

AN INFORMATION REPORT

Measuring Local Discretionary Authority



Advisory Commission on Intergovernmental Relations

Washington, D.C. 20575 • November 1981

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Preface

This report on the discretionary authority of local governments, principally the work of Joseph F. Zimmerman, professor of political science at the State University of New York, Albany, caps his three earlier studies for the Commission dealing with aspects of the legal authority possessed by local governments in the U.S. The three are "Intergovernmental Service Agreements and Transfer of Functions," Chapter III of the 1974 report, *The Challenge of Local Governmental Reorganization (A-44)*, *Pragmatic Federalism: The Reassignment of Functional Responsibility (M-105)*, 1976, and *State Mandating of Local Expenditures (A-67)*, 1978.

This is an Information Report. It includes a summary of previous Commission recommendations on the state-local power relationship, excerpted from the ACIR report *State and Local Roles in the Federal System* (forthcoming, 1981), but presents no new recommendations.

James G. Watt
Chairman

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Executive Director



Acknowledgments

Under the direction of Prof. Joseph F. Zimmerman, Jon A. Baer and Deirdre A. Zimmerman conducted legal research and edited the questionnaire returns. Baer and Christian J. Eilers transferred the questionnaire data to Fortran sheets, and Robert J. Lowinger prepared the computer program and operated the computer. Mrs. Edith K. Connelly typed the original manuscript.

The report was prepared for publication by Albert J. Richter of the Commission's staff, with secretarial assistance from Evelyn Hahn and Marvis Dancy. Mavis Mann Reeves, ACIR senior resident 1978-80, provided comments on an early draft and Taru Jones, ACIR fellow 1978-80, helped to coordinate the distribution and return of the questionnaires.

The participation of state officials, representatives of state associations of municipal and county of-

ficials, and other informed observers of state-local relations was essential to the conduct of the survey and is greatly appreciated.

The Commission benefited from a review of the final draft by John Bebout, A. C. Breckenridge, William N. Cassella, Jr., Rubin G. Cohn, Orval Etter, Patricia S. Florestano, Jefferson B. Fordham, David L. Martin, Jim Mattis, Kenneth C. Tollenaar, Kenneth Vanlandingham, and Kenneth VerBurg.

Full responsibility for the content and accuracy of the report, of course, rests with Prof. Zimmerman and the Commission staff.

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Introduction

Although a considerable amount of literature dealing with local discretionary authority has been published during the past century, its quality and utility vary. A major problem involves the loose definition of the term "home rule," a phrase commonly used as a synonym for local discretionary authority. A second weakness is the failure to measure the amount of discretionary authority possessed by each of the various types of local governments.

A primary objective of this study was to develop such an index for the different types of general-purpose local units in each of the 50 states. For this purpose, local discretionary authority was defined as the power of a local government to conduct its own affairs—including specifically the power to determine its own organization, the functions it performs, its taxing and borrowing authority, and the numbers and employment conditions of its personnel.

USES OF AN INDEX

An index of local discretionary authority permits the identification of the true substantive power of the several types of general-purpose units of local government which is not apparent from their official names. The term "general-purpose unit of local government" is commonly understood to mean a unit organized to provide a variety of functions for its resident citizenry. It is distinguished from a special-purpose unit, which is established for one specific purpose or for a few. Included under the heading of general-purpose unit in one or more states are locali-

ties designated as municipalities, cities, counties, villages, towns, townships, and boroughs.

It is clear to those familiar with these various types of unit that, while they may all have multifunctional responsibilities, they are by no means comparable in terms of the number and importance of their functions and their authority to organize to perform and fund them. Thus, their mere designation as "general-purpose units" is not very helpful in revealing their true capacity.

"Getting behind" the general-purpose designation can be critical at the federal, state, and local levels. Congress, for example, designated all "general-purpose units of local government" as eligible recipients of General Revenue Sharing (GRS), evidently assuming that all units so classified by the Bureau of the Census are fairly equal in the sense of being responsible for providing a range of services to their citizens. This assumption is challenged by those who point out that townships in many middle western states and some counties in certain states—both eligible recipients of GRS—have very limited functional responsibilities. In the executive branch, federal administrators responsible for awarding project grants also have good reason for wanting to know the scope of functional authority possessed by different types of "general-purpose units." This is because program results under the grant program may well depend upon the specific functional and other capability possessed by the grantee.

Legislative and administrative officials at the state level are more apt to comprehend the substantive differences in the powers exercised by local units within their state than are federal officials who are farther removed and are responsible for knowing about 50 states rather than one. Yet, considering turnover in office and the remoteness of some state officials from the realities of local government—even in their own states—a meaningful, simple, index of local discretionary authority can be useful to them, for allocating functional responsibilities and distributing state grant money.

An index of local discretionary authority can be of value in attempting to differentiate among local units on the basis of fiscal measures. Direct general expenditures often are utilized to assess a local unit's functional responsibilities compared with those of other governmental jurisdictions, federal, state, or local. This was one of the approaches used in the Advisory Commission on Intergovernmental Relations' study of the assignment of functions at the local level.¹ That study pointed out that while direct general ex-

penditures are an indicator of servicing responsibility they do not necessarily measure policymaking responsibility. Intergovernmental conditional grants used entirely or partially to finance local expenditures can strongly influence the policies followed in performing the function. Even if a unit has heavy expenditure responsibility and heavy financing responsibility for a function, its control over that function might still be restricted if it lacks adequate power to organize and control the personnel responsible for performance. An index of local discretionary authority can throw light on these conditioning factors.

Such an index can be useful, of course, for those within a locality—officials and citizens alike—who may be concerned with whether their local government is meeting its potential. Determination of its relative standing can be an indispensable first step in a community's deciding whether it should seek expanded authority by charter reform, state legislation, or constitutional revision.

In short, an index of local discretionary authority is a means of (1) giving substantive content to terms such as general-purpose unit, city, county, town, or village in each of the 50 states; (2) enabling public officials to deal with those terms more meaningfully when differences in discretionary authority are important in making decisions that discriminate among local units; and (3) providing a yardstick whereby officials and citizens of each type of unit can decide whether they should strive for more authority for that unit.

INFORMATION SOURCES

Basic data on the discretionary authority of general-purpose local governments were obtained for each state (1) by examining the constitutions and statutes, court decisions, law review and journal articles, and reports on state-local relations, and (2) by a mail questionnaire survey of selected knowledgeable individuals. Included in the survey were the following in each state: the Governor, the attorney general, and officials of the legislative research bureau, community affairs department or its equivalent, the state municipal league(s), and county association, if any. Information also was provided by nonofficeholders identified as experts on state-local relations in their respective states.

In addition to obtaining the perceptions of these individuals on the amount of discretionary authority possessed by each type of local government, the ques-

tionnaire sought their views on the extent to which various types of local government actually exercise such authority. Further, respondents were requested to indicate their preferences for various kinds of state legal provisions affecting local discretionary authority. Finally, the questionnaire probed other related issues, such as factors eroding local discretionary authority and the status of efforts to recodify state statutes pertaining to local governments.

CHAPTER OUTLINE

Chapter 2 summarizes the major findings of this study and concludes with a list and description of the principal relevant recommendations in previous ACIR reports. As background for consideration of

the status of local discretionary authority, *Chapter 3* provides an account of the evolution of the basic state-local power relationship, including the two main approaches to constitutional protection for local discretionary powers (home rule) which have produced the existing patterns of state-local relations in states with a constitutional grant of local discretionary authority.

A full description of the questionnaire survey, an analysis of the survey results, and a description of the indices of local discretionary authority are set forth in *Chapter 4*.

FOOTNOTE

¹ACIR, *State and Local Roles in the Federal System (A-88)*, Washington, DC, U.S. Government Printing Office, 1981, Chapter 2.

Summary of Findings

APPROACHES TO EXPANDED LOCAL AUTHORITY

Relatively tight state control of local governments was a characteristic of the substate governance system in the U.S. until the post-Civil War period. At that time, movements commenced in many states (1) to amend the state constitution to prohibit legislative enactment of special acts; (2) to prescribe specific procedures for the enactment of such acts; (3) to limit the number of classes of local governments; (4) to establish a minimum number of units within a class; or to grant certain cities a suspensory veto over special acts (i.e., the power to make such acts ineffective within those cities).

These initial constitutional efforts to expand local discretionary authority were designed to prevent legislative abuses of local governments. The next phase, dating to the 1875 Missouri Constitution,¹ involved constitutional or statutory grants of authority for certain types of local units to draft, adopt, and amend a charter, and to supersede special laws and certain general laws. This constitutional grant of affirmative authority to local governments initially took the form of a provision establishing an *Imperium in Imperio*—or a state within a state—wherein local governments were given a general grant of power such as “local affairs,” or local powers were enumerated and removed from the competence and authority of the state legislature to affect.² Judicial emasculation of this approach and the belief that the courts should not make policy decisions led

to the proposal by then University of Pennsylvania Law School Dean Jefferson B. Fordham that the state constitution direct the legislature to delegate to general-purpose political subdivisions all powers capable of delegation subject to preemption by general law. All states amending the local government article of their constitutions or adopting new constitutions since 1953 (except Oregon with its county home rule amendment of 1958) have followed this “devolution of powers” approach, but most reserved certain powers to the legislature. In 1974, the Alaska supreme court interpreted the constitutional grant as a type of *Imperium in Imperio* grant.³

INDICES OF LOCAL DISCRETIONARY AUTHORITY

Based both on the knowledge and judgment of experienced observers in the 50 states and extensive legal research, Prof. Joseph Zimmerman developed indices of the amount of local discretionary authority possessed by each of the various types of general-purpose unit of local government found among the 50 states. One index was developed for each type of local unit for each of four kinds of authority: structural, functional, fiscal, and personnel. The indices are reflected in *Tables 14 through 19* in *Chapter 4*. Examination of those tables highlights that:

- Nationwide, as *Table 14, Chapter 4*, points out, cities have about an equal amount of discretionary authority in regard to their structure of government, functions, and personnel—with the overall unweighted averages being 2.05 for structure, 2.02 for functions, and 2.10 for personnel. These data were developed on a scale of 1 to 5, with 1 indicating the greatest degree of freedom from state control and 5 the least. The greatest variations are found in the structural area, with cities in Arkansas, Georgia, Indiana, and Vermont having no discretionary authority relative to their structure (an index of 5.00), in contrast to cities in 20 states with complete authority in this area (1.00).
- Cities in 38 states possess the least discretionary authority in the area of finance. The major exceptions—those where financial discretion is relatively broad—are cities in Arizona, Illinois, Maine, and Texas.

- Counties nationwide have been granted significantly fewer powers by state constitutions and statutes than have cities, relative to all four types of authority examined. The greatest differences are in the areas of structure and functions, where, with certain exceptions, counties have little discretionary authority, while cities desiring to change their structure or expand their functions have relatively fewer state-imposed restraints in most states.
- Towns seem to have discretionary powers identical, or nearly identical, to those of cities—with the major exceptions of Oklahoma, Texas, and Wisconsin, where cities have relatively broad powers and towns have relatively narrow ones. A similar pattern exists with respect to villages in comparison with cities—with the exceptions of Maine, Missouri, Nebraska, New Hampshire, and Texas, where village powers are substantially weaker than city powers.
- Townships generally possess relatively little discretionary authority in the nine Midwestern states with so-called “rural” townships. These units are controlled tightly by the state government and are allowed to exercise few discretionary powers.

A COMPOSITE INDEX

Using the indices for each of the six types of unit broken down by the four types of authority, the ACIR staff undertook to develop a single index representing a level of discretionary authority possessed by local government as a whole in each of the 50 states. The objective was to develop the relative standing of the states in relation to their local government as a whole. This composite index was computed by assigning arbitrary weights to each of the four types of authority: financial—4; functions—3; personnel—2; and structure—1. The figures for each of the six types of general-purpose local government unit were combined by weighting each type of unit based on its share of the state’s nonschool local direct general expenditures represented by that unit. *Table 20* in *Chapter 4* ranks the states according to this composite index, with the states granting the highest degree of local discretion at the top. Since the cities and counties carry by far the greatest weight in the

composite, by virtue of their high proportions of nonschool local direct general expenditures, the states are ranked separately on these two indices in the second and third columns. These rankings help to explain whether the cities or counties, or both, are responsible for the general posture of local discretionary authority in each state.

Clearly, these rankings should be used with great caution, because of the many subjective factors entering into their construction. These factors include the judgments of the individuals queried in the questionnaire survey as to the basic data, the selection of the four types of authority, the relative weights given to each of these types, and the relative weights given to each of the six types of local unit. Readers might wish to evaluate these judgments by undertaking a "do-it-yourself" testing of the questionnaire results—or parts of them—for the states they are familiar with, noting changes that have occurred since 1979-80.

Despite these important caveats, the ratings can be accepted at least as a general indication of the relative standing of the 50 states with respect to the amount of local discretion that they give to their general-purpose local governments as a whole. Thus, one would be justified in saying, as a minimum, that the ten states rated at the top—Oregon, Maine, North Carolina, Connecticut, Alaska, Maryland, Pennsylvania, Virginia, Delaware, and Louisiana—give their local governments relatively great discretion in the management of their own affairs; whereas the ten rated at the bottom—Nebraska, Colorado, Massachusetts, Iowa, Mississippi, Nevada, South Dakota, New Mexico, West Virginia, and Idaho—tend to maintain the greatest degree of control over their local units. Further, the 30 states in between ranked neither highest nor lowest in the degree of local discretion accorded to their general-purpose local units.

A further caveat must be added, however: Because of the many judgmental factors involved, too much must not be read into the specific place rankings of the individual states.

THE ACTUAL USE OF DISCRETIONARY AUTHORITY

The possession of discretionary authority at the local level is one thing; the actual use of available power is another. The questionnaire survey of state officials and other informed observers sought their

opinions on the extent of actual use. It revealed that:

- The power to draft and adopt a charter is not utilized often by eligible local governments. This conclusion would seem explainable by the fact that many local governments which drafted and adopted charters years ago still are satisfied with them because of their breadth and flexibility, or prefer optional charters made available by statute or general law that grant meager discretionary powers.
- Of related interest is the fact that cities and other local governments possessing the power do not amend their charters often.
- Only one-fifth to one-fourth of the respondents reported that there was an increase over time in the utilization of each of the four types of local discretionary powers, with the greatest increase being concentrated in the functional area.
- Twenty-seven states authorize some or all of their general-purpose local units to supersede general and special state laws by the enactment of a local law, bylaw, or ordinance, and only 37% of the respondents in these states indicated that local governments actually supersede state laws.
- Part of the long campaign to increase local discretionary authority has been an effort to prohibit the legislature from enacting special legislation. Fifty-seven percent of those surveyed reported, however, that this prohibition is evaded by the use of classified legislation—that is, statutes which, in effect, are special legislation because the classes used are tailored to fit only one or a few local governments. On the other side of the coin, however, about a third of the respondents indicated that local governments often request local bills that fall within the purview of local discretionary authority. This suggests the ambivalence that exists among many local officials with respect to increased authority from the state to take care of local affairs.
- Respondents reported that various factors tended to reduce the actual exercise of local discretionary authority. Forty-one percent of those reporting reductions attributed them to the state legislature, 27% to state

court decisions, 18% to federal court decisions, 54% to federal grant conditions, and 30% to state grant conditions. The exercise of local discretionary authority was found to be reduced by fiscal restraints in every state. Thirty-six percent of the respondents attributed the reduction to debt limits, another 35% cited tax limits, and an additional 29% placed the blame on a lack of revenue.

DESIRABLE CHANGES IN DIRECTION

Recipients of the survey questionnaire were requested to rate 28 constitutional and statutory provisions on local discretionary authority as "very desirable," "desirable," or "undesirable." Striking regional differences in responses were noted. Among the significant findings:

- Whereas 55% of the Northeastern respondents rated a constitutional prohibition of special legislation as "very desirable," only 32% of the North Central respondents agreed. Only 10% of the respondents in the Northeast viewed as "very desirable" statutory authorization for local governments to levy a sales tax, compared to a 57% rating in the South.
- Perhaps somewhat surprisingly, there is significant opposition to a constitutional provision prohibiting the enactment of special legislation, ranging from 18% in the North Central region to 30% in the Northeast.
- The devolution of powers approach to granting discretionary authority is a much more popular approach than the *Imperium in Imperio* (local affairs or enumerated powers) approach in all four regions of the country.
- Removal of constitutional local debt and tax limits drew very strong opposition nationwide. At the same time, there was strong disapproval of constitutional limits on the property tax: from 80% in the Northeast and West to 64% in the North Central states.

Responses to questions on the desirability of certain provisions also were analyzed by the offices or positions of the respondents. These findings included:

- Governors and experts on state-local relations agree that a constitutional provision for enumerating local powers or granting political subdivisions control over "local affairs" is "undesirable." In contrast, 44% of the responding attorneys general and 50% of the county association representatives rated that approach "very desirable." Consistent with that position, the attorneys general were the strongest in opposition to the devolution of powers alternative, while the strongest support for this approach was expressed by the municipal association officials.
- The principal split on the issue of the desirability of prohibiting special legislation came between the experts on state-local relations and legislative research bureau staff, who favored such a provision, and the Governors and attorneys general who opposed it.
- A majority of each official position category opposed constitutional provisions removing local debt and tax limits, with one exception—the municipal association officials, only 27% of whom would keep such limits.

The responses also were broken down according to the general nature of the state-local fiscal partnership in each state: "state dominant fiscal partner," "state strong fiscal partner," or "state junior fiscal partner." The analysis showed that the strongest support for the *Imperium in Imperio* approach was in states where the state is a "strong fiscal partner." The strongest support for the devolution of powers approach is in the "junior fiscal partner" states. Predictably, therefore, the strongest support for the constitutional prohibition of special legislation is found in the junior fiscal partner states. While these findings would suggest that these states would provide the strongest support for the removal of constitutional debt and tax limits, surprisingly the survey data show that the strongest opposition to the removal of such limits is found in this group.

ACIR POSITION ON LOCAL DISCRETIONARY AUTHORITY

Local discretionary power has been a concern of the Commission since 1962, when it recommended that the states and their constitutions grant to certain units of local government all functional powers not

expressly reserved, preempted, or restricted by the constitution or legislation.⁴ The Commission thus adopted the devolution of powers approach but limited it to certain specified local units and to functional powers only. That approach, the Commission believed, permits a broad, unambiguous grant of power, while at the same time stipulating the right of affirmative reservation, preemption, and restriction by the state legislature to forestall problems arising from a lack of local responsibility or prudence or from placing local interests above the broader sub-state regional or statewide interest. It firmly establishes the ultimate authority of states over local governments, even while recognizing that (1) local governments should have the freedom to experiment with solutions to servicing problems and to adapt to changing conditions without wasting time seeking permission from the state legislature; (2) local governments, being closest to the citizens, are more knowledgeable about local conditions and can respond more quickly and better to local problems than the legislature; (3) the diversity among local areas requires a flexible state approach to local governments; and (4) broad local discretion frees state legislatures from the burden of acting on a myriad of local matters, allowing them to concentrate on truly state concerns.

In a recent study of state-local governmental structure and the assignment of functions, the Commission had occasion to reexamine its position on basic state-local legal relationships.⁵ In that report, the Commission reaffirmed its 1962 recommendation in support of the devolution of powers approach. Furthermore, the Commission broadened the earlier recommendation by urging that (1) such a grant of powers be given to all general-purpose local governments, not just to "certain units of local government," and (2) that the grant encompass structural and fiscal, as well as functional, powers. Broadening the availability of discretionary authority to include all types of general-purpose local governments was justified by the increasing dispersion of local government responsibilities among the various types of local unit and in particular the expansion of the role of county government. Enlarging local discretionary power to include structural and fiscal as well as functional power makes sense, the Commission believes, because of the inevitable linkages among the three. The fundamental problem of balancing needs and resources cannot be handled most effectively in the long run by merely making adjustments in one of the three factors without reference to the others.

The Commission's recommendation contained five additional sections consistent with the basic thrust of strengthening local discretionary authority by restricting the state government's actions to matters of statewide concern. Thus, in 1980 the Commission further recommended that the constitutional amendment (1) contain a self-executing provision; (2) stipulate that the grant of local discretionary authority be interpreted liberally by the courts; (3) limit the use of special legislation by requiring that the state legislature examine carefully requests by local governments for the enactment of special laws, and reject requests if the concerned local governments possess sufficient discretionary authority to achieve the objective(s) of the special laws by enactment of local bylaws, laws, or ordinances; (4) require that the state legislature establish a "code of restriction" specifying those powers expressly reserved to or preempted by the state legislature; and (5) require that the state legislature adopt and maintain a local government code consolidating all statutes applicable to local governments. The last two provisions are essentially aimed at avoiding confusion about the precise nature and extent of powers reserved to, or preempted by the state, and therefore beyond local governments to exercise under the devolution of powers principle.

In concluding its explanation of recommendations supporting the devolution of powers approach, the Commission stated that,

... drafting, obtaining, and retaining state legislation designed to maximize local discretion has always been a difficult legal and political undertaking. Given the growing fiscal and servicing interdependencies of states and their localities over the past decade and a half, this task has become even more complex and controversial. In this six-point recommendation, the Commission advances a balanced program for basic reform in this crucial area, protective of essential state as well as local rights.

FOOTNOTES

¹*Constitution of Missouri*, Art. IX, Sec. 19 (1875). This grant of authority was limited to cities with a population exceeding 100,000; i.e., St. Louis.

²The 1875 Missouri constitution provided only for the framing of a charter.

³*Jefferson vs. State*, 527 P. 2d 37 (1974).

⁴ACIR, *State Constitutional and Statutory Restrictions Upon the Structural, Functional, and Personnel Powers of Local Governments* (A-12), Washington, DC, U.S. Government Printing Office, October 1962, pp. 72-73.

⁵ACIR (A-88).

State Dominance or Local Autonomy?

