation must be based upon the criteria and standards set forth in Section 15.2-3526 of the Code of Virginia.

(b) At the conclusion of its review, the Commission shall submit a written report containing its findings of fact and recommendations with respect to the proposed consolidation to the affected local governments and to the special three-judge court which must subsequently review the issue. After receipt of the Commission's report, the localities proposing to consolidate may initiate the requisite court review.

(i.) The Commission is expected to render its report within six months of its receipt of notice of the proposed consolidation, unless the parties agree to an extension of the deadline. The Commission, however, is authorized to extend its reporting deadline for a sixty-day period by its own volition.

(ii.) The Commission's report is advisory in nature and is not binding upon the three-judge court. The report, however, must be considered in evidence by the court during its review.

3. Notice and Publication of Pending Court Review
(Sec. 15.2-3521, Code of Va.)

At least thirty days prior to initiating court review of the proposed consolidation, the jurisdictions proposing to consolidate must serve notice on certain specified officials of each county and city having a common boundary with the proposed consolidated entity. These notices must include a certified copy of the consolidation agreement. In addition, prior to petitioning the circuit court for the appointment of a special three-judge court to review the proposed consolidation, a copy of the notice and consolidation agreement must be published once a week for four successive weeks in one or more newspapers

having general circulation within the jurisdictions proposing to consolidate.

4. Convening of Special Court
(Sec. 15.2-3002, Code of Va.)

After the required service of notice and publication, the jurisdictions proposing to consolidate shall petition one of the circuit courts serving the affected localities for review of the proposed consolidation. The circuit court shall then notify the Supreme Court of the petition. The Supreme Court shall then designate a special court comprised of three circuit court judges from judicial circuits having no involvement with the affected jurisdictions.

5. Proceedings of the Special Court
(Sec. 15.2-3526, Code of Va.)

(a) In order for a special three-judge court to approve the establishment of a consolidated city, it must:

(i.) Find that the proposed consolidated entity has a minimum population of 20,000 persons and a population density of at least 300 persons per square mile, or a minimum population of 50,000 persons and a population density of at least 140 persons per square mile; (in instance where a proposed consolidated city embraces an existing city, the population and population density requirements are waived);

(ii.) Find that the proposed consolidation has the fiscal capacity to function as an independent city and to provide appropriate services;

(iii.) Consider the best interests of the parties; the interests of the Commonwealth in compliance with and promotion of applicable State policies with respect to environmental protection, public planning, education, public transportation, housing, and other State service policies; and the interest of the State in promoting strong and viable units of government in the affected area.

(b) If the court finds that the criteria and standards described above have been met, it shall enter an order directing that a referendum be held in each of the affected jurisdictions on the issue of consolidation. If the court concludes that the criteria and standards have not been met, it shall deny the proposed consolidation. The court is limited in its decision to granting or denying eligibility for city status and has no authority to impose terms or conditions with respect to the proposed consolidation.

6. Referendum on Consolidation
(Secs. 15.2-3538 and 15.2-3547, Code of Va.)

If the special three-judge court determines that the criteria and standards have been met for the establishment of a consolidated city, it shall enter an order calling for an election in each of the jurisdictions which are parties to the consolidation agreement. The chief judges of the circuit courts serving the affected jurisdictions shall then by order establish a date, which shall be the same in each jurisdiction, on which the voters of each jurisdiction shall decide the question of consolidation. The proposed consolidation must be approved by referendum within each of the jurisdictions which is a party to the consolidation agreement. In instances in which a county is proposing to consolidate with an adjoining city or county, separate approval in a town within such counties is not required. Voters residing in such towns shall participate in the countywide referendum, but no separate referendum will be conducted within the town. (Sec. 15.2-3547, Code of Va.)

7. Effect of Consolidation on Towns
[Sec. 15.2-3548, Code of Va.]

Towns that are not parties to a consolidation agreement by which their counties become part of a consolidated city shall continue to exist as "townships" within the consolidated city. The charter of the former town shall become the charter of the township. Such townships shall continue to exercise such powers and elect such officers as the township charter may authorize and shall exercise such other powers as towns exercise under general law. In general, no township shall exercise any extra territorial authority, initiate annexation proceedings or transition to city status. However, a township created as a result of a consolidation of a city and a county after July 1, 2011 may institute proceedings for annexation if the consolidation agreement permits a township to exercise such authority. Townships shall receive from the State financial assistance in the same manner and to the same extent as is provided towns. Townships are granted the authority, however, to transfer all or any part of their revenues, services they perform, their facilities, other assets, and debts to the consolidated city by mutual agreement of the governing bodies.

B. Proposed Consolidated County

1. Publication of Consolidation Agreement
(Sec. 15.2-3537, Code of Va.)

After the development of a consolidation agreement by the jurisdictions proposing to consolidate, a copy of the agreement must be published by the parties at least once a week for four successive weeks in a newspaper having general circulation in each locality proposing to consolidate.

2. Order of Election and Referenda
(Secs. 15.2-3538 and 15.2-3540, Code of Va.)

Following completion of the publication requirement, the judges of the circuit courts serving the jurisdictions proposing to consolidate shall enter orders establishing a date, which must be the same in each jurisdiction, for a referendum on the question of consolidation. The election must be held within 300 days from the completion of the consolidation agreement by the parties.

