

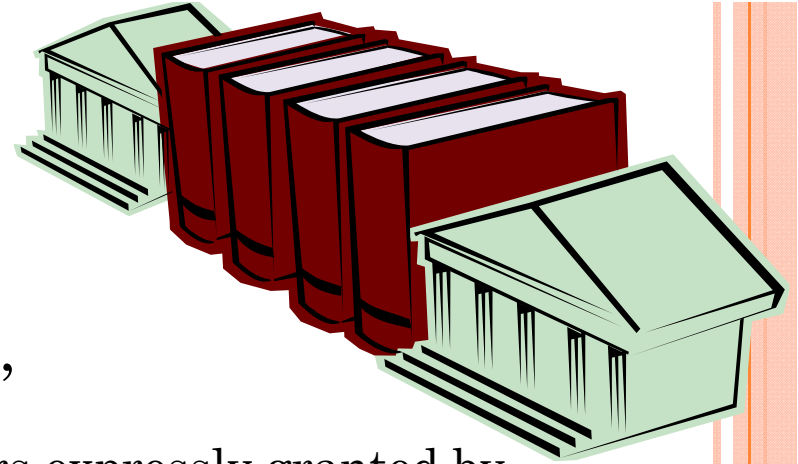


CHANGING ARLINGTON COUNTY'S FORM OF GOVERNMENT

Arlington County League of Women Voters
April 22, 2010

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LEGAL BACKDROP



- Virginia follows the “Dillon rule”
 - Localities can only exercise those powers expressly granted by the state; those necessarily or fairly implied in or incident to the powers expressly granted; and those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable. Judge John Dillon, Clark v City of Des Moines (1865)
- State law sets out local government powers for each form of county government
- State law establishes the process to change county form of government
- Optional forms of county government first authorized by 1928 state constitution amendment; enabling statutes adopted 1932 (and amended many times subsequently)

OPTIONAL FORMS OF COUNTY GOVERNMENT

- County Manager Plan (Arlington) *must have population density of at least 500/square mile*
- County Manager Form (Henrico) *any county may adopt*
- County Executive (Albemarle, Prince William) *any county may adopt*
- Urban County Executive (Fairfax) *must have population of at least 90,000*
- County Board (Scott, Carroll, Russell, Grayson) *any county may adopt*

OTHER FORMS OF COUNTY GOVERNMENT IN VIRGINIA

- ❑ Charter counties (Chesterfield, James City County, Roanoke County) *any county may adopt*
- ❑ Traditional or default form of county government:

83 counties have not adopted an optional form or a charter). Traditional/default powers are available to all counties regardless of form. Although, specific provisions set out in optional form statutes often trump any default Code provisions for counties that have adopted an optional form.

PROCEDURE TO ADOPT OR CHANGE OPTIONAL FORM OF COUNTY GOVERNMENT



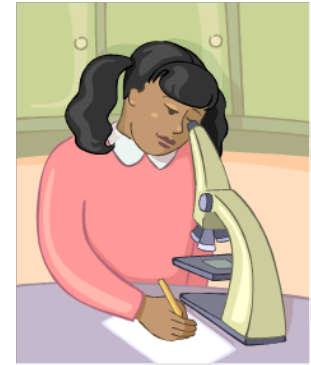
- Citizen petition signed by 10% of registered voters (14,340) within 9 months of initial certification by Circuit Court Clerk (or by resolution of the governing body) filed with Circuit Court - *July 15 filing deadline for the current petition*
- Circuit Court orders referendum election within “reasonable time” ballot question must be “Yes” or “No”, e.g.: Should Arlington County Adopt the County Board Form of Government?
- New form takes effect on Jan. 1 following the election of the new governing body, which occurs the November general election following the referendum. (If referendum is held in 2010, the new form would most likely take effect January 1, 2012)
- § 5 Voting Rights Act – U.S. Attorney General preclearance required for new election districts (districts and precincts can not discriminate by race or color)
- Three years must pass before another referendum can be held

LEGAL IMPACTS OF CHANGING ARLINGTON'S FORM OF GOVERNMENT



- Specific statutory authority granted to County Manager Plan counties will be lost
- Specific statutory authority granted to the new form (County Board) will be gained
- Specific “Arlington County” statutory authority will remain in effect
- Applicable default authority available to all localities/counties will remain in effect

A CLOSER LOOK AT SPECIFIC AUTHORITY UNIQUE TO COUNTY MANAGER PLAN



- Home purchase and rental assistance to employees (incl. teachers, fire and rescue, and constitutional officers)
- Civil Service Commission
- Human Rights Ordinance/Commission – broader discretion than default provisions in Va. Code
- Retirement benefits for part-time employees
- Regulation of child-care facilities - can be more strict than state regulations
- Very flexible Transfer of Development Rights authority - No county has adopted default TDR authority as it is highly prescriptive and difficult to implement

A CLOSER LOOK AT SPECIFIC AUTHORITY UNIQUE TO COUNTY MANAGER PLAN CONT'D

- Broad authority to regulate exterior illumination
 - default authority limited to regulation near planetariums and observatories
- Civil penalties authorized for wrongful demolition of historic buildings
- Authority to prohibit/enforce all misdemeanors set out in state law
- Sanitary District authority
 - Broader under County Manager Plan than under default provisions to use county funds/debt financing for sanitary district (water, sewer, etc.) projects when district encompasses entire county