The best system of substate governance has been a subject of dispute for more than a century and a half. At the heart of the controversy is a difference of opinion on the degree to which states should be involved in the local governance system. Here, two theories have been in competition. One stresses the integration of political authority and the other supports the fragmentation of such authority. To some observers, the clash is between elitist theory and democratic theory. To others, it is a clash between functional and dysfunctional governmental approaches. The key question is: On what level of government should policy be made?

As the superior government, the state historically has been involved deeply in the local governance system. The nature of this involvement, however, has changed significantly in a number of states during the past three decades.

Beginning in the 19th century, local government officials sought constitutional protection against interference by the state legislature in what were perceived by the officials to be "local affairs," and later sought constitutional and statutory authorization for broader discretionary powers. Arguments advanced by local government officials in support of additional discretionary powers emphasized the importance of local self-government in a democratic society and the ability of officials on the local level—in contrast to remote state officials—to determine the best course of action to solve problems. In the 1950s, support for local self-government came from a new group—public choice theorists—who maintained that local governments possessing broad discre-

tionary powers afford citizens the opportunity to “vote with their feet” by establishing residence within the jurisdiction of a political subdivision offering the types and quality of services, as well as the taxes, the citizens find most satisfactory in terms of their needs and preferences.¹

THE DIVISION OF STATE-LOCAL POWERS

Governmental power at the subnational level may be placed in three broad spheres—a state controlling sphere, a local controlling sphere, and a shared state-local sphere. The state possesses complete responsibility for several governmental functions, many local governments possess complete or nearly complete responsibility for others, and the state and certain local governments share responsibility for the remainder.

These spheres of control have been shifting in recent decades in response to economic, political, and social changes. Some of these trends conflict, however, since a number of states grant additional local discretionary authority to some or all local governments but at the same time preempt—partially or totally—responsibility for functions that had been the responsibility of local governments. Although the resulting kaleidoscopic nature of functional authority assignment is generally apparent, relatively little detailed information is available on the variations in discretionary authority currently possessed by the several types of local government in each of the 50 states. This lack of information and the complexity of the relationships between the state and the various units of local government make the system of local government both relatively incomprehensible to most citizens and often confusing to federal, state, and local officials.

The amount of discretionary authority granted by the states to local units or their legal voters generally may be placed within four distinctive categories—structural, functional, personnel, and fiscal. Typically, the broadest discretionary powers apply to governmental structure and functions and the narrowest to finance. The amount of discretionary authority in personnel matters varies considerably from function to function.

Determining Factors

The precise allocation of local discretionary au-

thority within a particular state is influenced by five principal interdependent factors:

1. The political culture of the state is an important determining force.² Traditional beliefs regarding the proper repository of legal authority, if strongly held, make exceedingly difficult attempts to change the distribution of local authority within a state.
2. The length of the legislative session determines in large measure the opportunity for legislative control of local governments. The Kentucky General Assembly, for example, meets biennially for a 60-day regular session and, consequently, is unable to exercise the type of detailed control over substate governments that the Massachusetts General Court, which meets annually for nearly the entire year, can exercise. This factor was reflected in a national study of state mandates revealing mandates in only 28 of 76 specific program areas in Kentucky compared to mandates in 46 areas in Massachusetts.³
3. The number of units of local government also influences the degree of legislative control, since the legislature can devote only a limited amount of time to local issues. Southern states generally have the smallest number of political subdivisions on a per capita basis.
4. The complexity and length of the state constitution and ease of the amendment process influence the extent to which the state constitution or legislation is employed to grant or restrict powers of political subdivisions. In Vermont, heavy reliance is placed upon statutes because its 7,600-word constitution stipulates that the senate, by a two-thirds vote every fourth year, may propose amendments if a majority of the members of the house of representatives concurs.⁴ A proposed amendment approved by the legislature in this manner is referred to the subsequent biennial session of the general assembly, which, if it approves the proposed amendment, must submit the proposal to a statewide referendum. In other words, up to eight years may be required to amend the

state constitution. It also should be noted that in 17 states voters may employ the constitutional initiative.

5. Finally, the political strength of associations of local officials and public service unions affects the amount of discretionary authority exercisable by local governments. Unions representing firemen and policemen have been successful in a number of states in persuading the legislature to mandate action by local governments favorable to their members.

Constitutional Variation

Although each state constitution contains provisions relative to local governments, not all constitutions grant authority to local governments or their legal voters: No powers are granted by the state constitution to any type of local government in Alabama, Arkansas, Delaware, Indiana, Kentucky, Mississippi, North Carolina, Vermont and Virginia. Relatively broad discretionary powers, however, may be granted by statute as in New Jersey. *Table 1* contains citations for the principal constitutional and statutory provisions relating to local governments in each state.

Georgia's constitutional grant is unique. Whereas all other states with a constitutional provision relative to local discretionary authority grant powers to municipalities only (or to their legal voters) or to municipalities and counties (which legally are municipal corporations in several states), the Georgia constitutional provision limits such powers to counties. Nationwide, the legal system of state-local relations is mixed with a constitutional grant of local discretionary authority restricted to certain types of local units (such as cities and towns in Colorado and Oklahoma) or by population size (such as cities in Texas with a population exceeding 5,000).

The constitutional grant of authority may or may not be self-executing. The grant in Rhode Island is triggered by the adoption of a locally drafted charter by a city or town. Although the self-executing nature of the Tennessee constitutional grant of local discretionary authority was not made explicit, the Tennessee Supreme Court ruled that "an examination of the *Journal and Proceedings of the Constitutional Convention of 1953* shows that the authors of these home rule provisions intended them to be self-executing."⁵ In the 24 self-executing states, powers not delegated

by the Constitution are subject to Dillon's Rule—the rule of strict construction—which is explained in a subsequent section. In other states, legislation is required to implement the constitutional grant of authority. The Nevada legislature has not implemented the constitutional provision.

Complicated Systems

The variety of state-local relations in the 50 states and within certain states strains comprehension. The number of local governments in 1977 varied from four in Hawaii to 6,643 in Illinois (see *Chart 1*), and in Hawaii the state has preempted complete responsibility for corrections, education, hospitals, and welfare—with the result that approximately 80% of all state-local functions are performed by the state.

Understanding the system of local discretionary authority within a state can be complicated if voters employ special provisions, such as that in Illinois authorizing local electors by referendum in cities over 25,000 population to vote to exclude their city from the constitutional grant of power. No Illinois city, however, has exercised this option.

In Massachusetts, an "acceptance" or "permissive" statute does not apply within a city or a town unless the city council or the town meeting, respectively, votes to accept the statute. In addition, a town of a population under 15,000 may rescind its acceptance of a special law relating to town employees, authorizing a capital expenditure, or involving participation of the town in a regional district unless the statute specifies another method of revision. Towns over 15,000 population lacked this power until 1979.

Further complicating the system of local governance is the fact that many local governments seek the enactment of special laws by the state legislature instead of exercising their own discretionary authority. Similarly, a city may decide to adopt an optional charter prepared by the state legislature (as in Massachusetts and Washington), instead of drafting and adopting its own charter.

Constitutional prohibition of special legislation has not been completely successful, as exhibited by the fact that in Philadelphia, Pittsburgh, Allegheny County, and Scranton each city is placed, by statute, in a separate class in spite of the Pennsylvania constitutional prohibition of special legislation.

In California, "general law" cities today possess approximately the same powers as so-called "home rule" cities, thereby in effect making the constitu-

Table 1

PRINCIPAL CONSTITUTIONAL AND STATUTORY PROVISIONS RELATING TO LOCAL GOVERNMENTS, BY STATES, 1980

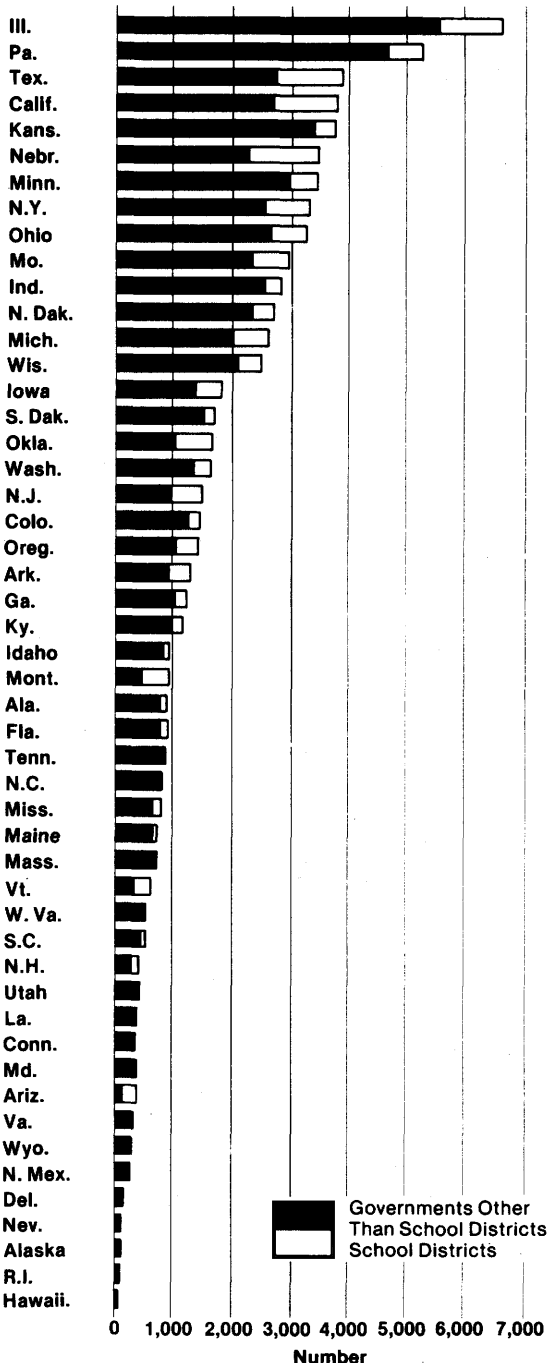
States	Constitutional Provision	Self-Executing	Liberal Interpretation	Prohibition of Special Legislation	Statutory Provision
Alabama	—	—	—	Yes	tit. 11, chap. 40, 47.
Alaska	art. X, § 11	Yes	Yes	Yes	AS 29.13.
Arizona	art. XIII, § 2	Yes	No	Yes	ARS 9-281 et seq.
Arkansas	art. XII-XIII	—	—	Yes	AS tit. 19, § 1042
California	art. XI, §§1-20	Yes	No	Yes	GC tit. 3-4.
Colorado	art. XX, §§1-6&9	Yes	No	No	tit. 31, art. 1-10
Connecticut	art. X	No	Yes	No	CGS § 7-187 et seq.
Delaware	—	—	—	No	DC chap. 22, §§ 801-36.
Florida	art. VIII, §§1-2	Yes	No	No	GS chap. 165-86.
Georgia	art. IX, §§ 2-5901-5903	No	Yes	Yes	GC chap. 2-60.
Hawaii	art. VIII, §§ 1-2	No	No	Yes	HRS chap. 50.
Idaho	art. XII, § 1	No	No	No	ICA § 50-302.
Illinois	art. VII, § 6	Yes	Yes	Yes	tit. 24 and 34-36.
Indiana	—	—	—	Yes	IC tit. 17-19, and 36.
Iowa	art. III, §§ 30 & 39A	Yes	No	Yes	ICA tit. 15.
Kansas	art. XII, § 5	Yes	Yes	Yes	KSA §§ 13-101, 14-101, 15-101, 19-101.
Kentucky	—	—	—	Yes	KRS §§ 67, 67A, 82A, 83, 83A.
Louisiana	art. VI, §§5-6	Yes	No	Yes	LSA tit. 33, chap. I-XVI.
Maine	art. VIII	No	No	No	MRS §§ 1911-920.
Maryland	art. XI-A, XI-E, XI-F	Yes	No	Yes	MCA art. 23A, 25A, 25B.
Massachusetts	art. LXXXIXX of amendments	Yes	No	Yes	MGL chap. 43B, § 8.
Michigan	art. VII, §§ 2 & 22	No	Yes	Yes	MCL §§ 61.1, 81.1, 117-1 et seq.
Minnesota	art. XII, § 4	No	No	Yes	MSA chap. 370-83, 410-11, 412.
Mississippi	—	—	—	Yes	MCA § 21-17-1.
Missouri	art. VI, §§ 18-19	Yes	No	Yes	MSA chap. 46-55 & 70-99.
Montana	art. XI	No	No	Yes	RCM tit. 11 & 16.
Nebraska	art. XI, § 22-5	No	No	Yes	RSN chap. 14-19 & 22.

Table 1 (cont.)

PRINCIPAL CONSTITUTIONAL AND STATUTORY PROVISIONS RELATING TO LOCAL GOVERNMENTS, BY STATES, 1980

States	Constitutional Provision	Self-Executing	Liberal Interpretation	Prohibition of Special Legislation	Statutory Provision
Nevada	art. VIII, § 8	No	No	Yes	NRS chap. 265-73.
New Hampshire	—	—	—	Yes	NHRS § 49A.
New Jersey	—	—	—	Yes	NJSA §§ 40: 20-1, 40:23-1, 40: 48-1.
New Mexico	art. X, § 6	No	Yes	Yes	NMS §§ 15-37-1 to 15-37-41.
New York	art. IX	No	Yes	Yes	Mun. Home Rule Law, Gen. Mun. Law.
North Carolina	—	—	—	No	NCGS chap. 153A & 160A.
North Dakota	art. VI, § 130	No	No	Yes	NDCC tit. 11 & 40.
Ohio	art. XV, §§ 3&7 & art. X	Yes	No	Yes	ORCA §§ 705.01 et. seq.
Oklahoma	art. XVIII	Yes	No	Yes	OSA tit. 11 & 19.
Oregon	art. IV, VI, XI	Yes	No	Yes	ORS §§ 203 & 215.
Pennsylvania	art. IX	Yes	No	Yes	PA, SA tit. 16 & 53.
Rhode Island	art. XXVIII, §§ 1-12	Yes	No	Yes	RIGL §45-2-1.
South Carolina	art. VII-VIII	No	No	Yes	SCCL tit. 14 & 47.
South Dakota	art. IX, § 2	Yes	Yes	No	SDCL chap. 6-9.
Tennessee	art. XI, § 9	Yes	No	Yes	TCA tit. 5-6.
Texas	art. XI, § 5	Yes	No	Yes	TACS tit. 28 & 33-37.
Utah	art. XI, § 5	Yes	Yes	Yes	UCA tit. 10 & 17.
Vermont	—	—	—	No	VTSA tit. 24, § 703.
Virginia	—	—	—	Yes	VC tit. 15.1, §839.
Washington	art. XI, § 10	Yes	No	Yes	RCW, §§ 35.22.570, 32.21.620, 35.22.900.
West Virginia	art. VI, § 39a	Yes	Yes	Yes	WVC chap. 8.
Wisconsin	art. XI, § 3 art. IV, § 23	No	No	Yes	WSA tit. 8, §§ 66.01-66.99.
Wyoming	art. XIII, § 1	Yes	No	Yes	WSA tit. 15 & 18.

**Chart 1
LOCAL GOVERNMENTS,
BY STATES, 1977**



SOURCE: U.S. Department of Commerce, Bureau of the Census, *Governmental Organization, 1977 Census of Governments*, Vol. 1, No. 1, Washington, DC, U.S. Government Printing Office, 1978, p. 20.

tional grant of local discretionary authority of relatively little significance.

Cities and counties in New Mexico, although granted certain discretionary powers by the state constitution, must submit their budgets to the state local government division for approval. A most interesting perspective was provided by a North Carolina respondent, who wrote:

In some states, the local government commission's responsibilities and regulations would be looked upon as highly restrictive, as would state responsibility and funding for schools, highways, and prisons. It is looked on here as providing freedom from responsibilities, rather than restrictive.

In 1979, the West Virginia Supreme Court invalidated most of the statutory grant of local discretionary authority and in effect limited cities to selecting one of four statutory forms of government and determining the dates of local elections.⁶ In Vermont, the so-called statutory "home rule" provision is inoperative, because bond counsels advise cities and towns that the provision is unconstitutional.

Public understanding of the amount and type of local discretionary authority has been inhibited by the failure of state constitutions to define terms, such as "local concerns" and "municipal affairs," resulting in a case-by-case examination of state-local conflicts by the courts. Poorly drafted provisions—such as the use of "not inconsistent" or "denied" in the Massachusetts constitution—cause problems because a local action not denied by the constitution or laws is inconsistent if the action does not follow existing statutes.

Regardless of the amount of discretionary authority granted by the state constitution or statutes—structural, functional, fiscal or personnel—the key determinant of the ability of a local government to exercise fully the grant of powers is adequate finance. Typically, the state reserves a large measure of control over finances, thus critically limiting the ability of most local governments to exercise fully the grant of discretionary authority.

DILLON'S RULE

In interpreting the formal powers granted to local governments, state courts traditionally adhered to a rule of strict construction that became known as "Dillon's Rule," or the rule of state omnipotence

relative to local governments. In 1868, Judge John F. Dillon held:

The true view is this: Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all municipal corporations of the state, and the corporations could not prevent it. We know of no limitation on this right as the corporations themselves are concerned. They are, so to phrase it, the mere *tenants at will* of the legislature.⁷

Later in 1868, in another opinion, Judge Dillon held:

In determining the question now made, it must be taken for settled law, that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable; and fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation.⁸

In 1871, Judge Thomas M. Cooley of the Michigan Supreme Court challenged Judge Dillon's opinion by ruling that some rights of local self-government are inherent in municipalities.⁹ Judge Cooley also held that legislation affecting local governments should be general in nature. Although his ruling was followed by courts in Indiana, Iowa, Kentucky, and Texas, for a time, it is no longer followed in any state.

In 1903, the U.S. Supreme Court upheld the constitutionality of Dillon's Rule:

Such corporations are the creatures, mere political subdivisions of the state for the purpose of exercising a part of its powers. They may exert only such powers as are expressly granted to them, or such as may be necessarily implied from those granted. What they

lawfully do of a public character is done under the sanction of the state. They may be created, or, having been created, their powers may be restricted or enlarged, or altogether withdrawn at the will of the legislature; the authority of the legislature, when restricting or withdrawing such powers, being subject only to the fundamental condition that the collective and individual rights of the people of the municipality shall not be destroyed.¹⁰

In 1923, the U.S. Supreme Court again refused to recognize an inherent right of local self-government.¹¹

Acting upon the basis of Dillon's Rule, in the 19th century state legislatures enacted numerous special laws affecting individual local governments. Some of these special laws correctly recognized that local communities were different in many respects—including their climate, industry, population, topography, and transportation systems. Other special laws representing an abuse of legislative power were used as a means of arbitrarily controlling local governments. The state legislature was an incubus in the view of cities objecting to what were considered unjust special laws.

Despite the thrust of Dillon's Rule, it is a mistake to assume that all local governments have limited powers in a state where the rule applies. In Alabama, local legislation provides a broad array of powers to municipalities but not to counties. An expert correspondent in Kentucky wrote that "there is considerable home rule in practice. Dillon's Rule applies, but it is impossible for the legislature to enact any law affecting local government when there is considerable local opposition on a wide scale." In addition, it must be recognized that a number of state procedural controls—a uniform system of accounting, postaudits, competitive bidding requirement, merit system for personnel selection—do not affect local discretionary authority in a significant manner unless the controls prevent the adoption of a different system preferred by the local government. Furthermore, in 41 states the constitution offers political subdivisions some protection prohibiting special legislation from what often is viewed as excessive state intrusion into purely local matters.

Still, the basic impact of Dillon's Rule was to constrain local discretionary authority; and growing dissatisfaction with this trend in the 19th century led to a countermovement to expand that authority.

THE MOVEMENT FOR LOCAL DISCRETIONARY AUTHORITY

Constitutionally established as the creator and controller of local governments, the state legislature has had a deep involvement in the local governance system since the end of the Revolutionary War in 1781. Whereas some states have been concerned with the economy and efficiency of local governments and the prevention of corruption, other states have exhibited little concern for these matters.

Abuses of the legislature's plenary power to enact special laws led voters in several states in the 19th century to approve proposed constitutional amendments prohibiting the legislature from enacting special laws relating to specific topics. The 1850 Michigan Constitution was the first to prohibit a specific special law, when it forbade the legislature from passing such a law "vacating or altering" any road laid out by highway commissioners.¹² Since 1874, the New York Constitution has forbidden the state legislature from passing local bills laying out or discontinuing roads, draining swamps, locating or changing county seats, or incorporating villages.¹³

A second method of limiting the power of the legislature to control local governments involves constitutional provisions prescribing specific procedures for the enactment of a local law. The Massachusetts Constitution stipulates that the general court (legislature) may enact a local law only upon (1) the approval of a petition by the voters of the concerned city or town, or mayor and council, or town meeting, or (2) receipt of a recommendation for passage of a bill from the Governor and its subsequent approval by a two-thirds vote of each house of the legislature.¹⁴ To protect against the enactment of "Ripper laws," the pre-1970 Illinois Constitution granted to Chicago a suspensory veto over special acts applying to the city.¹⁵

A third method of restricting the power of the legislature over political subdivisions is to limit constitutionally the number of classes of local government that may be established, by the legislature, or the minimum number of units in a class. The Massachusetts Constitution requires at least two local governments in a class.¹⁶

A fourth approach is illustrated by the Wisconsin constitutional provision that the legislature may approve only statewide bills uniformly affecting "every city or every village."¹⁷

Affirmative Grants of Power

The prohibition of special legislation may be viewed as a negative constitutional right of local governments. The first positive grant of power was contained in optional charter laws allowing cities partial discretion relative to the structure of government. Currently, New Jersey, New York, Utah, and Virginia have optional charter laws for counties, and Massachusetts and Washington have such laws for cities. New York counties have made no use of the optional charter laws, but 19 of its counties have drafted and adopted charters under special legislation or the 1958 constitutional grant of power.

The first broad affirmative constitutional grant of discretionary authority allowed cities in certain states to draft, adopt, and amend charters—a power later extended to other local units in some states. This movement for greater local discretionary authority has been labeled "home rule"—an emotionally loaded term and a political symbol often employed without definition.