3. Special Review of Certain Tier-City Arrangements
[Secs. 15.2-3534(16) and 15.2-3400, Code of Va.]

If the consolidation agreement proposes the establishment of a tier-city within a consolidated county with special provisions regarding annexation, annexation immunity, and transition to city status, such provisions must be reviewed by the Commission on Local Government and approved by a special three-judge court before a vote on consolidation is taken.

VI. Other Provisions Relative to Local Governmental Consolidation

A. Special State Assistance Provisions

In order to facilitate the consolidation of units of local government, the following provisions have been enacted by the General Assembly to assist the consolidated localities during a period of transition:

1. General State Aid "Hold Harmless" Provision
[Sec. 15.2-1302, Code of Va. and Ch. 665, 2015 Acts of Assembly Item 4-1.03 (c)(8)]

Under general law provisions, for a 20-year period following a consolidation no State funds which are distributed to localities for any "governmental program or function" shall be reduced as a consequence of the consolidation below the aggregate amount which the consolidating local governments would have received had no consolidation occurred.

The Director of the Department of Planning and Budget is authorized to transfer appropriations between state agencies as necessary in the event of the consolidation of a city and a county into a single city.

2. Roads and Streets
(Sec. 15.2-3530, Code of Va.)

In instances where counties consolidate with municipalities to establish consolidated cities, the State Department of Transportation shall construct and maintain the public thoroughfares in the former county areas in the same manner and to the same extent as it performed prior to the consolidation. At any time after the consolidation, however, the Department of Transportation

and the governing body of the consolidated city may agree that some or all of such public thoroughfares may be transferred to the city and made the responsibility of the municipality. In such instances, the Department of Transportation shall provide construction and maintenance assistance for such public thoroughfares as is provided generally to the State's municipality.

3. State Police Assistance
(Sec. 52-11.2, Code of Va.)

Upon the request of the governing body of a consolidated city, the Superintendent of State Police shall continue the services of the Department of State Police in those portions of the consolidated jurisdiction which were formerly county areas. Such services shall be made available by the Department of State Police for a period of ten years following the effective date of the consolidation.

4. Specific Provisions Regarding Educational Assistance

(a) Operational Assistance
(Sec. 22.1-25, Code of Va., and Ch. 665, 2015 Acts of Assembly Item 136
(A)(4)(c))

In 2015, the General Assembly eliminated the incentive funding formula that provided additional funding to school divisions who have consolidated. The legislature at that time also directed the Commission on Local Government to recommend to the legislature an appropriate process and calculation for future incentives. This study is to be completed by December 2015.

If the composite index of a consolidated school division is reduced during the course of the fifteen year period to a level that would entitle the school division to a lower interest rate for a Literary Fund loan than it received when the loan was originally released, the Board of Education shall reduce the interest rate of such loan for the remainder of the period of the loan. Such reduction shall be based on the interest rate that would apply at the time of such adjustment. This rate shall remain in effect for the duration of the loan and shall apply only to those years remaining to be paid.

(b) Literary Fund Loans
[8VAC20-100-210, State Board of Education Regulations, amended effective March 8, 1995]

The regulations of the State Board of Education require "priority funding" for any loan application "resulting directly from the consolidation of two or more school divisions into a single school division."

B. Allocation of Law-Enforcement Deputies to City Sheriff
[Sec. 15.2-1609.1, Code of Va.]

The Compensation Board is authorized to allocate law-enforcement deputies to a city sheriff in any city without a police force that was created by the consolidation of a city and a county after July 1, 2011.

C. Financial Assistance to Localities Operating Police Departments
[Ch. 665, 2015 Acts of Assembly Item 391 (A)]

Funds distributed to localities operating police departments (i.e., "599" funds) shall also be distributed to any city without a police force that was created by the consolidation of a city and a county after July 1, 2011. The amount to be distributed to such a consolidated city shall equal the sum distributed to the city during the year prior to the effective date of the consolidation, net of any additional funds allocated by the Compensation Board to the sheriff of the consolidated city as a result of such consolidation, as adjusted in proportion to the increase or decrease in the total amount distributed to all localities during the applicable year.

D. Allocation of Positions to Constitutional Officers
[Ch. 665, 2015 Acts of Assembly Item 73(L)]

In the event of the consolidation of a city and a county into a single city, the Compensation Board is required to allocate any positions in the constitutional offices of the former city and county to the consolidated city without regard to the Board's priority of need ranking for reallocated positions.

E. Establishment of Special Service Districts Following Consolidation
[Secs. 15.2-2401 and 15.2-2403, Code of Va.]

Under general law, special service districts can be created in consolidated cities by the governing body or court order pursuant to citizen petition. Once established, the city council is given broad powers to acquire, construct, maintain, and operate facilities; to provide public services; to levy taxes; and to establish alternative means for managing and operating such services and facilities within the specified districts. However, such taxes shall only be levied upon the specific classification of real estate that the local governing body deems the governmental services to benefit, and such services shall not be for the sole benefit of any particular individual or business.