A CLOSER LOOK AT SPECIFIC AUTHORITY UNIQUE TO COUNTY MANAGER PLAN CONT'D



- Housing related authority
 - Affordable Housing and Investment Fund
 - Tenant relocation payments - when buildings are being rehabilitated
 - Broad Affordable Dwelling Unit ordinance – unique, Arlington-tailored authority v. ADU authority available to other counties

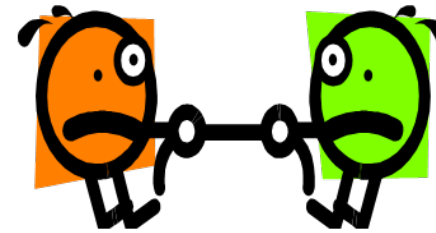
COUNTY BOARD FORM OF GOVERNMENT

- Specific authority to be gained:
 - No specific authority for programs similar to County Manager Plan powers cited above
 - County Department of Cooperative Extension and Continuing Education required
 - Constitutional Officers are the same - Sheriff, Clerk of Court, Commonwealth Attorney, Commissioner of Revenue, Treasurer

“ARLINGTON COUNTY” – SPECIFIC AUTHORITY (WILL NOT BE LOST WITH CHANGE OF GOVERNMENT FORM)

- Regulation of inoperable motor vehicles
- Authority to cut overgrown grass on private property
- Northern Virginia Transportation Tax District membership
- Authority to levy additional $\frac{1}{4}$ of 1% transient occupancy tax to promote tourism
- Authority to levy 10% admissions tax
- Authority to levy 5% per pack cigarette tax
- Authority to levy 4% food and beverage tax
- Authority to levy 1% income tax by referendum
- *Not an exhaustive list*

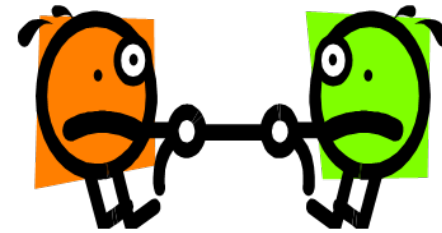
GOVERNMENT ADMINISTRATION COUNTY MANAGER PLAN V. COUNTY BOARD



○ County Manager Plan

- 5 board members elected at-large to staggered 4 year terms - no option for voter referendum creating election districts
- Members elect chairman
- Board vested primarily with legislative functions and empowered to exercise the general management of the affairs of the county
- Appointed county manager acts as executive and chief administrator
- County manager responsible for personnel decisions, except regarding manager, attorney and clerk – and except for role of Civil Service Commission
- Employees communicate to Board through county manager - Board members not to interfere

GOVERNMENT ADMINISTRATION COUNTY MANAGER PLAN V. COUNTY BOARD CONT'D



- County Board form
 - 3-11 Supervisors
 - One elected at-large, the rest by district
 - Four-year terms; not staggered
 - Members elect chairman
 - Board of Supervisors vested with both legislative and executive authority
 - Board has broad authority over personnel decisions – may delegate to any officer or department head
 - Board appoints county administrator

COUNTY MANAGER PLAN V. COUNTY BOARD - SCHOOL BOARD



- School Board Under County Manager Plan
 - 3-7 school board members
 - Appointed by governing body unless local referendum passes to create elected school board, which was done in Arlington
 - Terms same as board members (staggered)
 - Election districts same as county board (all at-large)
- School Board Under County Board form
 - 3-6 members
 - Appointed by board of supervisors, unless voter referendum creates elected school board
 - Election districts same as supervisors
 - Terms are staggered – unless referendum passes to create elected school board, then terms would be the same as board of supervisors (not staggered)

MAJOR POLICY CONSIDERATIONS



- Loss of specific authority granted only to County Manager Plan counties (Remember the Dillon rule!)
- Staggered v. non-staggered board terms – continuity favored or “clean slate” opportunity each election?
- At-large supervisors v. election districts
 - “Balkanization” of the county by districts or more accountability to each neighborhood?
- Benefits of more “hands on” role for board members v. risk of politicizing county personnel and government operations and hindering efficiency of administration

MAJOR POLICY CONSIDERATIONS CONT'D

- School board at-large v. election districts
- Impacts of future Va. Code changes Arlington might want made to County Board form of government on other counties with same form (i.e. possible political resistance from other localities/legislators)
- “Arlington County” - specific legislation (the alternative to amending County Board statutes) requires 2/3 “supermajority” to pass General Assembly; changes to County Manager Plan only require simple majority



OTHER APPROACHES AVAILABLE TO EFFECT LEGAL CHANGES TO ARLINGTON'S GOVERNING STRUCTURE

- Seek legislative changes to provisions of County Manager Plan chapter in Title 15.2 of the Code of Virginia (§15.2-700 et seq.)
- Become a charter county – requires either voter approval *or* public hearing. Charter must be approved by the General Assembly.
- Transition to city status – requires court and voter approval. City charter must be approved by General Assembly.

CHANGING ARLINGTON COUNTY'S FORM OF GOVERNMENT

APRIL 22, 2010 (HAPPY EARTH DAY!)

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