According to proponents, advantages of a broad grant of local discretionary authority include the following:

1. Local experimentation to solve problems and provide services more expeditiously is encouraged.
2. Citizen interest in local affairs is stimulated as the citizens possess the authority to initiate discretionary activities.
3. Education of residents in civic affairs is promoted because major decisions are made on the local level.
4. The most expeditious solution of public problems is promoted since local citizens know the problems best because of intimate knowledge of conditions.
5. A major legislative burden is removed, thereby providing additional time for the legislature to consider statewide issues and problems. In other words, local discretionary authority is a substitute for special legislation and also may be viewed as local initiative replacing dependence upon the legislature for permission to initiate action.
6. Citizen alienation from government, that may result from decisions being made by state bureaucrats who are insensitive to the views of local residents, may be reduced.

In granting discretionary authority by constitutional provision to local governments, states followed one or both of two avenues: *Imperium in Imperio* and devolution of powers.

IMPERIUM IN IMPERIO

The early constitutional grants did not enumerate local government powers, but such powers were implicit in the grant of authority to draft, adopt, and amend a charter.

In 1921, the National Municipal League proposed a model constitutional provision based upon a type of federalism within the state, with governmental powers divided between the state and local governments. This model provision would establish an *Imperium in Imperio*, or a state within a state, by enumerating local government powers and placing them beyond the competence of the state legislature to affect. It should be noted that the sixth edition of the model state constitution (1963) lists the *Imperium in Imperio* approach as an alternative and features the devolution of powers approach.

In cases involving a conflict between the state and a local government under this division of powers or federated approach, courts apply the rule of exclusion (i.e., a constitutional grant enumerating certain local powers automatically excludes all other powers). The courts also interpret a specific word in concert with other words on the same subject.

In theory, this approach to local discretionary authority is inflexible, since a constitutional amendment is needed to change the distribution of authority. In practice, the effectiveness of the *Imperium in Imperio* approach has been limited by narrow judicial interpretation of the scope of local affairs. In other words, the traditional repository of control has not been changed significantly since in most cases the courts upheld the paramountcy of legislative power.

In 1955, Dean Jefferson B. Fordham criticized the *Imperium in Imperio* approach by charging that the "general-local distinction ranks with the governmental-proprietorship test in tort and other matters as a major contributor to the fuzziness of local government law doctrine and relatively high unpredictability in application."¹⁸

The *Imperium in Imperio* approach to providing a constitutional grant of power to local governments was a defensive movement to stop state interference in what were perceived to be local affairs. This "layer cake" division of powers and functional responsibilities was more feasible when the approach was devel-

oped, since society was less complex and not all local governmental functions had a clear state interest. The growing interdependence of levels of government led courts to perceive a "state concern" in most functional areas and to limit severely the scope of local discretionary powers.

DEVOLUTION OF POWERS

Growing dissatisfaction with the *Imperium in Imperio* approach induced the American Municipal Association (now the National League of Cities) to employ Dean Fordham to study the problem of local discretionary authority. In 1953, Dean Fordham drafted model constitutional provisions recognizing that local affairs cannot be divorced completely from state affairs,¹⁹ and emphasizing that authority is granted to political subdivisions to enable them to discharge responsibilities.

His devolution of powers approach rejects the traditional division of governmental powers approach and removes from the judiciary the function of determining the dividing line between state and local powers. Under the proposal, the state constitution delegates to a municipal government, with two exceptions, all powers capable of delegation subject to preemption by general law. The exceptions are the power to enact "civil law governing civil relations" and the power to define and provide for "the punishment of a felony." This approach reflects a legislative supremacy approach, as did Dillon's Rule, but differs in that local governments under the former are free to act within the broad constitutional grant of power in the absence of general preemption statutes. Under Dillon's Rule, of course, no action can be initiated by a local government in the absence of legislative permission. Since the devolution of powers approach is self-executing, an *Imperium in Imperio* in effect is established automatically if the legislature fails to exercise its powers of preemption. The local charter, as well as general state laws and reserved constitutional powers, is more like a document placing restrictions upon the exercise of local discretionary powers than one granting such powers and, consequently, the charter is shorter than a Dillon's Rule charter. In Oregon, for example, most city charters are short because they provide for a general grant of powers under the *Imperium in Imperio* approach.

Under the devolution of powers—and assuming the legislature through general laws reassesses continuously the powers devolved upon local govern-

ments—the courts no longer have to determine the extent of the grant of local discretionary powers as they do under an *Imperium in Imperio* approach. The legislature, rather than the courts, is the arbiter of local powers and is omnipotent in its relationship to local governments if it decides to exercise fully its powers. As the late Prof. Arthur W. Bromage of the University of Michigan wrote in 1955, “There is, with certain exceptions, no home rule power which is beyond legislative control” under the devolution of powers approach.²⁰

Yet, the devolution of powers approach does not eliminate all state-local conflicts, since the legislature, in exercising its police power, may clash with a local government which maintains that the legislature is invading the sphere of local responsibility. Here, as under the *Imperium in Imperio* model, the courts are called upon to adjudicate the dispute on grounds of public policy rather than on law.

Recognizing that classified legislation may be a euphemism for special legislation, the model provisions drafted by Dean Fordham limit the number of classes of local governments to four, and stipulate that each class must contain at least two local governments.²¹

Only Alaska, Montana, and Pennsylvania have adopted the devolution of powers proposal in toto. With the exception of the 1958 Oregon county provision establishing an *Imperium in Imperio*, all states amending their constitutions since 1953 have followed the “devolution of powers” approach in general but reserved specific powers to the legislature. The Massachusetts constitutional provision, for example, contains the following limitations on local powers:

Nothing in this article shall be deemed to grant to any city or town the power (1) to regulate elections other than those prescribed by sections three and four; (2) to levy, assess, and collect taxes; (3) to borrow money or pledge the credit of the city or town; (4) to dispose of park land; (5) to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power; or (6) to define and provide for the punishment of a felony or to impose imprisonment as a punishment for any violation of law.²²

Discretionary authority is granted to political subdivisions by specific sections of some state constitu-

tions in addition to the general grant of authority. To cite two examples, section 4 of article XVIII of the Ohio Constitution authorizes cities to acquire and operate public utilities, and section 5 of article XIII of the Arizona Constitution authorizes cities to engage in private business. In addition, discretionary authority is granted to local governments by numerous general, classified, and special statutes in certain states.

CONCLUSION

Local governments are nowhere mentioned in the U.S. Constitution. As Judge John F. Dillon stated in his classic decision, they are creatures of their states. The history of state-local relations since the mid-19th century is largely the story of local government’s efforts to modify this subordinate relationship.

At first, these efforts focused on preventing legislative abuses through various types of limits on special legislation. Then, they took a different tack—an affirmative grant of authority from the state, through its constitution or legislation, to draft, adopt, and amend a charter and to supersede special laws and certain general laws. This affirmative approach, in turn, has taken two different paths. First came a constitutional provision establishing an *Imperium in Imperio*, or a state within a state, wherein local government affairs were enumerated and placed beyond the legislature’s power to affect. Narrow judicial interpretation of the scope of local affairs, however, severely eroded the effectiveness of this approach. As a consequence, a second approach—the “devolution of powers”—was developed. This concept was designed to remove from the courts the function of differentiating between state and local powers, and instead to delegate to municipal government, through the constitution, all powers that the legislature can delegate but subject to the legislature’s taking them back when it pleases. The “devolution of powers” generally offers localities the greatest amount of discretionary authority. With the exception of the Oregon county provision, all states seeking to alter the local government provisions of their constitutions have followed this approach in general since 1953.

A reasonable question is: How is each of the 50 states classified according to the threefold typology of Dillon’s Rule, *Imperium in Imperio*, and the devolution of powers? Unfortunately, while these are three useful concepts in explaining the legal nature of

state local relations, it is not possible to use them to classify the 50 states, because no one type applies to all general-purpose local governments in any state, and many states have a legal system that blends two or three of the types. A further complication is the conflicting decisions issued by the highest court in many states with respect to the extent of local discretionary authority.

Two examples may suffice: The first type of problem is illustrated by a Massachusetts case. The Massachusetts General Laws specifically allow a town with a population of under 15,000 to rescind its previous acceptance of special statutes—with the exception of statutes that (1) stipulate a different method of rescission, or (2) relate to the tenure and pension status of town employees, or authorize a capital expenditure, or involve participation of a town in a district.²³ However, a 1970 decision of the

supreme judicial court held that a special statute accepted by a town meeting in towns over 15,000 cannot be repealed subsequently by a vote of the town meeting.²⁴ Thus, the state has blended more than one approach in its relations with a single type of local unit.

Two Rhode Island Supreme Court decisions illustrate the second type of complication. In 1976, the court upheld the right of cities and towns to impose residence requirements on their employees.²⁵ While this decision broadened the power of cities and towns, the court subsequently ruled in another case that a local officeholder, Wilfrid L. Godin, could retain his state senate seat despite a City of Woonsocket charter ban on all dual office holdings.²⁶ Thus, the court gave both broad and narrow interpretations to the constitutional grant of local discretionary authority.

FOOTNOTES

- ¹See Charles M. Tiebout, "A Pure Theory of Local Expenditures," *Journal of Political Economy*, October 1956, pp. 416-24; and Robert L. Bish and Vincent Ostrom, *Understanding Urban Government: Metropolitan Reform Reconsidered*, Washington, DC, American Enterprise Institute for Public Policy Research, 1973.
- ²Daniel J. Elazar, *American Federalism: A View from the States*, 2nd ed., New York, NY, Thomas Y. Crowell Company, 1972, pp. 86-126.
- ³ACIR, *State Mandating of Local Expenditures (A-67)*, Washington, DC, U.S. Government Printing Office, July 1978, pp. 44-45.
- ⁴*Constitution of Vermont*, §72.
- ⁵*Washington City Electric vs. Johnson City*, 350 S.W.2d 601 at 604 (1961).
- ⁶*Hogan vs. City of South Charleston*, 260 S.E.2d 283 (1979). See also David A. Bingham, "No Home Rule in Virginia," *National Civic Review*, April 1980, pp. 213-14.
- ⁷*City of Clinton vs. Cedar Rapids and Missouri Railroad Company*, 24 Iowa 455 at 461 (1868).
- ⁸*Merriam vs. Moody's Executors*, 25 Iowa 163 at 170 (1868).
- ⁹*People vs. Hurlburt*, 24 Michigan 44 (1871).
- ¹⁰*Atkins vs. Kansas*, 191 U.S. 207 at 220-21 (1903).
- ¹¹*City of Trenton vs. New Jersey*, 262 U.S. 182 (1923).
- ¹²*Constitution of the State of Michigan*, art. IV, § 30 (1850).
- ¹³*Constitution of the State of New York*, art. III, § 17.
- ¹⁴*Constitution of the Commonwealth of Massachusetts*, art.

- LXXXIX, § 8 of the articles of amendment.
- ¹⁵*Constitution of the State of Illinois*, art. IV, § 34 (1870). See also the *New York Constitution*, art. XII, § 2 (1894).
- ¹⁶*Constitution of the Commonwealth of Massachusetts*, *op. cit.*
- ¹⁷*Constitution of the State of Wisconsin*, art. XI, § 3.
- ¹⁸Jefferson B. Fordham, "Local Government in the Larger Scheme of Things," *Vanderbilt Law Review*, June 1955, p. 675.
- ¹⁹Jefferson B. Fordham, *Model Constitutional Provisions for Municipal Home Rule*, Chicago, IL, American Municipal Association, 1953. The association never endorsed the proposal. Dean Fordham currently is a professor of law at the University of Utah.
- ²⁰Arthur W. Bromage, "Home Rule-NML Model," *National Municipal Review*, March 1955, pp. 132-33.
- ²¹Fordham, *Model Constitutional Provisions for Municipal Home Rule*, *op. cit.*, p. 15.
- ²²*Constitution of the Commonwealth of Massachusetts*, art. LXXXIX of the articles of amendment, § 7. Texas, as the result of a state supreme court decision, has had the devolution of powers approach in operation since 1948. See *Forwood vs. City of Taylor*, 147 Tex. 161 at 165, 214 S.W. 2d 282 at 286 (1948).
- ²³*Massachusetts General Laws Annotated*, Chap. 4, § 4A.
- ²⁴*Chief of Police of Dracut vs. Town of Dracut*, 357 Mass. 492, 258 N.E. 2d 531 (1970).
- ²⁵*Louiselle vs. City of East Providence*, 116 R.I. 585, 351 Atl. 2d 345 (1976).
- ²⁶*Cummings vs. Godin*, 377 Atl. 2d 1071 (1977).

Measuring Local Discretionary Authority

As noted in *Chapter 1*, although the subject of local discretionary authority has been researched extensively during the past century, the quality and utility of the treatments have varied widely. A major problem has been the failure to measure the amount of discretionary authority possessed by the several types of local government in each of the 50 states. This chapter (1) describes the methods used in this study to develop such an index for each type of general-purpose local government, and (2) presents other relevant information on local discretionary authority obtained in the course of developing the indices.

RECENT RESEARCH ON STATE-LOCAL RELATIONSHIP PATTERNS

In 1946 the Council of State Governments published *State-Local Relations*—an excellent report which clearly explained the types of controls that a state may exercise over its local governments and pointed out that “the methods of charter granting are by no means mutually exclusive and legal forms frequently do not disclose actual practice.”¹ The report stressed the confusion produced by a “conglomeration of constitutional provisions and general and special laws” which “leaves local officials with an unclear idea of what is within their power, prohibited to them, or within the scope of their discretion.”² The CSG report, however, did not

attempt to measure the amount of discretionary authority possessed by local governments. In addition, it was published prior to the Fordham study, urging adoption of the devolution of powers approach in the granting of constitutional discretionary authority to local governments. All states adopting constitutional provisions granting discretionary power to subdivisions since 1953 have selected a modified version of the Fordham plan which in large measure depends for success upon the legislature's restraint in exercising its powers of preemption.

Numerous descriptive and prescriptive articles and reports dealing with the legal relationships between a state and its political subdivisions have been published during the past quarter-century. Two of the best law review articles on the subject carefully analyzed the *Imperium in Imperio* and devolution of powers approaches to the granting of discretionary authority to units of local government.³

In 1974, the Advisory Commission on Intergovernmental Relations published a report classifying states in terms of the extent of state dominance of the state-local revenue systems as (1) state junior partner role (9 states), (2) strong state role (28 states), and (3) state dominance (13 states).⁴ In a 1977 report, ACIR classified state-local fiscal systems by both expenditure and financing responsibility and found ten states with high state financing-high state expenditure, eight with low state financing-low state expenditure, and the remaining 32 in between.⁵ Since the exercise of discretionary authority depends in large measure upon the availability of fiscal resources, and is reflected to some extent in expenditure patterns, the Commission's classifications provide an indication of the degree of centralization of political power in each state. At the same time, they do not reveal the amount of discretionary authority that may be exercised by the various types of local governments in a state.

In 1974, Prof. G. Ross Stephens of the University of Missouri wrote an article based upon "a quantifiable measure of state centralization" utilizing "three components that reflect the relative distribution of power between state and local governments: (1) financial responsibility, or which level pays for public goods and services; (2) determination of the level which delivers each of 15 major functional activities; and (3) distribution of public personnel between levels modified by the relative labor intensity of different services rendered by state and local governments."⁶ Using *Census of Governments* data, Stephens developed an index for 1957 and 1969 and

placed states in a "continuum of state centralization," ranging from decentralized to balanced to centralized.⁷ In a 1979 report to the National Science Foundation, Prof. Stephens and Prof. Gerald W. Olson updated the original Stephens report by preparing an index for 1977.⁸ While the Stephens study and its sophisticated update are most useful, they were limited to *Census of Governments* data and no attempt was made to measure the amount of discretionary authority possessed and exercised by each type of local government in each state.

SURVEY SCOPE AND METHODS

In order to obtain information for construction of an index of local discretionary authority, the Commission's analysis utilized legal research on constitutional and statutory provisions and court decisions to delineate the respective powers of each state and its political subdivisions. In addition, state officials, officials of state associations of local governments, and experts on state-local relations were surveyed by mail questionnaire about their perceptions of the amount of discretionary authority possessed by each type of local government in their respective states.⁹ For purposes of the index, local discretionary authority was divided into the areas of governmental structure, functional responsibilities, personnel, and finance.

In addition to requesting respondents—Governors, attorneys general, representatives of departments of community affairs, legislative research bureaus, municipal associations, and county associations,¹⁰ and experts on state-local relations—to provide information on their perceptions of local discretionary authority, the questionnaire sought data on the extent to which various types of local government in each state actually exercise such authority. Specifically, the survey probed the extent to which the local units—

- 1) utilized the grant of power to draft, adopt, and amend a charter;

- 2) utilized the grant of power to supersede state laws by adoption of a local law, bylaw, or ordinance; and

- 3) requested the state legislature to enact a special law dealing with a subject that the local governments could deal with directly under the constitutional and/or statutory grant of discretionary authority.

To supplement this information, data relative to the erosion of local discretionary authority also were collected. Specifically, the data involved—

1) the state legislature's evasion of the constitutional prohibition of special legislation;

2) requests by local governments for special laws and the role of legislative courtesy;

3) the extent to which the legislature has used its powers of preemption, under the "devolution of powers" approach, to assume complete or partial responsibility for a traditional local government function; and

4) the extent to which federal partial preemption, in areas such as air and water pollution abatement, forced the state legislature to exercise its powers of preemption.

Supplementary information was gathered on—

1) impediments to the state legislature's initiating action to resolve metropolitan and other areawide problems because of the constitutional grant of local discretionary authority; and

2) recodification of state statutes pertaining to local governments.

In order to obtain the highest possible response rate, ACIR posted a second copy of the questionnaire to officials and organizations who did not return the original questionnaire by the requested return date, and a third copy to those who did not respond to the first and second requests.

Returns were received from 20 Governors,¹¹ 14 attorneys general, and officials of 21 departments of community affairs, 20 legislative research bureaus, 28 municipal leagues, and 16 county associations (see *Table 2*). The average response rate was 44%—41% for the various state respondents, 61% for municipal associations, and 36% for county associations. Because many questionnaires were completed only partially, the total number of responses for each question was different. For these reasons, the survey data are useful only in providing a general indication of the amount and use of local discretionary authority. Caution, then, must be exercised in drawing firm conclusions based upon the survey data alone.

It should be noted that the survey utilized the official names of each type of local government in each of the 50 states, rather than the classes of local governments employed by the U.S. Bureau of the Census. The bureau's classification involves the grouping together of units varying considerably in the amount of local discretionary authority each possesses as illustrated by New England and New York towns being grouped with Midwestern townships. The former, which are municipal corporations, differ substantially from the latter which are quasi-municipal corporations.

Table 2
QUESTIONNAIRE RETURNS CLASSIFIED BY REGION AND RESPONDENT, 1979

Region	Questionnaires Distributed	Questionnaires Returned	Response Rate
	Number	Number	Percent
Northeast	49	19	39
Midwest	69	26	38
South	86	44	51
West	69	30	43
Total	273	119	44
Respondent			
Governor	50	20	40
Attorney General	50	14	28
Department of Community Affairs	38	21	55
Legislative Research Bureau	44	20	45
Municipal League	46	28	61
County Association	45	16	36
Total	273	119	44

SOURCE: ACIR survey.

Table 3
**UTILIZATION OF POWER TO DRAFT AND ADOPT A CHARTER, BY TYPE
 OF LOCAL UNIT, 1979**

Unit	Often ¹		Occasionally ¹		Seldom ¹		Never ¹	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Cities	18	18	25	25	36	36	21	21
Towns	14	21	15	22	24	36	14	21
Villages	9	20	16	36	15	33	6	13
Townships	7	18	18	46	9	23	5	13
Boroughs	9	28	8	25	9	28	6	19
Counties	12	13	25	27	32	36	21	23
Total²	69	18	107	29	125	33	73	20

¹The percentage for each type of local government is based upon the number of responses for that type.

²The total percentage is based upon the total number of responses for all types of local government.

SOURCE: ACIR survey.

SURVEY FINDINGS

As explained in *Chapter 3*, the first constitutional provision designed to protect local discretionary authority (1) prohibited the enactment of special laws by the state legislature or (2) allowed the enactment of such laws only upon receipt of an emergency message from the Governor and approval of the laws by an extraordinary majority vote of each house of the legislature. The first affirmative step taken by a number of states to broaden local discretionary authority was the adoption of a constitutional amendment or statutory provision authorizing certain types of local governments—initially restricted to cities—to draft, adopt, and amend charters.

Charter Adoption

Adoption of a locally drafted charter is not permitted in Alabama, Kentucky, and Virginia; in certain other states, it is limited to specific types of local governments (counties in Georgia and cities and towns in Massachusetts); and in still others, it is restricted to units of local government exceeding a specified population (cities of 3,500 or more in Arizona and cities of 5,000 or more in Texas). In addition, eligible local governments in several states—Kansas, Illinois, and New York are examples—can exercise the constitutional grant of discretionary powers without adopting a charter.

An examination of *Table 3* reveals that the power to draft and adopt a charter is not utilized often by

eligible local governments: Only 18% of the respondents checked “often” whereas 33% checked “seldom” and 20% “never.” The 21% “often” response for towns is attributable in large measure to the adoption of charters by towns in Massachusetts. The 28% response rate for “often” for boroughs is not a meaningful figure, because of the small number of responses. The most common reason for adoption of a new charter is to achieve greater administrative or structural discretion (see *Appendix Table B-1*).

The relatively infrequent use of the power to draft and adopt charters is attributable to the facts that many local governments that drafted and adopted charters years ago still are satisfied with them, or prefer optional charters made available by statute or general law charters containing an adequate grant of discretionary powers. One California correspondent pointed out that “. . . the statutes have been liberalized to the extent that a city would gain little if it adopted its own charter. Most of California’s nearly 80 charter cities adopted charters years ago when the general statutes were more restrictive than now.” A Florida respondent noted that state law “. . . draws no distinction between charter and noncharter counties, evidencing a legislative intent to provide the fullest possible extent of home rule powers for all counties.” A similar distinction was made by a State of Washington respondent: “Many cities in recent years have opted for statutory home rule under the optional municipal code, chapter 35A RCW, rather than to draft a charter. . . the . . . code provides the legislative bodies of each code city with all the power possible under the state constitution, not

specifically denied to code cities by law.”

Although South Dakota has a self-executing devolution of powers constitutional provision, only two local governments—the City of Yankton and Pennington County—have attempted to use the grant of powers. An expert on state-local relations in South Dakota attributes the failure of local governments to use it to “the responsiveness of the legislature to local needs, the adequate fiscal powers possessed by local governments, and a fear by voters of what might happen if home rule were adopted.”

Charter Amendment

A local government may lack the power to draft and adopt a new charter and yet may be authorized to amend an existing charter. A Delaware correspondent wrote that “it would appear from 22 Delaware Code, Chapter 8, ‘Home Rule,’ that there is power to alter an existing charter, but not to draft or adopt a charter.”

Cities and other local governments possessing the power do not amend their charters often (see *Table 4*). Thirty-six percent of the respondents reported political subdivisions seldom, if ever, amended their charters. A particularly striking finding is the fact that 73% of the respondents indicated that, where amendments had been made, they generally were minor ones.

Supersession of State Laws

As pointed out earlier, a local government in some states may supersede state laws only by means of the

adoption of a locally drafted charter (Rhode Island is an example) and in other states may supersede certain state laws by means of a local law, bylaw, or ordinance (New York is an example). In 1951, the Arizona supreme court, following the *Imperium in Imperio* doctrine, ruled that sections of a city charter relating “to purely municipal affairs supersede all conflicting state laws.”¹³

Twenty-seven states now authorize some or all of their general-purpose local governments to supersede general and special state laws by the enactment of a local law, bylaw, or ordinance. *Table 5* contains information on the utilization of the power to supersede state laws by type of local government unit. Thirty-seven percent of the respondents from states that authorize supersession indicated that local governments often or occasionally superseded state laws. All respondents in New York State reported that local governments often supersede state laws.

Use of Broad Discretionary Powers

Local governments can be granted broad discretionary powers by the state constitution, state statutes, or both. The Alaska Constitution, for example, stipulates that “a home rule borough or city may exercise all legislative powers not prohibited by law or charter.”¹³ In 1948 the Texas Supreme Court held:

It was the purpose of the home-rule amendment . . . to bestow upon accepting cities and towns of more than 5,000 population full power of self-government, that is,

Table 4
UTILIZATION OF POWER TO AMEND A CHARTER, BY TYPE OF LOCAL UNIT, 1979

Unit	Often ¹		Occasionally ¹		Seldom ¹		Never ¹	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Cities	15	17	26	25	38	37	22	21
Towns	14	20	15	21	29	28	12	17
Villages	9	19	16	33	16	33	7	15
Townships	7	17	18	43	11	26	6	14
Boroughs	8	23	9	26	10	29	8	23
Counties	12	13	22	25	33	37	22	25
Total²	65	17	106	28	137	36	77	20

¹The percentage for each type of local government is based upon the number of responses for that type.

²The total percentage is based upon the total number of responses for all types of local government.

SOURCE: ACIR survey.

Table 5
UTILIZATION OF POWER TO SUPERSEDE STATE LAWS, BY TYPE OF LOCAL UNIT, 1979

Unit	Often ¹		Occasionally ¹		Seldom ¹		Never ¹	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Cities	21	18	22	19	43	38	28	25
Towns	19	19	17	17	41	41	24	24
Villages	19	20	17	18	37	40	20	22
Townships	16	18	17	20	34	39	20	23
Boroughs	16	19	13	15	34	40	21	25
Counties	20	19	19	18	41	39	25	24
Total²	111	19	105	18	230	39	138	24

¹The percentage for each type of local government is based upon the number of responses for that type.

²The total percentage is based upon the total number of responses for all types of local government.

SOURCE: ACIR survey.

full authority to do anything the legislature could theretofore to have authorized them to do. The result is that now it is necessary to look to the acts of the legislature not for grants of power to such cities but only for limitations on their powers.¹⁴

Elaborating upon the above decision and similar decisions, a Texas respondent wrote:

. . . home rule cities have the inherent authority to do anything which qualifies as a "public purpose" and is not contrary to the constitution or laws of the state. From the city attorney's vantage point, this means that the presumption will be in favor of ordinances and other acts of a home rule city whenever the city is a party to a law suit. From the city council's viewpoint, it means that a new program can be initiated to solve problems whenever they occur.

Home rule also is an important instrument of decentralization. It assumes that governmental problems should be settled at the lowest possible level of government closest to the people, and that the undue concentration of powers in higher levels of government should be curtailed.

A Virginia correspondent wrote that ". . . the scope of discretionary authority granted by statutes is very extensive The general feeling is that the general assembly has been liberal in granting a broad range of powers." A North Carolina respondent sim-

ply wrote that "the statutory grant is very broad." And a New Jersey expert on state-local relations emphasized that—

The home rule act of 1917 (chapter 152) gave all our municipal corporations (and all 567 New Jersey municipalities are public corporations) a long laundry list of *functional* powers. This act, as amended and supplemented, is very generous. Except in the financial area, if a community wants to engage in a function or exercise a power, it usually can do so. The 1947 constitution (article IV, § VII, par. 11) endorses this "home rule" aspect of our political system by mandating liberal interpretation of municipal and county powers.

Not surprisingly, correspondents in Dillon Rule states emphasized that local governments are granted little discretionary authority. An Indiana correspondent in 1979 wrote "the units of local government are given by statute very narrow standards within which they must exist." In 1937, the New Hampshire Supreme Court held that "there is no inherent right of local self-government which is beyond legislative control."¹⁵ This still prevails in the state. An interesting comment was written by a South Dakota expert, who said, "Smaller cities do not have the innovative tendencies or the problems that require greater discretion."

In response to a question of whether there had been increased utilization of discretionary powers by local governments with the passage of time, a North

Carolina correspondent wrote that, in functional areas, local governments "have historically had broad powers, and have generally exercised them, so that no recent increases are evident." *Table 6*, however, indicates that there has been some increase in the utilization of each of the four types of local discretionary powers with the passage of time, with the greatest increase (26% of responses) being concentrated in functional areas.

Reduction of Scope of Discretionary Powers

Asked if the state legislature had reduced the scope of the constitutional grant of local discretionary authority, 41% of the respondents answered in the affirmative and 27% attributed the reduction to court decisions.

A New Jersey expert on state-local relations highlighted the constraining relationship between revenue raising by the state and the amount of local discretionary authority:

Prior to 1966, the state government in New Jersey had no big sources of revenue. It traditionally, then, allowed municipal and county governments to do as they pleased—"home rule" was really acceptance of the local property tax as the mainstay of our fiscal system. Since 1966, we have gone to both a state sales tax and a state income tax,

and the state budget has burgeoned. One result has been that functions long left to municipal or county discretion have been pulled into the state's maw—land use, solid waste disposal, sewerage, code enforcement, public health, administration of justice, to name a few. The process has been incremental—a statute here, an executive order there, a state aid program—but the results have been dramatic. New Jerseyans still look to their local governments, but those levels increasingly find Trenton on their backs, or looking over their shoulders.

The exercise of local discretionary authority has been reduced by fiscal restraints in many states. Thirty-six percent of the respondents attributed a reduction in the exercise of local discretionary authority to debt limits, another 35% cited tax limits, and an additional 29% placed the blame on a lack of revenue.

Twenty-eight percent of the respondents described state tax limits as very restrictive and another 46% described them as moderately restrictive. Debt limits were held to be less restrictive than tax limits, with 21% of the respondents describing debt limits as very restrictive and 51% describing them as moderately restrictive.

Only 18% of the respondents viewed federal court decisions as causing a major reduction in the exercise of local discretionary authority. Fifty-four percent of

Table 6
INCREASED UTILIZATION OF DISCRETIONARY POWERS WITH PASSAGE OF TIME, BY TYPE OF POWER AND LOCAL UNIT, 1979

Unit	Structure of Government ¹		Functional Areas ¹		Finance ¹		Personnel ¹		No Grant of Powers ¹	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Cities	64	25	69	27	38	22	38	25	4	2
Towns	25	21	30	25	24	20	30	25	11	9
Villages	15	22	18	26	12	18	16	24	7	10
Townships	5	17	5	30	4	13	6	20	10	33
Boroughs	6	21	5	18	3	11	7	25	7	25
Counties	38	22	49	28	38	22	38	22	12	7
Total²	153	23	176	26	133	20	160	24	51	8

¹The percentage for each type of local government is based upon the number of responses for that type.

²The total percentage is based upon the total number of responses for all types of local government.

SOURCE: ACIR survey.

Table 7
**LOCAL REQUESTS FOR STATE LEGISLATION FALLING WITHIN THE
PURVIEW OF LOCAL DISCRETIONARY AUTHORITY, BY TYPE OF
LOCAL UNIT, 1979**

Unit	Often ¹		Occasionally ¹		Seldom ¹		Never ¹	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Cities	31	32	16	16	38	39	12	12
Towns	16	30	5	9	19	35	11	20
Villages	7	23	4	13	11	35	9	29
Townships	3	15	2	10	6	30	9	45
Boroughs	1	6	1	6	6	40	7	47
Counties	24	33	13	18	21	29	14	19
Total²	82	29	41	14	101	35	62	22

¹The percentage for each type of local government is based upon the number of responses for that type.

²The total percentage is based upon the total number of responses for all types of local government.

SOURCE: ACIR survey.

those surveyed, however, singled out conditions attached to federal grants-in-aid as a major constraining factor. By way of contrast, only 30% of the replies attributed a reduction in the exercise of local discretionary authority to state conditional grants-in-aid. A Michigan expert on state-local relations stressed that "lack of funds encourages local units to solicit state assistance with resulting loss in local discretion."

Classified Legislation

According to those surveyed, the use of classified legislation to evade the constitutional prohibition of special legislation is relatively common, with 57% citing the use of such legislation.

With respect to this question, one Idaho official responded, "Hard to tell," and a second Idaho state official wrote "Difficult to answer Yes or No." An Iowa respondent noted that "There are numerous constitutional challenges that could be made, but none are."

"Bracket" or population bills were used extensively in Alabama until 1978, when the state supreme court held that classified legislation violated the state constitution.¹⁶ This decision led to the proposal and ratification in 1978 of a constitutional amendment granting the legislature specific authority to classify municipalities.

An expert on state-local relations in Kentucky pointed out that "cities are usually classified or reclassified by the state legislature at their own requests. Here, again, is an example of what the cities

want, they get." An Oklahoma respondent mentioned that classified laws occasionally are enacted, but usually not unless the "cities being classified are agreeable to the classification."

Local Requests for Special Legislation

A major argument advanced in favor of a broad constitutional and/or statutory grant of local discretionary authority is that the state legislature will be relieved of the burden of considering local bills. When asked if cities often request state laws falling within the purview of local discretionary authority, 32% of the respondents answered "Yes" (see *Table 7*). The responses for towns and counties were similar (i.e., 30% and 33%, respectively) and the aggregate for all types of local unit was 29%. On the other hand, a total of 64% of the respondents indicated that villages seldom, if ever, request the state legislature to enact laws falling within the purview of local discretionary authority.

Many respondents agreed basically with a Colorado respondent's statement: "Home rule municipalities . . . are conservative in exercising home rule powers and seem more comfortable operating under statutory grants in many instances." A Georgia official wrote that his state "has had such a strong tradition of local acts by the legislature it appears that many city officials and their attorneys are insecure and unsure of the breadth of their home rule powers."

A Maine official attributed requests for special

legislation in part to a "desire for the state to take the political repercussions," and a Massachusetts state official wrote that it "takes less time than to make a home rule charter change." An Oregon respondent blamed special legislation requests on "Either (1) timidity or ignorance on the part of some local government advisors, or (2) it may be easier to win a political contest in the state capitol than at home."

LEGISLATIVE COURTESY

Legislative courtesy refers to the practice whereby bills affecting one or more local governments will not be passed by either house of the legislature unless first approved by the legislative delegation from the concerned local government or area. The role of legislative courtesy as the determinant of the fate of proposed special legislation varies dramatically from state to state. Fifty-two percent of the respondents indicated that there was no legislative courtesy in their states; 35% reported that legislative courtesy applied to legislation involving all categories of local governments, and 14% indicated that it applied to measures affecting only certain local governments.

According to a written comment on one questionnaire, local bills account for two-thirds of the bills in the Alabama legislature and legislative courtesy "totally determines the fate of these bills." A Florida official wrote that "some local delegations have a rule that local bills will not be introduced unless approved by a majority of the legislative delegation." The Kentucky Constitution provides for six classes of cities, based upon population and, according to one official, "if representatives of the class requesting agree on the legislation, members of the general assembly 'go along with it.'"

A Pennsylvania respondent stressed that legislative courtesy "extends only to those units having special classifications: Philadelphia, Pittsburgh, Allegheny County, and Scranton." An expert on state-local relations in Alabama agreed with the other surveyed officials in his state, that legislative courtesy totally determines the fate of bills, and added "this is the way blacks are gaining true political power in Alabama: through holding legislative seats."

Legislature's Use of Power of Preemption

When asked if the state legislature uses its power of preemption under the devolution of powers approach, 58% of the respondents in states with de-

volution of powers indicated that there had been no preemption. Only 12% reported that there had been total preemption, and another 23% stated that there had been partial preemption.

One Michigan respondent wrote that "the constitution grants broad excise taxing power to Michigan municipalities, but the legislature has limited this authority." A second Michigan respondent emphasized:

We see the relationship developing as one in which the state is becoming increasingly involved in what were once local affairs—states are setting minimum standards in a growing number of areas while local units carry on the administration in the communities.

And an official of a county association wrote that "the state has been forced into a more activist administrative enforcement role in certain areas in order to avoid direct federal regulation. . . ." Forty-six percent of the respondents agreed with this view.

Inhibitions of Metropolitan Solutions

When queried whether the constitutional grant of local discretionary authority or the constitutional prohibition of special legislation inhibited the ability of the state legislature to solve metropolitan and other areawide problems, 79% of the respondents replied "No." A Georgia state official answered the question in the affirmative: "Since population categories are the only way around the general law provision, specific metropolitan areas cannot be addressed. The City of Atlanta, however, can be addressed because of its size."

A state official in Kansas pointed out that complete city-county consolidation "may not be constitutionally permissible," and a Maryland respondent wrote that "county boundaries only may be altered with the consent of both counties involved." A New Jersey state official stressed that the state's "tradition of 'home rule' makes state-inspired action difficult but not excessively so." And a Wyoming state official pointed out that the state legislature would be inhibited "only in the sense that such laws must be uniformly applicable or a municipality may exempt itself. However, this would not seriously affect financial aid programs."

Table 8
**STATES CLASSIFIED BY REGION, RESTRICTION ON LENGTH OF
 LEGISLATIVE SESSION, DEGREE OF STATE DOMINANCE OF
 FISCAL PARTNERSHIP, AND STATE-LOCAL LEGAL RELATIONSHIP,
 1980**

States	Region¹	Restriction on Legislative Session²	Degree of State Dominance of Fiscal Partnership³	State-Local Legal Relationship⁴
Alabama	3	1	1	3
Alaska	4	2	1	1
Arizona	4	2	2	1
Arkansas	3	1	1	3
California	4	2	3	1
Colorado	4	2	2	1
Connecticut	1	1	2	1
Delaware	3	1	1	2
Florida	3	1	2	1
Georgia	3	1	2	1
Hawaii	4	1	1	1
Idaho	4	2	2	1
Illinois	2	2	2	1
Indiana	2	1	2	3
Iowa	2	2	2	1
Kansas	2	2	2	1
Kentucky	3	1	1	3
Louisiana	3	1	1	1
Maine	1	2	2	1
Maryland	3	1	2	1
Massachusetts	1	2	3	1
Michigan	2	2	2	1
Minnesota	2	1	2	1
Mississippi	3	1	1	3
Missouri	2	1	2	1

¹Region: 1 = Northeast; 2 = North Central; 3 = South; 4 = West.

²Restriction on length of legislative session: 1 = Yes; 2 = No.

³Degree of state dominance of fiscal partnership: 1 = state dominant fiscal partner; 2 = state strong fiscal partner; 3 = state junior fiscal partner. From ACIR, *Local Revenue Diversification: Income, Sales Taxes, and User Charges* (A-47), Washington, DC, U.S. Government Printing Office, October 1974.

Table 8 (cont.)
**STATES CLASSIFIED BY REGION, RESTRICTION ON LENGTH OF
 LEGISLATIVE SESSION, DEGREE OF STATE DOMINANCE OF
 FISCAL PARTNERSHIP, AND STATE-LOCAL LEGAL RELATIONSHIP,
 1980**

States	Region ¹	Restriction on Legislative Session ²	Degree of State Dominance of Fiscal Partnership ³	State-Local Legal Relationship ⁴
Montana	4	1	3	1
Nebraska	2	1	3	1
Nevada	4	1	2	3*
New Hampshire	1	1	3	1
New Jersey	1	2	3	2
New Mexico	4	1	1	1
New York	1	2	3	1
North Carolina	3	2	1	2
North Dakota	2	1	2	1
Ohio	2	2	3	1
Oklahoma	3	1	1	1
Oregon	4	2	2	1
Pennsylvania	1	2	2	1
Rhode Island	1	1	2	1
South Carolina	3	2	1	1
South Dakota	2	1	3	3**
Tennessee	3	1	2	1
Texas	3	1	2	1
Utah	4	1	2	1
Vermont	1	2	2	3***
Virginia	3	1	2	2
Washington	4	1	2	1
West Virginia	3	1	1	1
Wisconsin	2	2	2	1
Wyoming	4	1	2	1

¹State-local legal relationship: 1 = constitutional grant of power; 2 = statutory grant of power; 3 = Dillon Rule state.

*The constitutional provision has not been implemented by the legislature.

**The constitutional provision has not been utilized.

***The statutory provision is a dead letter because of rulings by bond counsel.

SOURCE: ACIR staff compilations.

Table 9
PERCEPTIONS OF THE DESIRABILITY OF CONSTITUTIONAL AND STATUTORY PROVISIONS, BY REGION, 1979

	Northeast Region			North Central Region			The South			The West		
	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable
1. Constitutional provisions for enumerated or "local affairs" powers (<i>Imperium in Imperio</i>).	3 (15%)	2 (10%)	15 (75%)	2 (10%)	5 (24%)	14 (68%)	8 (21%)	10 (26%)	20 (53%)	7 (25%)	10 (36%)	11 (39%)
2. Constitutional provision for devolution of powers to local government.	5 (25%)	11 (55%)	4 (20%)	10 (46%)	7 (32%)	5 (23%)	14 (37%)	13 (34%)	11 (29%)	12 (43%)	11 (39%)	5 (18%)
3. Constitutional provision authorizing local governments to exercise all powers not included in a "code of restriction" enacted by the legislature.	4 (20%)	7 (35%)	9 (45%)	5 (23%)	6 (27%)	11 (50%)	13 (33%)	10 (26%)	16 (41%)	11 (42%)	8 (31%)	7 (27%)
4. Constitutional grant of discretionary authority to local governments that have modified their structures.	4 (20%)	5 (25%)	11 (55%)	5 (24%)	5 (24%)	11 (52%)	7 (18%)	18 (47%)	13 (34%)	7 (27%)	11 (42%)	8 (31%)
5. Constitutional grant of discretionary authority to all general-purpose local governments.	4 (20%)	10 (50%)	6 (30%)	6 (30%)	9 (45%)	5 (25%)	9 (24%)	17 (48%)	12 (32%)	10 (36%)	10 (36%)	8 (29%)
6. Constitutional provision requiring courts to construe local powers liberally.	9 (45%)	5 (25%)	6 (30%)	9 (47%)	4 (21%)	6 (32%)	17 (46%)	10 (27%)	10 (27%)	9 (33%)	9 (33%)	9 (33%)
7. Statutory grant of discretionary powers to local governments.	8 (40%)	8 (40%)	4 (20%)	9 (43%)	9 (43%)	3 (14%)	22 (56%)	13 (33%)	4 (10%)	10 (37%)	17 (63%)	0 (0%)
8. Constitutional prohibition of special legislation.	11 (55%)	3 (15%)	6 (30%)	7 (32%)	11 (50%)	4 (18%)	17 (44%)	11 (28%)	11 (28%)	13 (48%)	9 (33%)	5 (19%)
9. Constitutional restriction on the power of the state legislature to preempt a local function or functional component.	9 (15%)	4 (20%)	13 (65%)	4 (17%)	6 (26%)	13 (57%)	9 (24%)	11 (29%)	18 (47%)	6 (21%)	13 (46%)	9 (32%)

10. Constitutional provision requiring full state reimbursement for costs associated with state mandates.	6 (30%)	3 (15%)	11 (55%)	7 (30%)	8 (35%)	8 (35%)	18 (47%)	9 (24%)	11 (29%)	16 (57%)	5 (18%)	7 (25%)
11. Constitutional provision requiring partial state reimbursement for costs associated with state mandates.	2 (10%)	9 (45%)	9 (45%)	7 (30%)	9 (39%)	7 (30%)	11 (31%)	13 (36%)	12 (33%)	7 (27%)	13 (50%)	6 (23%)
12. Statutory provision requiring full state reimbursement for costs associated with state mandates.	8 (40%)	4 (20%)	8 (40%)	4 (17%)	12 (52%)	7 (30%)	17 (44%)	13 (33%)	9 (23%)	12 (44%)	10 (37%)	5 (19%)
13. Statutory provision requiring partial state reimbursement for costs associated with state mandates.	3 (15%)	13 (65%)	4 (20%)	7 (30%)	11 (48%)	5 (22%)	13 (37%)	15 (43%)	7 (20%)	6 (23%)	16 (62%)	4 (15%)
14. Constitutional provision authorizing local governments to supersede state law with the exception of specified areas.	2 (10%)	4 (20%)	14 (70%)	1 (5%)	8 (37%)	13 (59%)	6 (15%)	9 (23%)	25 (63%)	5 (19%)	12 (44%)	10 (37%)
15. Constitutional provision authorizing local governments to rescind their acceptance of "permissive" or "optional" state laws.	4 (21%)	3 (16%)	12 (63%)	3 (14%)	9 (43%)	9 (43%)	5 (14%)	9 (25%)	22 (61%)	3 (11%)	12 (44%)	12 (44%)
16. Statutory provision authorizing local governments to rescind their acceptance of "permissive" or "optional" state laws.	5 (26%)	11 (58%)	3 (16%)	1 (5%)	16 (76%)	4 (19%)	5 (15%)	18 (55%)	10 (30%)	2 (8%)	18 (69%)	6 (23%)
17. Constitutional amendment removing local debt limits.	2 (10%)	1 (5%)	17 (85%)	2 (10%)	5 (25%)	13 (65%)	8 (21%)	5 (13%)	26 (67%)	5 (19%)	4 (15%)	17 (65%)
18. Constitutional amendment removing local tax limits.	3 (16%)	2 (11%)	14 (74%)	2 (10%)	5 (24%)	14 (67%)	8 (24%)	8 (24%)	18 (53%)	7 (26%)	8 (30%)	12 (44%)
19. Constitutional provision limiting the property tax.	1 (5%)	3 (15%)	16 (80%)	3 (14%)	5 (23%)	14 (64%)	2 (5%)	7 (18%)	29 (76%)	1 (4%)	4 (16%)	20 (80%)
20. Constitutional authorization for local governments to levy a local sales tax.	1 (5%)	5 (25%)	14 (70%)	5 (22%)	7 (30%)	11 (48%)	11 (29%)	13 (34%)	14 (37%)	9 (33%)	10 (37%)	8 (30%)

Table 9 (cont.)
PERCEPTIONS OF THE DESIRABILITY OF CONSTITUTIONAL AND STATUTORY PROVISIONS, BY REGION, 1979

	Northeast Region			North Central Region			The South			The West		
	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable
21. Statutory authorization for local governments to levy a local sales tax.	2 (10%)	7 (35%)	11 (55%)	6 (26%)	10 (44%)	7 (30%)	21 (57%)	12 (32%)	4 (11%)	9 (32%)	12 (43%)	7 (25%)
22. Constitutional provision authorizing local governments to levy a local gross receipts tax.	1 (5%)	4 (20%)	15 (75%)	5 (23%)	5 (23%)	12 (55%)	8 (22%)	13 (36%)	15 (42%)	8 (32%)	9 (36%)	8 (32%)
23. Statutory authorization for local governments to levy a local gross receipts tax.	3 (15%)	8 (40%)	9 (45%)	3 (14%)	13 (59%)	6 (27%)	17 (50%)	14 (41%)	3 (9%)	7 (26%)	13 (48%)	7 (26%)
24. Constitutional authorization for local governments to levy a local income tax.	1 (5%)	3 (15%)	16 (80%)	7 (32%)	5 (23%)	10 (45%)	6 (17%)	13 (36%)	17 (47%)	9 (33%)	5 (19%)	13 (48%)
25. Statutory authorization for local governments to levy a local income tax.	4 (20%)	6 (30%)	10 (50%)	3 (14%)	16 (73%)	3 (14%)	8 (34%)	15 (44%)	11 (32%)	5 (18%)	10 (36%)	13 (46%)
26. Constitutional authorization for local governments to levy a payroll tax.	1 (5%)	2 (10%)	17 (85%)	6 (27%)	3 (14%)	13 (59%)	7 (21%)	7 (28%)	19 (58%)	7 (26%)	5 (19%)	15 (56%)
27. Statutory authorization for local governments to levy a payroll tax.	2 (10%)	6 (30%)	12 (60%)	4 (18%)	12 (55%)	6 (27%)	12 (32%)	11 (30%)	14 (38%)	7 (25%)	8 (29%)	13 (46%)
28. Constitutional provision restricting the authority of the state legislature to grant local property tax exemptions.	6 (30%)	6 (30%)	8 (40%)	4 (18%)	9 (41%)	9 (41%)	16 (46%)	12 (34%)	7 (20%)	8 (29%)	12 (43%)	8 (29%)

Note: Percentages may not add to 100% because of rounding.
 SOURCE: ACIR survey.

Recodification of State Laws

The utilization of discretionary authority by local governments clearly will be inhibited unless the state laws pertaining to political subdivisions are recodified periodically to identify fully the powers preempted by the state legislature. As pointed out earlier, requests for special legislation frequently are made because local government officials are unsure of the extent of their discretionary authority and know that special legislation will prevent a legal challenge of their use of certain powers.

Respondents in only five states reported that all of their state laws relating to local governments had been recodified since 1970 to identify clearly preempted powers. In a sixth state—Minnesota—the laws were “recodified in 1973, but more in terms of granting powers not preempting them.”

Since 1970, certain state laws pertaining to local governments have been recodified in Arkansas, California, Iowa, New Jersey, New York, Oklahoma, and Virginia. Currently, the entire Georgia code, and state statutes relating to political subdivisions in Indiana and Kentucky, are being recodified.

Desirability of Certain Provisions

Recipients of the questionnaire were requested to rate 28 constitutional and statutory provisions on local discretionary authority as “very desirable,” “desirable,” or “undesirable.” Ratings were classified by region of the country, restriction on the length of the state legislature’s session, degree of state dominance of the state-local fiscal partnership, nature of the state-local legal relationship, and position of the respondent. *Table 8* classifies each state by these variables, with the exception of position of the respondents.

REGIONAL PERCEPTIONS

Table 9 contains respondents’ perceptions by region. Striking regional differences are to be noted: Whereas 55% of the Northeastern respondents rated a constitutional prohibition of special legislation as “very desirable,” only 32% of the North Central respondents agreed. More striking is the difference in views on the desirability of statutory authorization for local governments to levy a sales tax: only 10% of those surveyed in the Northeast rated such a provi-

sion as “very desirable,” compared to a 57% rating in the South.

The *Imperium in Imperio* (enumerated powers or grant of power over “local affairs”) approach to granting discretionary authority to local governments is the least popular approach, with the “undesirable” rating ranging as follows: Northeast (75%), North Central (68%), South (53%), and West (39%).

The devolution of powers approach received a “very desirable” rating, ranging from 46% in the North Central region to 25% in the Northeast. The “undesirable” rating for this approach—29% (S), 23% (NC), 20% (NE), and 18% (W)—may represent a preference for the *Imperium in Imperio* approach, for a statutory grant of discretionary powers to local governments, or for a combination of the two.

A constitutional grant of discretionary authority restricted to local governments that have modernized their structures was rated “undesirable” by 55% of the Northeast and 52% of the North Central regions. The corresponding rating for the South was 34% and for the West 31%. However, only 18% of the southern respondents and 27% of the western respondents rated such a provision as “very desirable.”

Somewhat surprisingly, there is fairly significant opposition to a constitutional provision prohibiting the enactment of special legislation, ranging from 18% in the North Central region to 30% in the Northeast.

There was very strong opposition to the removal of constitutional local debt limits (ranging from 85% in the Northeast to 65% in the North Central region and the West) and to the removal of constitutional local tax limits (ranging from 74% in the Northeast to 44% in the West). At the same time, there was strong disapproval of constitutional limits on the property tax: from 80% in the Northeast and West to 64% in the North Central states.

PERCEPTIONS BY POSITION

Table 10 classifies the perceptions of respondents by position. Governors (71%) and experts on state-local relations (85%) are in agreement that a constitutional provision for *Imperium in Imperio* is “undesirable.” (No Governor rated such a position as “very desirable” although one expert did assign such a rating.) By contrast, 44% of the responding attorneys general and 50% of the county association representatives rated this provision “very desirable.” The attorneys general may believe that the *Imperium*

Table
**PERCEPTIONS OF THE DESIRABILITY OF
PROVISIONS, BY POSITION**

	Governors			Attorneys General			Departments of Community Affairs		
	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable
1. Constitutional provisions for enumerated or "local affairs" powers (<i>Imperium in Imperio</i>).	0 (0%)	4 (29%)	10 (71%)	4 (44%)	4 (44%)	1 (11%)	4 (21%)	4 (21%)	11 (58%)
2. Constitutional provision for devolution of powers to local government.	5 (36%)	5 (36%)	4 (29%)	1 (11%)	4 (44%)	4 (44%)	6 (32%)	9 (47%)	4 (21%)
3. Constitutional provision authorizing local governments to exercise all powers not included in a "code of restriction" enacted by the legislature.	2 (15%)	4 (31%)	7 (54%)	1 (13%)	2 (25%)	5 (63%)	4 (21%)	6 (32%)	9 (47%)
4. Constitutional grant of discretionary authority to local governments that have modernized their structures.	0 (0%)	6 (50%)	6 (50%)	2 (25%)	3 (38%)	3 (38%)	5 (26%)	6 (32%)	8 (42%)
5. Constitutional grant of discretionary authority to all general-purpose local governments.	3 (21%)	4 (29%)	7 (50%)	3 (33%)	3 (33%)	3 (33%)	3 (16%)	10 (53%)	6 (32%)
6. Constitutional provision requiring courts to construe local powers liberally.	2 (15%)	3 (23%)	8 (62%)	3 (33%)	2 (22%)	4 (44%)	8 (44%)	5 (28%)	5 (28%)
7. Statutory grant of discretionary powers to local governments.	8 (62%)	5 (39%)	0 (0%)	1 (13%)	7 (86%)	0 (0%)	5 (26%)	10 (53%)	4 (21%)
8. Constitutional prohibition of special legislation.	7 (50%)	2 (14%)	5 (36%)	3 (33%)	3 (33%)	3 (33%)	8 (42%)	6 (32%)	5 (26%)
9. Constitutional restriction on the power of the state legislature to preempt a local function or functional component.	1 (7%)	3 (21%)	10 (71%)	3 (33%)	3 (33%)	3 (33%)	0 (0%)	11 (58%)	8 (42%)
10. Constitutional provision requiring full state reimbursement for costs associated with state mandates.	1 (7%)	4 (29%)	9 (64%)	4 (44%)	1 (11%)	4 (44%)	4 (21%)	5 (26%)	10 (53%)
11. Constitutional provision requiring partial state reimbursement for costs associated with state mandates.	3 (21%)	2 (14%)	9 (64%)	0 (0%)	6 (75%)	2 (25%)	2 (11%)	5 (28%)	11 (61%)
12. Statutory provision requiring full state reimbursement for costs associated with state mandates.	1 (7%)	7 (50%)	6 (43%)	3 (33%)	2 (22%)	4 (44%)	2 (11%)	10 (56%)	6 (33%)
13. Statutory provision requiring partial state reimbursement for costs associated with state mandates.	5 (36%)	6 (43%)	3 (21%)	0 (0%)	7 (88%)	1 (13%)	3 (17%)	10 (56%)	5 (28%)
14. Constitutional provision authorizing local governments to supersede state law with the exception of specified areas.	1 (7%)	1 (7%)	12 (86%)	0 (0%)	3 (33%)	6 (67%)	1 (6%)	3 (17%)	14 (78%)

**CONSTITUTIONAL AND STATUTORY
OF RESPONDENT, 1979**

Legislative Research Bureaus			Municipal Associations			County Associations			Experts		
Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable
1 (9%)	2 (18%)	8 (73%)	2 (8%)	9 (36%)	14 (56%)	8 (50%)	3 (19%)	5 (31%)	1 (8%)	1 (8%)	11 (85%)
1 (10%)	6 (60%)	3 (30%)	15 (58%)	7 (27%)	4 (15%)	8 (50%)	6 (38%)	2 (13%)	5 (36%)	5 (36%)	4 (29%)
3 (27%)	5 (46%)	3 (27%)	9 (35%)	6 (23%)	11 (42%)	9 (56%)	5 (31%)	2 (13%)	5 (36%)	3 (21%)	6 (43%)
1 (10%)	4 (40%)	5 (50%)	6 (23%)	9 (35%)	11 (42%)	5 (31%)	8 (50%)	3 (19%)	4 (29%)	3 (21%)	7 (50%)
1 (10%)	4 (40%)	5 (50%)	10 (39%)	11 (42%)	5 (19%)	6 (40%)	7 (47%)	2 (13%)	3 (23%)	7 (54%)	3 (23%)
2 (22%)	4 (44%)	3 (33%)	16 (64%)	4 (16%)	5 (20%)	7 (47%)	8 (53%)	0 (0%)	6 (43%)	2 (14%)	6 (43%)
5 (46%)	5 (46%)	1 (9%)	12 (46%)	10 (39%)	4 (15%)	11 (69%)	5 (31%)	0 (0%)	7 (50%)	5 (36%)	2 (14%)
6 (60%)	3 (30%)	1 (10%)	10 (39%)	8 (31%)	8 (31%)	3 (19%)	10 (63%)	3 (19%)	11 (79%)	2 (14%)	1 (7%)
1 (9%)	1 (9%)	9 (82%)	11 (42%)	5 (19%)	10 (39%)	5 (31%)	7 (44%)	4 (25%)	1 (7%)	4 (29%)	9 (64%)
1 (9%)	6 (55%)	4 (36%)	19 (73%)	4 (15%)	3 (12%)	14 (88%)	1 (6%)	1 (6%)	4 (29%)	4 (29%)	6 (43%)
0 (0%)	9 (82%)	2 (18%)	12 (50%)	9 (38%)	3 (13%)	6 (38%)	8 (50%)	2 (13%)	4 (29%)	9 (36%)	5 (36%)
2 (18%)	4 (36%)	5 (46%)	18 (67%)	6 (22%)	3 (11%)	12 (75%)	4 (25%)	0 (0%)	3 (21%)	6 (43%)	5 (36%)
1 (9%)	6 (55%)	4 (36%)	9 (38%)	13 (54%)	2 (8%)	6 (40%)	7 (47%)	2 (13%)	5 (36%)	6 (43%)	3 (21%)
1 (8%)	1 (8%)	10 (83%)	7 (26%)	12 (44%)	8 (30%)	3 (19%)	10 (63%)	3 (19%)	1 (8%)	3 (23%)	9 (69%)

Table 10
PERCEPTIONS OF THE DESIRABILITY PROVISIONS, BY POSITION

	Governors			Attorneys General			Departments of Community Affairs		
	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable
15. Constitutional provision authorizing local governments to rescind their acceptance of "permissive" or "optional" state laws.	2 (15%)	1 (8%)	10 (77%)	1 (11%)	4 (44%)	4 (44%)	2 (11%)	3 (16%)	14 (74%)
16. Statutory provision authorizing local governments to rescind their acceptance of "permissive" or "optional" state laws.	2 (17%)	7 (58%)	3 (25%)	1 (11%)	6 (67%)	2 (22%)	3 (16%)	10 (53%)	6 (32%)
17. Constitutional amendment removing local debt limits.	2 (15%)	1 (8%)	10 (77%)	1 (11%)	0 (0%)	8 (89%)	3 (16%)	5 (26%)	11 (58%)
18. Constitutional amendment removing local tax limits.	1 (9%)	3 (27%)	7 (64%)	1 (11%)	1 (11%)	7 (78%)	2 (11%)	6 (33%)	10 (56%)
19. Constitutional provision limiting the property tax.	0 (0%)	3 (23%)	10 (77%)	3 (33%)	0 (0%)	6 (67%)	2 (11%)	3 (16%)	14 (74%)
20. Constitutional authorization for local governments to levy a local sales tax.	1 (7%)	4 (29%)	9 (64%)	0 (0%)	5 (56%)	4 (44%)	5 (26%)	5 (26%)	9 (47%)
21. Statutory authorization for local governments to levy a local sales tax.	2 (14%)	6 (43%)	6 (43%)	0 (0%)	5 (63%)	3 (30%)	6 (32%)	8 (42%)	5 (26%)
22. Constitutional provision authorizing local governments to levy a local gross receipts tax.	1 (8%)	3 (23%)	9 (69%)	0 (0%)	4 (50%)	4 (50%)	1 (6%)	7 (39%)	10 (56%)
23. Statutory authorization for local governments to levy a local gross receipts tax.	2 (15%)	6 (46%)	5 (39%)	0 (0%)	6 (75%)	2 (25%)	5 (29%)	7 (41%)	5 (29%)
24. Constitutional authorization for local governments to levy a local income tax.	1 (8%)	3 (23%)	9 (69%)	1 (11%)	3 (33%)	5 (56%)	2 (11%)	5 (26%)	12 (63%)
25. Statutory authorization for local governments to levy a local income tax.	1 (8%)	4 (33%)	7 (58%)	0 (0%)	3 (38%)	5 (63%)	2 (11%)	11 (58%)	6 (32%)
26. Constitutional authorization for local governments to levy a payroll tax.	1 (8%)	2 (17%)	9 (75%)	1 (13%)	1 (13%)	6 (75%)	0 (0%)	5 (28%)	13 (72%)
27. Statutory authorization for local governments to levy a payroll tax.	2 (15%)	5 (39%)	6 (46%)	0 (0%)	3 (33%)	6 (67%)	4 (21%)	6 (32%)	9 (47%)
28. Constitutional provision restricting the authority of the state legislature to grant local property tax exemptions.	0 (0%)	4 (33%)	8 (67%)	1 (13%)	4 (50%)	3 (38%)	6 (32%)	9 (47%)	4 (21%)

Note: Percentages may not add to 100% because of rounding.
SOURCE: ACIR survey.

(continued)
**OF CONSTITUTIONAL AND STATUTORY
 OF RESPONDENT, 1979**

Legislative Research Bureaus			Municipal Associations			County Associations			Experts		
Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable
1 (10%)	3 (30%)	6 (60%)	6 (26%)	7 (30%)	10 (43%)	3 (20%)	9 (60%)	3 (20%)	0 (0%)	6 (43%)	8 (57%)
1 (10%)	8 (80%)	1 (10%)	2 (10%)	12 (57%)	7 (33%)	3 (20%)	10 (67%)	2 (13%)	1 (8%)	10 (77%)	2 (15%)
0 (0%)	0 (0%)	12 (100%)	6 (26%)	3 (13%)	14 (61%)	2 (13%)	3 (19%)	11 (69%)	3 (23%)	3 (23%)	7 (54%)
1 (8%)	0 (0%)	11 (92%)	10 (46%)	6 (27%)	6 (27%)	4 (27%)	3 (20%)	8 (53%)	1 (7%)	4 (29%)	9 (64%)
1 (8%)	4 (33%)	7 (58%)	0 (0%)	2 (8%)	23 (92%)	0 (0%)	4 (27%)	11 (74%)	1 (8%)	3 (25%)	8 (67%)
1 (9%)	3 (27%)	7 (64%)	13 (52%)	6 (24%)	6 (24%)	6 (38%)	7 (44%)	3 (19%)	0 (0%)	3 (36%)	9 (64%)
1 (9%)	4 (36%)	6 (55%)	18 (69%)	6 (23%)	2 (8%)	8 (50%)	7 (44%)	1 (6%)	3 (21%)	3 (36%)	6 (43%)
1 (9%)	3 (27%)	7 (64%)	10 (44%)	7 (30%)	6 (26%)	8 (50%)	5 (31%)	3 (19%)	1 (7%)	2 (14%)	11 (79%)
1 (10%)	5 (50%)	4 (40%)	12 (48%)	13 (52%)	0 (0%)	8 (50%)	6 (38%)	2 (13%)	2 (14%)	5 (36%)	7 (50%)
1 (9%)	3 (27%)	7 (64%)	11 (48%)	4 (17%)	8 (35%)	6 (38%)	5 (31%)	5 (31%)	1 (7%)	3 (21%)	10 (71%)
2 (18%)	5 (46%)	4 (36%)	9 (36%)	12 (48%)	4 (16%)	5 (31%)	7 (44%)	4 (25%)	1 (8%)	5 (39%)	7 (54%)
1 (9%)	2 (19%)	8 (73%)	11 (46%)	2 (8%)	11 (46%)	6 (38%)	4 (25%)	6 (38%)	1 (8%)	1 (8%)	11 (83%)
1 (9%)	5 (46%)	5 (46%)	11 (44%)	8 (32%)	6 (24%)	5 (31%)	6 (38%)	5 (31%)	2 (14%)	4 (29%)	8 (57%)
3 (27%)	4 (36%)	4 (36%)	14 (54%)	9 (35%)	3 (12%)	9 (60%)	3 (20%)	3 (20%)	1 (7%)	6 (43%)	7 (50%)

in Imperio approach involves fewer legal problems and county associations in states, where counties are legally quasi-municipal corporations, may view this approach as preferable to the existing legal position of the counties.

The strongest opposition to the devolution of powers approach to granting local discretionary authority—a 44% “undesirable” rating—was expressed by attorneys general, and the strongest support for this approach—a 58% “very desirable” rating—was expressed by municipal association officials.

Opinions on whether the state constitution should prohibit special legislation were divided sharply, with 79% of the experts on state-local relations and 60% of the legislative research bureau staff favoring such a provision by rating it “very desirable,” compared to 36% of the Governors and 33% of the attorneys general opposing such a provision by indicating that it was “undesirable.”

A majority of each occupational category opposed constitutional provisions removing local debt limits and local tax limits, with one exception: only 27% of the municipal association officials found removal of constitutional tax limits undesirable. The strongest opposition to the removal of both types of limits was expressed by the legislative research bureau officials: all rated the removal of local debt limits “undesirable” and 92% rated the removal of local tax limits “undesirable.” Somewhat surprisingly, 69% of the county association officials and 61% of the municipal association representatives were opposed to the removal of local debt limits.

PERCEPTIONS BY DOMINANCE OF FISCAL SYSTEM

Table 8 classified the nature of the state-local fiscal partnership in each state as “state dominant fiscal partner,” “state strong fiscal partner,” or “state junior fiscal partner.”¹⁷

An examination of *Table 11* reveals that the strongest support for the *Imperium in Imperio* approach to the granting of discretionary authority to local governments is in states where the state is a “strong fiscal partner:” 50% of the respondents in these states rated the approach “very desirable” or “desirable.” On the other hand, the strongest support for the devolution of powers approach is in the “junior fiscal partner” states, 88% of whose respondents rated the approach “very desirable” or “desirable.” It is not surprising, therefore, that the strongest support for the constitutional prohibition

of special legislation also is found in these states: 56% of their respondents rated such a prohibition as “very desirable” and an additional 28% rated such a prohibition as “desirable.”

Based upon the above two findings, one would anticipate that the “junior fiscal partner” states would provide the strongest support for the removal of constitutional local debt limits and local tax limits. The survey data, however, support a contrary finding; *i.e.*, the strongest opposition to the removal of the limits is found in these states. Eighty-three percent of those surveyed in these states rated the removal of local debt limits as “undesirable” and 72% accorded the same rating to the removal of local tax limits.

PERCEPTIONS BY STATE-LOCAL LEGAL RELATIONSHIPS

One column in *Table 8* divided the states into three groups according to the nature of the state-local legal relationship: “constitutional grant” states, “statutory grant” states, or “Dillon Rule” states. *Table 12* reveals that the strongest support for the *Imperium in Imperio* (enumerated local powers) approach to granting discretionary authority to local governments is found in “Dillon’s Rule” states: 25% of the respondents rate this approach “very desirable” and an additional 33% found it “desirable.”

A striking finding is the differential between the “undesirable” rating given to the devolution of powers approach by respondents in the “constitutional grant” states and the ratings given to the same approach by respondents in the “Dillon’s Rule” and “statutory grant” states. While only 16% of the respondents in the “constitutional grant” states viewed it negatively, the ratio was 42% in the “Dillon’s Rule” and 50% in the “statutory grant” states.

Strong support for a statutory grant of discretionary powers to local governments was given by those surveyed in each of the three types of states. The strongest came in states with a statutory grant of local discretionary powers, where none of those surveyed rated such a grant as “undesirable.” Even in “Dillon’s Rule” states, only 15% of those surveyed deemed it “undesirable.”

The greatest opposition to a constitutional prohibition of special legislation was found in “Dillon’s Rule” states (46%) and in states with a “statutory grant of power” (43%). In states with a “constitutional grant of power,” only 17% of the respondents considered such a prohibition to be “undesirable.”

A majority of those surveyed in each of the three

Table 11
PERCEPTIONS OF THE DESIRABILITY OF CONSTITUTIONAL AND STATUTORY PROVISIONS, BY STATE'S RELATIVE DOMINANCE OF STATE-LOCAL FISCAL SYSTEM, 1979

	State Dominant Fiscal Partner			State Strong Fiscal Partner			State Junior Fiscal Partner		
	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable
1. Constitutional provisions for enumerated or "local affairs" powers (<i>Imperium in Imperio</i>).	3 (11%)	7 (25%)	18 (64%)	15 (24%)	16 (26%)	31 (50%)	2 (12%)	4 (24%)	11 (65%)
2. Constitutional provision for devolution of powers to local government.	9 (31%)	11 (38%)	9 (31%)	24 (39%)	23 (38%)	14 (23%)	8 (44%)	8 (44%)	2 (11%)
3. Constitutional provision authorizing local governments to exercise all powers not included in a "code of restriction" enacted by the legislature.	8 (27%)	11 (37%)	11 (37%)	17 (29%)	15 (25%)	27 (46%)	8 (44%)	5 (28%)	5 (28%)
4. Constitutional grant of discretionary authority to local governments that have modernized their structures.	2 (7%)	15 (54%)	11 (39%)	16 (27%)	19 (32%)	24 (41%)	5 (28%)	5 (28%)	8 (44%)
5. Constitutional grant of discretionary authority to all general-purpose local governments.	5 (17%)	15 (52%)	9 (31%)	18 (31%)	24 (41%)	17 (29%)	6 (33%)	7 (39%)	5 (28%)
6. Constitutional provision requiring courts to construe local powers liberally.	8 (28%)	9 (31%)	12 (41%)	27 (48%)	13 (23%)	16 (29%)	9 (50%)	6 (33%)	3 (17%)
7. Statutory grant of discretionary powers to local governments.	16 (53%)	12 (40%)	2 (7%)	8 (44%)	27 (46%)	7 (12%)	8 (44%)	8 (44%)	2 (11%)
8. Constitutional prohibition of special legislation.	14 (50%)	6 (21%)	8 (29%)	24 (39%)	23 (37%)	15 (24%)	10 (56%)	5 (28%)	3 (17%)
9. Constitutional restriction on the power of the state legislature to preempt a local function or functional component.	3 (10%)	8 (28%)	18 (62%)	16 (26%)	20 (32%)	26 (42%)	3 (17%)	6 (33%)	9 (50%)

Table 11 (cont.)
PERCEPTIONS OF THE DESIRABILITY OF CONSTITUTIONAL AND STATUTORY PROVISIONS, BY STATE'S RELATIVE DOMINANCE OF STATE-LOCAL FISCAL SYSTEM, 1979

	State Dominant Fiscal Partner			State Strong Fiscal Partner			State Junior Fiscal Partner		
	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable
10. Constitutional provision requiring full state reimbursement for costs associated with state mandates.	10 (35%)	9 (31%)	10 (35%)	28 (45%)	14 (23%)	20 (32%)	9 (50%)	2 (11%)	7 (29%)
11. Constitutional provision requiring partial state reimbursement for costs associated with state mandates.	8 (29%)	9 (32%)	11 (39%)	17 (29%)	24 (41%)	18 (31%)	2 (11%)	11 (61%)	5 (28%)
12. Statutory provision requiring full state reimbursement for costs associated with state mandates.	10 (33%)	12 (40%)	8 (27%)	22 (28%)	22 (36%)	17 (28%)	9 (50%)	5 (28%)	4 (22%)
13. Statutory provision requiring partial state reimbursement for costs associated with state mandates.	11 (39%)	11 (39%)	6 (21%)	14 (24%)	33 (57%)	11 (19%)	4 (22%)	11 (61%)	3 (17%)
14. Constitutional provision authorizing local governments to supersede state law with the exception of specified areas.	4 (13%)	7 (23%)	19 (63%)	7 (12%)	20 (33%)	34 (56%)	3 (17%)	6 (33%)	9 (50%)
15. Constitutional provision authorizing local governments to rescind their acceptance of "permissive" or "optional" state laws.	0 (0%)	6 (21%)	22 (79%)	11 (19%)	22 (38%)	25 (43%)	4 (24%)	5 (29%)	8 (47%)
16. Statutory provision authorizing local governments to rescind their acceptance of "permissive" or "optional" state laws.	1 (4%)	15 (56%)	11 (41%)	7 (13%)	39 (71%)	9 (16%)	5 (30%)	9 (53%)	3 (18%)
17. Constitutional amendment removing local debt limits.	6 (21%)	5 (17%)	18 (62%)	9 (16%)	9 (16%)	40 (69%)	2 (11%)	1 (6%)	15 (83%)

18. Constitutional amendment removing local tax limits.	3 (11%)	9 (33%)	15 (56%)	15 (27%)	11 (20%)	30 (54%)	2 (11%)	3 (17%)	13 (72%)
19. Constitutional provision limiting the property tax.	1 (4%)	7 (25%)	20 (71%)	5 (9%)	7 (12%)	47 (80%)	1 (6%)	5 (28%)	12 (67%)
20. Constitutional authorization for local governments to levy a local sales tax.	7 (24%)	9 (31%)	13 (45%)	16 (26%)	19 (31%)	26 (43%)	3 (17%)	7 (30%)	8 (44%)
21. Statutory authorization for local governments to levy a local sales tax.	12 (43%)	9 (32%)	7 (25%)	21 (34%)	25 (40%)	16 (26%)	5 (28%)	7 (39%)	6 (33%)
22. Constitutional provision authorizing local governments to levy a local gross receipts tax.	6 (22%)	9 (33%)	12 (44%)	13 (22%)	16 (28%)	29 (50%)	3 (17%)	6 (33%)	9 (50%)
23. Statutory authorization for local governments to levy a local gross receipts tax.	11 (41%)	9 (33%)	7 (26%)	15 (26%)	31 (53%)	12 (21%)	4 (22%)	8 (44%)	6 (33%)
24. Constitutional authorization for local governments to levy a local income tax.	4 (15%)	8 (30%)	15 (56%)	16 (27%)	14 (23%)	30 (50%)	3 (17%)	4 (22%)	11 (61%)
25. Statutory authorization for local governments to levy a local income tax.	5 (19%)	9 (35%)	12 (46%)	11 (18%)	31 (52%)	18 (30%)	4 (22%)	7 (39%)	7 (39%)
26. Constitutional authorization for local governments to levy a payroll tax.	4 (16%)	5 (20%)	16 (64%)	14 (24%)	9 (15%)	36 (61%)	3 (17%)	3 (17%)	12 (68%)
27. Statutory authorization for local governments to levy a payroll tax.	8 (28%)	10 (35%)	11 (38%)	13 (22%)	20 (33%)	27 (45%)	4 (22%)	7 (39%)	7 (39%)
28. Constitutional provision restricting the authority of the state legislature to grant local property tax exemptions.	7 (26%)	13 (48%)	7 (26%)	24 (40%)	19 (32%)	17 (28%)	3 (17%)	7 (39%)	8 (44%)

Note: Percentages may not add to 100% because of rounding.
SOURCE: ACIR survey.

Table 12
PERCEPTIONS OF THE DESIRABILITY OF CONSTITUTIONAL AND STATUTORY PROVISIONS, BY STATE-LOCAL LEGAL RELATIONSHIPS, 1979

	Constitutional Grant States			Statutory Grant States			Dillon's Rule States		
	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable
1. Constitutional provisions for enumerated or "local affairs" powers (<i>Imperium in Imperio</i>).	14 (17%)	19 (23%)	48 (59%)	3 (21%)	4 (29%)	7 (50%)	3 (25%)	4 (33%)	5 (42%)
2. Constitutional provision for devolution of powers to local government.	34 (41%)	35 (43%)	13 (16%)	2 (14%)	5 (36%)	7 (50%)	5 (42%)	2 (17%)	5 (42%)
3. Constitutional provision authorizing local governments to exercise all powers not included in a "code of restriction" enacted by the legislature.	23 (29%)	27 (34%)	30 (38%)	5 (36%)	3 (21%)	6 (43%)	5 (38%)	1 (8%)	7 (54%)
4. Constitutional grant of discretionary authority to local governments that have modified their structures.	19 (24%)	30 (38%)	30 (38%)	2 (15%)	4 (31%)	7 (54%)	2 (15%)	5 (38%)	6 (46%)
5. Constitutional grant of discretionary authority to all general-purpose local governments.	23 (29%)	38 (46%)	19 (24%)	3 (21%)	3 (21%)	8 (57%)	3 (23%)	5 (38%)	4 (31%)
6. Constitutional provision requiring courts to construe local powers liberally.	34 (45%)	19 (25%)	23 (30%)	7 (50%)	4 (29%)	3 (21%)	3 (23%)	5 (38%)	5 (38%)
7. Statutory grant of discretionary powers to local governments.	34 (43%)	37 (46%)	9 (11%)	8 (57%)	6 (43%)	0 (0%)	7 (54%)	4 (31%)	2 (15%)
8. Constitutional prohibition of special legislation.	39 (48%)	28 (36%)	14 (17%)	5 (36%)	3 (21%)	6 (43%)	4 (31%)	3 (23%)	6 (46%)
9. Constitutional restriction on the power of the state legislature to preempt a local function or functional component.	18 (22%)	26 (31%)	39 (47%)	2 (14%)	6 (43%)	6 (43%)	2 (17%)	2 (17%)	8 (67%)

10. Constitutional provision requiring full state reimbursement for costs associated with state mandates.	36 (44%)	19 (23%)	27 (33%)	6 (43%)	2 (14%)	6 (43%)	5 (38%)	4 (31%)	4 (31%)
11. Constitutional provision requiring partial state reimbursement for costs associated with state mandates.	20 (25%)	33 (42%)	26 (33%)	3 (23%)	7 (54%)	3 (23%)	4 (31%)	4 (31%)	5 (38%)
12. Statutory provision requiring full state reimbursement for costs associated with state mandates.	30 (37%)	31 (38%)	21 (26%)	6 (43%)	3 (21%)	5 (36%)	5 (38%)	5 (38%)	3 (23%)
13. Statutory provision requiring partial state reimbursement for costs associated with state mandates.	20 (25%)	44 (56%)	15 (19%)	3 (25%)	7 (58%)	2 (17%)	6 (46%)	4 (31%)	3 (23%)
14. Constitutional provision authorizing local governments to supersede state law with the exception of specified areas.	10 (8%)	27 (33%)	45 (55%)	3 (21%)	2 (14%)	9 (64%)	1 (8%)	4 (31%)	8 (62%)
15. Constitutional provision authorizing local governments to rescind their acceptance of "permissive" or "optional" state laws.	13 (17%)	29 (38%)	35 (45%)	1 (8%)	0 (0%)	12 (92%)	1 (8%)	4 (31%)	8 (62%)
16. Statutory provision authorizing local governments to rescind their acceptance of "permissive" or "optional" state laws.	11 (15%)	46 (62%)	17 (23%)	1 (8%)	7 (58%)	4 (33%)	1 (8%)	10 (77%)	2 (15%)
17. Constitutional amendment removing local debt limits.	14 (18%)	13 (17%)	51 (65%)	0 (0%)	2 (14%)	12 (86%)	3 (23%)	0 (0%)	10 (77%)
18. Constitutional amendment removing local tax limits.	16 (21%)	19 (25%)	42 (56%)	1 (8%)	3 (23%)	9 (69%)	3 (27%)	1 (9%)	7 (64%)
19. Constitutional provision limiting the property tax.	7 (9%)	12 (15%)	61 (76%)	0 (0%)	2 (14%)	12 (86%)	0 (0%)	5 (45%)	6 (55%)
20. Constitutional authorization for local governments to levy a local sales tax.	21 (26%)	26 (33%)	33 (41%)	0 (0%)	5 (36%)	9 (64%)	5 (36%)	4 (29%)	5 (36%)
21. Statutory authorization for local governments to levy a local sales tax.	27 (33%)	33 (40%)	23 (28%)	5 (42%)	4 (33%)	3 (25%)	6 (46%)	4 (31%)	3 (23%)

Table 12 (cont.)
PERCEPTIONS OF THE DESIRABILITY OF CONSTITUTIONAL AND STATUTORY PROVISIONS, BY STATE-LOCAL LEGAL RELATIONSHIPS, 1979

	<u>Constitutional Grant States</u>			<u>Statutory Grant States</u>			<u>Dillon's Rule States</u>		
	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable
22. Constitutional provision authorizing local governments to levy a local gross receipts tax.	16 (21%)	25 (32%)	37 (47%)	1 (8%)	3 (23%)	9 (69%)	5 (42%)	3 (25%)	4 (33%)
23. Statutory authorization for local governments to levy a local gross receipts tax.	21 (27%)	37 (47%)	20 (26%)	4 (33%)	5 (42%)	3 (25%)	5 (38%)	6 (46%)	2 (15%)
24. Constitutional authorization for local governments to levy a local income tax.	18 (23%)	22 (28%)	39 (49%)	2 (15%)	3 (23%)	8 (62%)	3 (23%)	1 (8%)	9 (69%)
25. Statutory authorization for local governments to levy a local income tax.	14 (18%)	38 (49%)	26 (33%)	4 (31%)	5 (39%)	4 (31%)	2 (15%)	4 (31%)	7 (54%)
26. Constitutional authorization for local governments to levy a payroll tax.	16 (21%)	15 (19%)	46 (60%)	2 (17%)	1 (8%)	9 (75%)	3 (23%)	1 (8%)	9 (69%)
27. Statutory authorization for local governments to levy a payroll tax.	19 (23%)	28 (35%)	34 (42%)	4 (29%)	4 (29%)	6 (43%)	2 (17%)	5 (42%)	5 (42%)
28. Constitutional provision restricting the authority of the state legislature to grant local property tax exemptions.	25 (30%)	30 (37%)	27 (33%)	4 (36%)	5 (46%)	2 (18%)	5 (42%)	4 (33%)	3 (25%)

Note: Percentages may not add to 100% because of rounding.
 SOURCE: ACIR survey.

types of states expressed opposition to the removal of local debt limits and local tax limits. In "statutory grant" states, no one considered the removal of local debt limits to be "very desirable," but 86% considered such a move as "undesirable." The greatest support for the removal of local tax limits was found in "constitutional grant" states, where 46% of the respondents rated their removal as "very desirable" or "desirable."

PERCEPTIONS BY RESTRICTIONS ON LEGISLATIVE SESSION

Table 8 also classified each state in terms of whether there are constitutional limits on the length of the legislative session. *Table 13* categorizes the responses to the desirability of certain constitutional and statutory provisions according to whether there is a restriction on the length of the legislative session. The *Imperium in Imperio* approach was less popular in states that have no restrictions on the length of their legislative session—70% of whose respondents considered the approach to be "undesirable," compared to 48% of those in states with legislative sessions of restricted length.

A significant difference also exists in the "undesirable" rating given to the devolution of powers approach. Only 8% of the respondents in states with unrestricted sessions gave it an "undesirable" rating, compared to 27% in the opposite group.

A third major difference in the ratings involves the desirability of a constitutional grant of discretionary authority restricted to local governments that have modernized their structure. Two-thirds of those surveyed in states with restricted legislative sessions rated this option as "very desirable" or "desirable," compared to 47% in the other states.

Stronger opposition (31%) to a constitutional prohibition of special legislation was found in states with legislative sessions restricted in length; 88% of the respondents in the other states, however, favored such a ban.

While there was a difference in perception regarding the desirability of removing local debt limits and local tax limits in the two categories of states, the difference was not major. For example, 79% of those surveyed in states with legislative sessions of unrestricted length viewed the removal of local debt limits as "undesirable" compared to 64% of those with a restriction.

THE INDEX OF LOCAL DISCRETIONARY AUTHORITY

Using the data obtained in the questionnaire and from the legal research, preliminary ratings for each type of local government in each of the 50 states were derived. These were then mailed to all recipients of the original survey questionnaire, regardless of whether they had returned the questionnaire, with a request that the ratings for the recipients' state be checked against their knowledge and judgment. The responses led to revisions in a number of the preliminary ratings.

The revised indices for cities, counties, towns, villages, townships, and boroughs appear on a state-by-state basis in *Tables 14 to 19*. The ratings indicate "potential authority" or "authority possessed," and not necessarily "authority exercised." In cases where a state has two types of cities, the rating refers to the type with the broadest discretionary authority. A Texas correspondent, for example, wrote that "there are two categories of general law cities: towns and villages, and cities and towns. Although it is sometimes difficult to distinguish between the two, especially since the use of 'towns' is common to both, it is necessary to know the difference in order to determine which state laws apply." In Arizona, charter cities have broader discretionary powers than general law cities.

An examination of *Table 14* reveals that cities nationwide have about an equal amount of discretionary authority in regard to structure of government, functions, and personnel—with U.S. unweighted averages of 2.05, 2.02, and 2.10, respectively. The greatest variations were found in the structural area, with cities in Arkansas, Georgia, Indiana, and Vermont having no discretionary authority relative to their structure (an index of 5.00), in contrast to cities in 20 states with complete authority in this area (1.00) unless they are subject to the federal *Voting Rights Act of 1965*, as amended.¹⁸ It should be noted that in 1980 the Indiana legislature enacted a package of 14 local bills granting additional authority to cities, counties, and towns, wherein one chapter stipulates that "any doubt as to the existence of a power of a unit shall be resolved in favor of its existence."¹⁹

Cities in 38 states possess the least discretionary authority in the area of finance. The major exceptions (i.e., where financial discretion is relatively broad) are cities in Arizona, Illinois, Maine, and Texas.

A comparison of *Table 14* with *Table 15* leads to a

Table 13
**PERCEPTIONS OF THE DESIRABILITY OF
 CONSTITUTIONAL AND STATUTORY PROVISIONS,
 BY RESTRICTIONS ON LENGTH OF LEGISLATIVE SESSIONS, 1979**

	Legislative Sessions Restricted in Length			Legislative Sessions Unrestricted in Length		
	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable
1. Constitutional provisions for enumerated or "local affairs" powers (<i>Imperium in Imperio</i>).	16 (24%)	19 (28%)	32 (48%)	4 (10%)	8 (20%)	28 (70%)
2. Constitutional provision for devolution of powers to local government.	24 (35%)	26 (38%)	18 (27%)	17 (43%)	16 (40%)	7 (8%)
3. Constitutional provision authorizing local governments to exercise all powers not included in a "code of restriction" enacted by the legislature.	23 (24%)	19 (28%)	26 (28%)	10 (26%)	12 (31%)	17 (44%)
4. Constitutional grant of discretionary authority to local governments that have modernized their structures.	16 (24%)	28 (42%)	23 (34%)	7 (18%)	11 (29%)	20 (53%)
5. Constitutional grant of discretionary authority to all general-purpose local governments.	16 (24%)	30 (45%)	21 (31%)	13 (33%)	16 (41%)	10 (26%)
6. Constitutional provision requiring courts to construe local powers liberally.	24 (39%)	17 (26%)	23 (35%)	19 (50%)	11 (29%)	8 (21%)
7. Statutory grant of discretionary powers to local governments.	34 (49%)	26 (38%)	9 (13%)	15 (40%)	21 (55%)	2 (5%)
8. Constitutional prohibition of special legislation.	31 (46%)	16 (24%)	21 (31%)	17 (43%)	18 (45%)	5 (13%)
9. Constitutional restriction on the power of the state legislature to preempt a local function or functional component.	16 (24%)	21 (31%)	31 (46%)	6 (15%)	13 (32%)	22 (54%)
10. Constitutional provision requiring full state reimbursement for costs associated with state mandates.	35 (52%)	15 (22%)	18 (27%)	12 (29%)	10 (24%)	19 (46%)
11. Constitutional provision requiring partial state reimbursement for costs associated with state mandates.	17 (27%)	29 (45%)	18 (28%)	10 (24%)	15 (37%)	16 (39%)
12. Statutory provision requiring full state reimbursement for costs associated with state mandates.	33 (49%)	19 (28%)	16 (24%)	8 (20%)	20 (49%)	13 (32%)
13. Statutory provision requiring partial state reimbursement for costs associated with state mandates.	20 (32%)	29 (46%)	14 (22%)	9 (22%)	26 (63%)	6 (15%)
14. Constitutional provision authorizing local governments to supersede state law with the exception of specified areas.	9 (13%)	22 (31%)	39 (56%)	5 (13%)	11 (28%)	23 (59%)
15. Constitutional provision authorizing local governments to rescind their acceptance of "permissive" or "optional" state laws.	10 (15%)	19 (29%)	37 (56%)	5 (14%)	14 (38%)	18 (49%)

Table 13 (continued)

**PERCEPTIONS OF THE DESIRABILITY OF
CONSTITUTIONAL AND STATUTORY PROVISIONS,
BY RESTRICTIONS ON LENGTH OF LEGISLATIVE SESSIONS, 1979**

	Legislative Sessions Restricted in Length			Legislative Sessions Unrestricted in Length		
	Very Desirable	Desirable	Undesirable	Very Desirable	Desirable	Undesirable
16. Statutory provision authorizing local governments to rescind their acceptance of "permissive" or "optional" state laws.	8 (13%)	36 (58%)	18 (29%)	5 (14%)	27 (73%)	5 (14%)
17. Constitutional amendment removing local debt limits.	12 (18%)	12 (18%)	43 (64%)	5 (13%)	3 (8%)	30 (79%)
18. Constitutional amendment removing local tax limits.	15 (24%)	15 (24%)	33 (52%)	5 (13%)	8 (21%)	25 (66%)
19. Constitutional provision limiting the property tax.	3 (5%)	12 (19%)	50 (77%)	4 (10%)	7 (18%)	29 (73%)
20. Constitutional authorization for local governments to levy a local sales tax.	21 (31%)	20 (30%)	26 (39%)	5 (12%)	15 (37%)	21 (51%)
21. Statutory authorization for local governments to levy a local sales tax.	29 (43%)	20 (30%)	18 (27%)	9 (22%)	21 (51%)	11 (27%)
22. Constitutional provision authorizing local governments to levy a local gross receipts tax.	17 (27%)	19 (30%)	27 (43%)	5 (13%)	12 (30%)	23 (58%)
23. Statutory authorization for local governments to levy a local gross receipts tax.	22 (34%)	27 (42%)	15 (23%)	8 (21%)	21 (54%)	10 (26%)
24. Constitutional authorization for local governments to levy a local income tax.	15 (23%)	15 (23%)	35 (54%)	8 (20%)	11 (28%)	21 (53%)
25. Statutory authorization for local governments to levy a local income tax.	11 (17%)	24 (38%)	29 (45%)	9 (23%)	23 (58%)	8 (20%)
26. Constitutional authorization for local governments to levy a payroll tax.	15 (24%)	8 (13%)	39 (63%)	6 (15%)	9 (23%)	25 (63%)
27. Statutory authorization for local governments to levy a payroll tax.	17 (25%)	19 (27%)	32 (48%)	8 (20%)	19 (48%)	13 (33%)
28. Constitutional provision restricting the authority of the state legislature to grant local property tax exemptions.	24 (37%)	23 (35%)	18 (28%)	10 (25%)	16 (40%)	14 (35%)

Note: Percentages may not add to 100% because of rounding.

SOURCE: ACIR survey.

Table 14
INDEX OF CITY DISCRETIONARY AUTHORITY, BY STATES, 1980

States	Structure	Functional Areas	Finance	Personnel
U.S. (unweighted average)	2.05	2.02	3.16	2.10
Alabama	4.50	2.50	2.00	1.75
Alaska	1.00	2.00	2.00	2.00
Arizona	2.50	2.00	1.75	1.75
Arkansas	5.00	3.00	3.00	1.50
California	2.00	2.00	2.00	2.00
Colorado	2.50	3.00	3.50	2.00
Connecticut	1.00	1.00	2.00	2.00
Delaware	1.50	2.00	3.00	2.50
Florida	1.00	1.30	4.50	2.50
Georgia	5.00	1.00	3.00	1.00
Hawaii*	*	*	*	*
Idaho	3.00	2.00	5.00	4.00
Illinois	1.10	2.00	1.50	2.60
Indiana	5.00	2.50	4.00	2.00
Iowa	1.80	1.90	4.50	3.30
Kansas	1.00	1.00	3.00	1.50
Kentucky	1.50	3.50	2.60	3.50
Louisiana	1.00	1.50	3.00	1.00
Maine	1.00	1.00	1.50	1.50
Maryland	1.00	1.50	2.25	1.25
Massachusetts	1.00	2.00	5.00	3.00
Michigan	1.00	1.00	2.00	1.00
Minnesota	1.00	1.00	4.00	1.00
Mississippi	2.00	2.00	4.00	2.00
Missouri	1.00	1.00	3.00	1.00

Scale: 1 to 5, with 1 indicating the greatest degree of freedom from state control and 5 indicating the smallest degree of freedom.

*There are only four local governments in Hawaii, i.e., County of Hawaii, County of Kauai, County of Maui, and City and County of Honolulu.

most important, yet not unexpected, finding—i.e., that counties have been granted significantly fewer powers than cities by the state constitution and statutes relative to their structure of government, service areas, finances, and personnel. The greatest differences are in the areas of governmental structure and functions where counties, with certain exceptions,

have been granted little discretionary authority and cities desiring to change the structure of their governments or expand their functions in most states are subject to few state-imposed restraints.

A further comparison of these two tables also reveals that the rated discretionary authority of cities and counties is identical in Alaska and Oregon.

Table 14 (cont.)
INDEX OF CITY DISCRETIONARY AUTHORITY, BY STATES, 1980

States	Structure	Functional Areas	Finance	Personnel
Montana	1.00	2.00	5.00	2.00
Nebraska	1.50	2.00	3.50	1.00
Nevada	2.50	3.50	4.00	3.00
New Hampshire	2.00	1.50	4.00	1.00
New Jersey	3.00	2.00	4.00	2.00
New Mexico	3.00	5.00	3.00	5.00
New York	1.50	3.00	4.00	4.00
North Carolina	1.00	1.00	2.50	1.00
North Dakota	1.80	1.50	3.50	2.00
Ohio	1.00	1.50	2.50	1.50
Oklahoma	1.00	1.50	2.50	1.50
Oregon	1.00	1.50	2.00	1.50
Pennsylvania	2.00	2.00	2.50	2.00
Rhode Island	1.00	2.00	5.00	3.00
South Carolina	4.00	2.00	2.00	2.00
South Dakota	3.00	4.00	3.00	3.00
Tennessee	3.00	3.00	3.00	2.00
Texas	1.00	1.20	1.50	1.00
Utah	2.50	2.00	3.50	2.00
Vermont	5.00	2.00	5.00	3.00
Virginia	3.00	1.50	2.00	1.25
Washington	1.30	2.50	3.50	3.00
West Virginia	4.00	2.00	5.00	3.00
Wisconsin	1.00	2.00	3.00	2.00
Wyoming	1.00	3.00	3.00	2.50

SOURCE: ACIR survey and staff calculation.

Counties in North Carolina also possess discretionary authority nearly as broad as that possessed by cities.

Tables 14 and 16 make clear that towns in several states have discretionary powers either identical or nearly identical to the powers possessed by cities. A major difference, however, exists in Oklahoma, Tex-

as, and Wisconsin, where cities have relatively broad powers and towns have relatively narrow powers.

With the exceptions of Maine, Missouri, Nebraska, New Hampshire, and Texas, villages have discretionary powers similar to those of cities (see *Tables 14 and 17*). Townships generally possess relatively little discretionary authority, and in nine Midwest

Table 15
INDEX OF COUNTY DISCRETIONARY AUTHORITY, BY STATES, 1980

States	Structure	Functional Areas	Finance	Personnel
U.S. (unweighted average)	3.30	3.24	3.69	2.87
Alabama	4.50	4.00	4.75	2.25
Alaska	1.00	2.00	2.00	2.00
Arizona	4.00	4.00	4.00	4.00
Arkansas	1.00	3.00	3.00	1.50
California	3.00	3.00	3.00	3.00
Colorado	4.50	5.00	4.50	3.00
Connecticut*	*	*	*	*
Delaware	3.00	2.00	2.00	2.00
Florida	1.00	1.30	4.50	2.75
Georgia	5.00	5.00	3.00	3.00
Hawaii	1.00	3.20	4.00	3.50
Idaho	5.00	3.00	5.00	4.00
Illinois	2.10	3.30	2.80	3.80
Indiana	4.00	3.50	4.00	2.00
Iowa	4.00	2.50	4.50	3.60
Kansas	2.50	2.50	3.00	3.00
Kentucky	3.50	3.50	2.60	2.50
Louisiana	2.00	2.00	3.50	2.00
Maine	1.75	4.00	3.50	2.00
Maryland	2.60	2.33	3.20	2.20
Massachusetts	5.00	5.00	5.00	5.00
Michigan	4.50	3.50	3.50	3.50
Minnesota	3.00	3.00	3.00	2.00
Mississippi	5.00	4.00	4.00	3.00
Missouri	5.00	5.00	5.00	4.00

Scale: 1 to 5, with 1 indicating the greatest degree of freedom from state control and 5 indicating the smallest degree of freedom.

* There are no organized county governments in Connecticut and Rhode Island.

states—Illinois, Indiana, Iowa,²⁰ Kansas, Minnesota, Missouri, Nebraska, South Dakota, and Ohio—they are controlled tightly by the state government and are allowed few discretionary powers.

A Composite Index

The series of six tables provides a general picture

by state of the degree to which each of the four types of discretionary authority are possessed by each of the six types of local unit. Looking at the tables separately, it is difficult to obtain a judgment on how the states rate one to another with respect to the overall picture of state government relative to local government as a whole. In order to make such a

Table 15 (cont.)
INDEX OF COUNTY DISCRETIONARY AUTHORITY, BY STATES, 1980

States	Structure	Functional Areas	Finance	Personnel
Montana	1.00	2.00	4.00	3.50
Nebraska	3.00	4.00	5.00	3.00
Nevada	2.00	4.00	4.00	4.00
New Hampshire	5.00	4.00	5.00	1.00
New Jersey	3.00	3.50	4.50	3.00
New Mexico	3.00	3.00	3.00	5.00
New York	1.50	3.00	4.00	4.00
North Carolina	1.00	1.25	2.50	2.50
North Dakota	3.00	3.00	4.00	2.00
Ohio	4.00	4.00	4.00	4.50
Oklahoma	4.00	3.50	3.50	3.50
Oregon	1.00	1.50	2.00	1.50
Pennsylvania	2.00	2.00	2.00	2.00
Rhode Island*	*	*	*	*
South Carolina	4.00	3.00	2.00	2.00
South Dakota	5.00	3.00	5.00	3.00
Tennessee	5.00	3.00	5.00	2.00
Texas	5.00	4.80	4.50	2.00
Utah	3.50	3.00	3.00	1.50
Vermont	5.00	5.00	5.00	3.00
Virginia	4.00	2.50	3.00	2.25
Washington	3.00	2.80	4.00	4.50
West Virginia	5.00	3.00	5.00	3.00
Wisconsin	2.50	3.00	3.00	2.50
Wyoming	5.00	4.00	3.00	3.00

SOURCE: ACIR survey and staff calculation.

judgment, ACIR staff undertook to develop a composite index for each state, reflecting the standing of the six different types of local units relative to the four areas of discretionary authority.

A simple index was developed for each type of local unit—city, county, town, village, township, and borough—by assigning the following weights to each

of the four types of discretionary authority: financial—4; functional—3; personnel—2; and structural—1. The index for each type of local unit became the weighted average of the four separate indices.

The composite index for each state was calculated by weighting the index for each of the six types of

Table 16
INDEX OF TOWN DISCRETIONARY AUTHORITY, BY STATES, 1980

States	Structure	Functional Areas	Finance	Personnel
U.S. (unweighted average)	2.65	2.43	3.41	2.40
Alabama	4.50	3.00	2.00	1.75
Arizona	4.25	2.00	1.75	1.75
Arkansas	5.00	4.00	3.00	2.00
Colorado	2.50	3.00	3.50	2.00
Connecticut	1.00	1.00	3.50	2.00
Delaware	1.00	2.00	3.00	4.00
Illinois	1.00	2.00	1.50	2.50
Indiana	4.50	2.50	4.00	2.00
Louisiana	1.00	1.50	3.00	2.00
Maine	1.50	1.50	2.00	2.00
Massachusetts	1.00	2.00	5.00	3.00
Mississippi	2.00	2.00	4.00	2.00
Montana	1.00	2.00	5.00	2.00
Nevada	3.00	4.00	4.00	4.00
New Hampshire	2.00	1.75	4.00	1.00
New Jersey	3.00	2.00	4.00	2.00
New York	1.50	3.00	3.75	4.00
North Carolina	1.00	1.00	2.50	1.00
Oklahoma	4.00	2.50	3.50	2.50
Rhode Island	1.00	2.00	5.00	3.00
South Carolina	4.00	2.00	2.00	2.00
South Dakota	5.00	3.00	5.00	3.00
Tennessee	3.00	3.00	3.00	2.00
Texas	3.50	2.50	4.00	2.50
Utah	2.50	2.00	3.50	2.00
Vermont	5.00	3.00	3.00	3.00
Virginia	3.50	2.50	3.00	2.25
West Virginia	5.00	3.00	5.00	3.00
Wisconsin	3.00	5.00	4.00	5.00
Wyoming	1.00	3.00	3.00	2.00

Scale: 1 to 5, with 1 indicating the greatest degree of freedom from state control and 5 indicating the smallest degree of freedom.

SOURCE: ACIR survey and staff calculation.

Table 17
INDEX OF VILLAGE DISCRETIONARY AUTHORITY, BY STATES, 1980

States	Structure	Functional Areas	Finance	Personnel
U.S. (unweighted average)	2.84	2.55	3.46	2.50
Illinois	1.80	2.30	2.30	2.50
Louisiana	1.00	1.50	3.00	2.00
Maine	4.50	4.50	2.00	4.50
Michigan	2.00	1.50	2.00	1.50
Minnesota*	1.00	2.00	3.00	2.00
Mississippi	2.00	2.00	4.00	2.00
Missouri	5.00	4.00	3.00	3.00
Nebraska	5.00	5.00	5.00	5.00
New Hampshire	5.00	3.50	4.50	1.00
New Jersey	3.00	2.00	4.00	2.00
New York	1.50	3.00	4.00	4.00
North Carolina	1.00	1.00	2.50	1.00
Ohio	1.00	1.50	2.50	1.50
Texas	3.50	2.50	4.00	2.50
Vermont	5.00	2.00	5.00	3.00
West Virginia	5.00	3.00	5.00	3.00
Wisconsin	1.00	2.00	3.00	2.00

Scale: 1 to 5, with 1 indicating the greatest degree of freedom from state control and 5 indicating the smallest degree of freedom.

*Officially entitled statutory cities.

SOURCE: ACIR survey and staff calculation.

local unit according to the portion of the state's nonschool local direct expenditures represented by that type of unit. *Table 20* ranks the states according to this composite index, with the ten states granting the highest degree of local discretion listed at the top. Since the cities and counties carry by far the greatest weight in the composite, by virtue of their high proportions of nonschool local direct expenditures, the states are ranked separately on these two indices in the second and third columns. These rankings help explain whether the cities or counties or both are responsible for the general condition of local discretionary authority in each state. In Maine, for example, the degree of discretion possessed by the cities explains why Maine ranks relatively high on local discretionary authority; in North Carolina, the coun-

ties carry the greater weight; and in Maryland, the amount of local discretionary authority of both cities and counties accounts for the state's high overall rating in the composite index.

Finally, a fourth column shows for each state in column A., the state's rating (1, 2, or 3), according to the degree of state dominance in the state-local fiscal partnership, as originally displayed in *Table 8*. Among the ten states ranking highest on local discretionary authority, four are state dominant, six are state strong, and none is a state junior partner. Among the ten lowest, three are junior partners, four are state strong, and three are state dominant. There seems to be a weak tendency for the fiscally dominant states to grant the greatest amount of local discretion, according to this computation.

Table 18
INDEX OF TOWNSHIP DISCRETIONARY AUTHORITY, BY STATES, 1980

States	Structure	Functional Areas	Finance	Personnel
U.S. (unweighted average)	4.35	3.92	4.29	3.65
Illinois	4.30	4.00	4.00	4.00
Indiana	4.50	3.50	4.00	2.00
Iowa	5.00	3.50	4.30	4.50
Kansas	5.00	5.00	5.00	5.00
Michigan	3.50	3.00	4.00	3.00
Minnesota	4.50	4.50	5.00	4.00
Missouri	5.00	5.00	5.00	5.00
Nebraska	5.00	5.00	5.00	5.00
New Jersey	3.00	2.00	4.00	2.00
North Dakota	3.70	3.00	3.50	2.00
Ohio	5.00	4.50	4.50	3.50
Pennsylvania	3.00	3.00	2.50	2.50
South Dakota	5.00	5.00	5.00	5.00

Scale: 1 to 5, with 1 indicating the greatest degree of freedom from state control and 5 indicating the smallest degree of freedom.

SOURCE: ACIR survey and staff calculation.

Table 19
INDEX OF BOROUGH DISCRETIONARY AUTHORITY, BY STATES, 1980

States	Structure	Functional Areas	Finance	Personnel
U.S. (unweighted average)	2.50	2.50	2.83	2.17
Alaska	*	*	*	*
Connecticut	2.00	2.00	2.00	2.00
New Jersey	3.00	2.00	4.00	2.00
Pennsylvania	2.50	3.50	2.50	2.50

Scale: 1 to 5, with 1 indicating the greatest degree of freedom from state control and 5 indicating the smallest degree of freedom.

*Alaska boroughs are the equivalent of counties in other states.

SOURCE: ACIR survey and staff calculation.

Table 20
STATES RANKED BY DEGREE OF LOCAL DISCRETIONARY AUTHORITY, 1980

A. Composite (all types of local units)	B. Cities Only	C. Counties Only	Degree of State Dominance of Fiscal Partnership*
1 Oregon	Texas	Oregon	2
2 Maine	Maine	Alaska	2
3 North Carolina	Michigan	North Carolina	1
4 Connecticut	Connecticut	Pennsylvania	2
5 Alaska	North Carolina	Delaware	1
6 Maryland	Oregon	Arkansas	2
7 Pennsylvania	Maryland	South Carolina	2
8 Virginia	Missouri	Louisiana	2
9 Delaware	Virginia	Maryland	1
10 Louisiana	Illinois	Utah	1
11 Texas	Ohio	Kansas	2
12 Illinois	Oklahoma	Minnesota	2
13 Oklahoma	Alaska	Virginia	1
14 Kansas	Arizona	Florida	2
15 South Carolina	Kansas	Wisconsin	1
16 Michigan	Louisiana	Kentucky	2
17 Minnesota	California	California	2
18 California	Georgia	Montana	3
19 Missouri	Minnesota	Illinois	2
20 Utah	Pennsylvania	Maine	2
21 Arkansas	South Carolina	North Dakota	1
22 New Hampshire	Wisconsin	Hawaii	3
23 Wisconsin	Alabama	New Mexico	2
24 North Dakota	Nebraska	Indiana	2
25 Arizona	North Dakota	New York	2
26 Florida	Delaware	Wyoming	2
27 Ohio	New Hampshire	Oklahoma	3
28 Alabama	Utah	Michigan	1
29 Kentucky	Wyoming	Washington	1
30 Georgia	Florida	Iowa	2
31 Montana	Mississippi	New Jersey	3
32 Washington	Tennessee	Georgia	2
33 Wyoming	Washington	Nevada	2
34 Tennessee	Arkansas	Tennessee	2
35 New York	New Jersey	Mississippi	3
36 New Jersey	Kentucky	New Hampshire	3
37 Indiana	Colorado	Alabama	2
38 Rhode Island	Montana	Arizona	2
39 Vermont	Iowa	South Dakota	2
40 Hawaii	Indiana	West Virginia	1
41 Nebraska	Massachusetts	Nebraska	3
42 Colorado	Rhode Island	Ohio	2
43 Massachusetts	South Dakota	Texas	3
44 Iowa	New York	Idaho	2
45 Mississippi	Nevada	Colorado	1
46 Nevada	West Virginia	Vermont	2
47 South Dakota	Idaho	Missouri	3
48 New Mexico	Vermont	Massachusetts	1
49 West Virginia	New Mexico	—	1
50 Idaho	—	—	2

*Key:
 1—State dominant fiscal partner.
 2—State strong fiscal partner.
 3—State junior fiscal partner.
 Applies to states in column A.

SOURCE: ACIR survey and staff calculation.

CONCLUDING OBSERVATIONS

The history of state-local relations in the U.S. since the Civil War has been marked by constant pressure for expanding local discretionary authority. The plea for more "home rule"—for power "to take care of our own affairs"—is virtually a conditioned reflex among local officials and their supporters. About 90% of the representatives of state municipal and county associations surveyed favored the devolution of powers—the approach to state-local relations best calculated to enhance local discretionary authority.

The survey results, and the index of local discretionary authority derived from it, show that in most states general-purpose local governments in fact do fall short of possessing broad structural, functional, and financing powers—particularly the last. In many instances, this was traceable in part to the proliferation of special-district governments—26,140, other than school districts, in 1977. Yet, the survey results also show that localities do not always use their available authority in some key areas, even though over time such utilization has tended to rise. About one-third of the survey respondents said that cities and counties request special state legislation even

when they already have the requested authority under their charters or general legislation. Consistent with this policy, the survey results show that about one-third of the state municipal association representatives and one-fifth of their county counterparts thought it undesirable to have a constitutional prohibition on special legislation.

Some see the ambivalence of many local officials toward local autonomy as a healthy recognition that certain local problems are beyond local solution and require the superior resources of the state. Despite the pleas for more "home rule," others see it as reflecting a cautious conservatism among officials who may be accustomed to operating under special legislation, unsure of their local powers, and hesitant to test their authority. Still others discern a desire to pass the buck of political repercussions to the state. Overall, the gap between the rhetoric and the reality seems to demonstrate again some of the basic characteristics of American federalism in general and state-local relations in particular: (1) the central power position of state government, and (2) the basic pragmatic interest at all levels in utilizing whatever governmental institutions are available to solve public problems.

FOOTNOTES

¹*State-Local Relations*, Chicago, IL, The Council of State Governments, 1946, p. 143.

²*Ibid.*, pp. 50-51.

³Kenneth Vanlandingham, "Constitutional Municipal Home Rule Since the AMA (NLC) Model," *William & Mary Law Review*, Fall 1975, pp. 1-34; and Jefferson B. Fordham, "Local Government in the Larger Scheme of Things," *Vanderbilt Law Review*, June 1955, pp. 667-77. There are other articles of reasonably good quality that are restricted to a single state.

⁴ACIR, *Local Revenue Diversification: Income Sales Taxes and User Charges* (A-47), Washington, DC, U.S. Government Printing Office, October 1974, pp. 16-17.

⁵ACIR, *Federal Grants: Their Effects on State-Local Expenditures, Employment Levels, Wage Rates* (A-61), Washington, DC, U.S. Government Printing Office, February 1977, p. 19.

⁶G. Ross Stephens, "State Centralization and the Erosion of Local Autonomy," *Journal of Politics*, February 1974, pp. 45-46.

⁷*Ibid.*, pp. 52-68.

⁸G. Ross Stephens and Gerald W. Olson, *Passthrough Federal Aid and Interlevel Finance in the American Federal System, 1957-77*, Kansas City, MO, University of Missouri-Kansas City, August 1, 1979, Vol. 1, pp. 59-65. The report was prepared for the National Science Foundation.

⁹See *Appendix A* for a copy of the questionnaire.

¹⁰A questionnaire was posted to each of the two county associations in Illinois and Washington. There is no county association in Vermont, and organized county governments do not exist in Connecticut and Rhode Island. Boroughs in Alaska and parishes in Louisiana were treated as counties.

¹¹A questionnaire was classified as prepared by the Governor if completed at his direction by another state official.

¹²*Strode vs. Sullivan*, 72 Ariz. 360, 236 P2d 48 (1951).

¹³*Constitution of Alaska*, art. X, Sec. 11.

¹⁴*Forwood vs. City of Taylor*, 147 Tex. 161 at 165, 214 S.W. 2d 282 at 286 (1948). See also John P. Keith, *City and County Home Rule in Texas*, Austin, TX, Institute of Public Affairs, University of Texas, 1951, p. 86, et. seq.

¹⁵*Amyot vs. Caron*, 88 N.H. 394, 190A 134 (1937).

¹⁶*Peddycoart vs. City of Birmingham*, 354 So. 2d 808 (Ala. 1978).

¹⁷*State dominant fiscal partner*—state sector accounts for at least 65% of total state-local revenue; *state strong fiscal partner*—state sector provides 50-65% of state-local revenue; *state junior fiscal partner*—state sector contributes less than 50% of state-local revenue.

¹⁸*Voting Rights Act of 1965*, 79 Stat. 437, 42 U.S.C. 1973 (1965 Supp.). *Voting Rights Act Amendments of 1970*, 84 Stat. 314, 42 U.S.C. 1973 (1970 Supp.). *Voting Rights Act Amendments of 1975*, 89 Stat. 400, 42 U.S.C. 1973 (1975 Supp.). For an analysis of the application of the act, see Joseph F. Zimmerman, "The Federal Voting Rights Act and Alternative Election Systems," *William & Mary Law Review*, Summer 1978, pp. 621-60. See also Joseph F. Zimmerman, "A 'Fair' Voting System for Local Governments," *National Civic Review*, October 1979, pp. 481-87 and 507; and Joseph F. Zimmerman, "Local Representation: Designing a Fair System," *National Civic Review*, June 1980, pp. 307-13.

¹⁹*Indiana Code*, tit. 36 (1980 Supp.).

²⁰The Bureau of the Census does not recognize active townships in the State of Iowa.

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QUESTIONNAIRE SURVEY ON DISCRETIONARY AUTHORITY OF UNITS OF LOCAL GOVERNMENT

Prepared by: _____
(Name) (Telephone Number)

_____ (Date)
(Title)

_____ (Address)

DEFINITIONS

1. "Devolution of powers" refers to a constitutional provision delegating all powers capable of delegation to local governments, with certain exceptions, subject to preemption by general law.
2. "Discretionary authority" means that a local government possesses substantial discretion to act or not act.
3. "Enumerated powers" ("Imperium in Imperio") refers to a constitutional provision specifically enumerating the powers that are delegated to local governments.
4. "Preemption" refers to the ability of a higher unit of government unilaterally to assume total or partial responsibility for a function that previously had been assigned to a lower unit of government.
5. A state "mandate" is a legal requirement—constitutional, statutory, or administrative—that local governments provide a specified service, meet minimum state standards, engage in an activity (such as collective bargaining with employee organizations), or establish certain terms and conditions of local public employment.
6. A "special law" (special legislation) applies to a single local government only.
7. "Classified legislation" refers to laws placing local governments in population classes such as (a) population, (b) property valuation, (c) need as measured by unemployment rate or per capita income, (d) geographical location, or (e) a combination of such factors.
8. "Legislative courtesy" means that a local bill will be approved by the state legislature only if the legislative delegation from the concerned local government gives its approval.
9. "Often" refers to more than ten times a year.
10. "Occasionally" refers to three-to-nine times a year.
11. "Seldom" refers to once or twice a year.

NOTE: If more space is needed in answering the following questions, please attach additional sheets.

FUNCTIONAL COMPONENTS LIST

1. Assessing
2. Payroll
3. Tax Collection
4. Treasury Functions
5. Utility Billing
6. Election Administration
7. Legal Services
8. Licensing
9. Microfilm Services
10. Personnel Services
11. Public Relations
12. Record Maintenance and Storage
13. Registration of Voters
14. All Public Health Services
15. Air Pollution Abatement
16. Alcoholic Rehabilitation
17. Ambulance Service
18. Animal Control Services
19. Cemeteries
20. Hospitals
21. Mental Health
22. Mosquito Control
23. Noise Pollution Abatement
24. Nursing Services
25. Water Pollution Abatement
26. Welfare
27. Flood Control
28. General Development Services
29. Housing
30. Industrial Development
31. Irrigation
32. Mapping
33. Planning
34. Soil Conservation
35. Urban Renewal
36. Zoning and Subdivision Control
37. Parks
38. Recreation Facilities
39. All Police Services
40. Crime Laboratory
41. Criminal Identification
42. Patrol Services
43. Police Communications
44. Police Training
45. School Crossing Guards
46. Traffic Control
47. Jails and Detention Homes
48. Juvenile Delinquency Programs
49. Probation and Parole
50. Work Release Programs
51. All Fire Services
52. Fire Communications
53. Fire Prevention
54. Training of Firemen
55. All Civil Defense Services
56. Civil Defense Communications
57. Civil Defense Training
58. Bridge Construction and Maintenance
59. Building and Mechanical Inspection
60. Electrical and Plumbing Inspection
61. Electricity Supply
62. Engineering Services
63. Refuse Collection
64. Sewage Disposal
65. Sewer Lines
66. Snow Removal
67. Solid Waste Disposal
68. Street Construction and Maintenance
69. Street Lighting
70. Water Supply
71. Water Distribution
72. Special Transportation Services
73. Management Service for Publicly Owned Transit System
74. Library Services
75. Museums
76. Schools

I. LOCAL DISCRETIONARY AUTHORITY

1. If your state has a constitutional provision granting discretionary authority to local governments, please comment on the adequacy of the statute(s) implementing the constitutional grant of powers and whether a revision of the statute(s) is needed. _____

2. If your state lacks a constitutional provision granting discretionary authority to local governments, please comment on the scope of discretionary authority granted to local governments by statutes. _____

3. Has there been a recent (within the past two years) major court decision affecting the discretionary authority of local governments? YES ____ NO ____ . If YES, please provide a citation if possible. _____

4. Has the state supreme court issued (within the past two years) "advisory opinions" interpreting the scope of powers granted to local governments? YES ____ NO ____ . If YES, please explain briefly and provide a citation if possible. _____

5. Has the attorney general issued (within the past two years) opinions interpreting the scope of powers granted to local governments? YES ____ NO ____ . If YES, please explain briefly and provide a citation if possible. _____

6. Has the state auditor (comptroller) issued (within the past two years) opinions interpreting the scope of powers granted to local governments? YES ____ NO ____ . If YES, please explain briefly and provide a citation if possible. _____

7. To what extent have local governments utilized the grant of powers to draft and adopt a charter?

UNIT	OFTEN (more than ten times a year)	OCCASIONALLY (three-to-nine times a year)	SELDOM (once or twice a year)	NEVER	NO GRANT OF POWERS
a. Cities	_____	_____	_____	_____	_____
b. Towns	_____	_____	_____	_____	_____
c. Villages	_____	_____	_____	_____	_____
d. Townships	_____	_____	_____	_____	_____
e. Boroughs	_____	_____	_____	_____	_____
f. Counties	_____	_____	_____	_____	_____

If SELDOM or NEVER, please explain the reason(s). _____

8. To what extent have local governments utilized the grant of powers to amend a charter?

UNIT	OFTEN (more than ten times a year)	OCCASIONALLY (three-to-nine times a year)	SELDOM (once or twice a year)	NEVER	NO GRANT OF POWERS
a. Cities	_____	_____	_____	_____	_____
b. Towns	_____	_____	_____	_____	_____
c. Villages	_____	_____	_____	_____	_____
d. Townships	_____	_____	_____	_____	_____
e. Boroughs	_____	_____	_____	_____	_____
f. Counties	_____	_____	_____	_____	_____

In general, have the amendments been major ones? YES _____ NO _____.

9. Please use numbers (with 1 indicating the most important reason, and 2 the next most important reason, etc.) to rate the following reasons why local governments adopt a new charter under the constitutional or statutory grant of powers.

- a. To achieve greater administrative or structural discretion. _____
- b. To achieve greater functional discretion. _____
- c. To achieve greater financial discretion. _____
- d. To achieve greater responsiveness on the part of elected officials by changing the electoral system. _____
- e. To concentrate authority in the executive branch of government. _____
- f. Other(s). Please list and indicate importance. _____

10. Are local governments authorized to supersede general _____ or special _____ state laws dealing with "local" matters by the adoption of a local ordinance, a local law, or a local bylaw? YES _____ NO _____. If YES, how often is the power utilized?

UNIT	OFTEN (more than ten times a year)	OCCASIONALLY (three-to-nine times a year)	SELDOM (once or twice a year)	NEVER
a. Cities	_____	_____	_____	_____
b. Towns	_____	_____	_____	_____
c. Villages	_____	_____	_____	_____
d. Townships	_____	_____	_____	_____
e. Boroughs	_____	_____	_____	_____
f. Counties	_____	_____	_____	_____

How important are the superseding local ordinances, laws, and bylaws? Major importance. _____
Minor importance. _____

11. Does the constitutional grant of powers, if any, authorize local governments to use broad discretionary powers in the following areas?

UNIT	STRUCTURE OF GOVERNMENT		FUNCTIONAL AREAS		FINANCE		PERSONNEL	
	YES	NO	YES	NO	YES	NO	YES	NO
a. Cities	_____	_____	_____	_____	_____	_____	_____	_____
b. Towns	_____	_____	_____	_____	_____	_____	_____	_____
c. Villages	_____	_____	_____	_____	_____	_____	_____	_____
d. Townships	_____	_____	_____	_____	_____	_____	_____	_____
e. Boroughs	_____	_____	_____	_____	_____	_____	_____	_____
f. Counties	_____	_____	_____	_____	_____	_____	_____	_____

If broad discretionary authority has been granted in one or more of the above areas, have the state legislature and state courts reduced the scope of the grant? YES _____ NO _____. If YES, indicate the area. _____

12. Does the statutory grant of powers authorize local governments to use broad discretionary powers in the following areas?

UNIT	STRUCTURE OF GOVERNMENT		FUNCTIONAL AREAS		FINANCE		PERSONNEL	
	YES	NO	YES	NO	YES	NO	YES	NO
a. Cities	_____	_____	_____	_____	_____	_____	_____	_____
b. Towns	_____	_____	_____	_____	_____	_____	_____	_____
c. Villages	_____	_____	_____	_____	_____	_____	_____	_____
d. Townships	_____	_____	_____	_____	_____	_____	_____	_____
e. Boroughs	_____	_____	_____	_____	_____	_____	_____	_____
f. Counties	_____	_____	_____	_____	_____	_____	_____	_____

If broad discretionary authority has been granted in one or more of the above areas, have state courts reduced the scope of the grant? YES _____ NO _____. If YES, please indicate the area. _____

13. With the passage of time, have local governments made more use of their constitutionally and statutorily granted discretionary powers in these areas?

UNIT	STRUCTURE OF GOVERNMENT		FUNCTIONAL AREAS		FINANCE		PERSONNEL		NO DISCRETIONARY POWERS
	YES	NO	YES	NO	YES	NO	YES	NO	
a. Cities	_____	_____	_____	_____	_____	_____	_____	_____	_____
b. Towns	_____	_____	_____	_____	_____	_____	_____	_____	_____
c. Villages	_____	_____	_____	_____	_____	_____	_____	_____	_____
d. Townships	_____	_____	_____	_____	_____	_____	_____	_____	_____

e. Boroughs _____
 f. Counties _____

14. Do financial restraints (debt limits _____, tax limits _____, lack of revenue _____) significantly reduce the exercise of discretionary authority by local governments? YES _____ NO _____. If YES, please explain briefly. _____
15. Have federal court decisions significantly reduced the exercise of discretionary authority by local governments? YES _____ NO _____. If YES, please explain briefly. _____
16. Do federal conditional grants-in-aid significantly reduce the exercise of discretionary authority by local governments? YES _____ NO _____. If YES, please explain briefly. _____
17. Do state conditional grants-in-aid significantly reduce the exercise of discretionary authority by local governments? YES _____ NO _____. If YES, please explain briefly. _____
18. To what extent do local governments request the state legislature to enact a special _____ or a general law _____ dealing with a subject that the local governments may be able to deal with directly under the constitutional grant of discretionary authority?

UNIT	OFTEN (more than ten times a year)	OCCASIONALLY (three-to-nine times a year)	SELDOM (once or twice a year)	NEVER
a. Cities	_____	_____	_____	_____
b. Towns	_____	_____	_____	_____
c. Villages	_____	_____	_____	_____
d. Townships	_____	_____	_____	_____
e. Boroughs	_____	_____	_____	_____
f. Counties	_____	_____	_____	_____

If local governments often seek the enactment of such bills, please explain the reason(s). _____

19. If there is a constitutional prohibition of special legislation in your state, does the legislature by classification attempt to evade the prohibition? YES _____ NO _____. If YES, how often does the legislature do this and with what degree of success? _____
20. Does the state legislature attempt to evade other restrictions on the enactment of special laws? YES _____ NO _____. If YES, please describe briefly the restriction and the attempted evasion. _____
21. Does "legislative courtesy" determine the fate of proposed special legislation? YES _____ NO _____. If YES, please indicate whether "legislative courtesy" applies to bills affecting all _____ or certain _____ types of local governments. If "legislative courtesy" applies only to certain types of local governments, please identify the units and the reason why the practice is restricted to these units. _____

22. Has the legislature used its powers of preemption, under the "devolution of powers" constitutional provision, to assume responsibility (complete _____ or partial _____) for a local government function? YES _____ NO _____. If YES, please describe briefly. _____
23. Has partial federal preemption in areas such as air and water pollution abatement forced the legislature to exercise its powers of preemption? YES _____ NO _____. If YES, please describe briefly. _____
24. Have the municipal or local laws of the state been recodified or revised since 1970 to identify clearly the powers that have been preempted by the legislature? YES _____ NO _____. If YES, please indicate whether all _____ or specified _____ municipal or local laws have been recodified or revised. If only specified laws have been recodified or revised, please list the laws. _____
25. Does the state constitution restrict the ability of the legislature to initiate action to resolve metropolitan and other areawide problems? YES _____ NO _____. If YES, please describe briefly. _____
26. Please rate the amount of freedom of action possessed by *each type* of local government *in your state* on a scale of 1 to 5 (with 1 indicating the greatest degree of freedom from state control and 5 indicating the smallest degree of freedom).

UNIT	STRUCTURE OF GOVERNMENT	FUNCTIONAL AREAS	FINANCE	PERSONNEL
a. Cities	_____	_____	_____	_____
b. Towns	_____	_____	_____	_____
c. Villages	_____	_____	_____	_____
d. Townships	_____	_____	_____	_____
e. Boroughs	_____	_____	_____	_____
f. Counties	_____	_____	_____	_____

27. How often does the state legislature "mandate" expenditures by local governments? Often (more than ten times each session) _____, occasionally (three-to-nine times each session) _____, seldom (once or twice a session) _____, never _____? Do mandates have a significant impact on local governments? YES _____ NO _____. If YES, please explain. _____
28. Does the constitutional grant of local powers, if any, limit the ability of the state legislature to grant local tax exemptions by requiring an extraordinary vote _____, "message of necessity" from the Governor _____, or reimbursement of local governments for loss of revenue _____? Please check the appropriate answer(s).
29. Please indicate the restrictiveness of state-imposed tax limits on local governments. Very restrictive _____, moderately restrictive _____, slightly restrictive _____, unrestricted _____.
30. May the state tax limit be exceeded with voter approval in a referendum _____ or approval of a state agency _____? YES _____ NO _____. If YES, please describe briefly and provide a legal citation if possible. _____
31. Please indicate the restrictiveness of state-imposed debt limits on local governments. Very restrictive _____, moderately restrictive _____, slightly restrictive _____, unrestricted _____.

32. May the state debt limits be exceeded with voter approval in a referendum _____ or approval of a state agency _____? YES _____ NO _____. If YES, please describe briefly and provide a legal citation. _____
33. Are state-imposed tax limits _____ or debt limits _____ relaxed by the state legislature at local request? YES _____ NO _____. If YES, how often are the limits relaxed? Seldom _____, occasionally _____, often _____.
34. Using the list of functional components, indicate the numbers of the five functional components relative to which you believe that local governments should be granted the largest degree of discretionary authority.

UNIT	FUNCTIONAL COMPONENTS				
a. Cities	1. _____	2. _____	3. _____	4. _____	5. _____
b. Towns	1. _____	2. _____	3. _____	4. _____	5. _____
c. Villages	1. _____	2. _____	3. _____	4. _____	5. _____
d. Townships	1. _____	2. _____	3. _____	4. _____	5. _____
e. Boroughs	1. _____	2. _____	3. _____	4. _____	5. _____
f. Counties	1. _____	2. _____	3. _____	4. _____	5. _____

35. Using the list of functional components, indicate the numbers of the five functional components relative to which you believe that local governments should be granted the smallest degree of discretionary authority.

UNIT	FUNCTIONAL COMPONENTS				
a. Cities	1. _____	2. _____	3. _____	4. _____	5. _____
b. Towns	1. _____	2. _____	3. _____	4. _____	5. _____
c. Villages	1. _____	2. _____	3. _____	4. _____	5. _____
d. Townships	1. _____	2. _____	3. _____	4. _____	5. _____
e. Boroughs	1. _____	2. _____	3. _____	4. _____	5. _____
f. Counties	1. _____	2. _____	3. _____	4. _____	5. _____

36. Please describe major substantive or procedural restrictions upon the powers of local governments (i.e., tax limits, debt limits, court decisions, administrative regulations) which, in your judgment, have the most narrowing impact on the powers of local units. (Add additional sheets of paper if necessary.)

37. Is there a special constitutional _____ or statutory _____ provision in your state (such as those granting annexation and extraterritorial powers to Texas home rule cities) that grants a class of local governments broad discretionary power? YES _____ NO _____. If YES, please provide a legal citation and explain briefly. _____

38. Do counties in your state possess the same discretionary authority in certain areas as other local units (cities, towns, townships, villages, boroughs)? YES _____ NO _____. If YES, please describe briefly how problems of overlapping jurisdiction are resolved. _____

II. STATE-LOCAL RELATIONS

Please rate the desirability of each of the following:

	VERY DESIRABLE	DESIRABLE	UNDESIRABLE
1. Constitutional provision for enumerated local powers.	_____	_____	_____
2. Constitutional provision for devolution of powers to local government.	_____	_____	_____
3. Constitutional provision authorizing local governments to exercise all powers not included in a "Code of Restriction" enacted by the legislature.	_____	_____	_____
4. Constitutional grant of discretionary authority to local governments that have modernized their structures.	_____	_____	_____
5. Constitutional grant of discretionary authority to all general purpose local governments.	_____	_____	_____
6. Constitutional provision requiring courts to construe local powers liberally.	_____	_____	_____
7. Statutory grant of discretionary powers to local governments.	_____	_____	_____
8. Constitutional prohibition of special legislation.	_____	_____	_____
9. Constitutional restriction on the power of the state legislature to preempt a local function or functional component.	_____	_____	_____
10. Constitutional provision requiring full state reimbursement for costs associated with state mandates.	_____	_____	_____
11. Constitutional provision requiring partial state reimbursement for costs associated with state mandates.	_____	_____	_____
12. Statutory provision requiring full state reimbursement for costs associated with state mandates.	_____	_____	_____
13. Statutory provision requiring partial state reimbursement for costs associated with state mandates.	_____	_____	_____
14. Constitutional provision authorizing local governments to supersede state law with the exception of specified areas.	_____	_____	_____
15. Constitutional provision authorizing local governments to rescind their acceptance of "permissive" or "optional" state laws.	_____	_____	_____
16. Statutory provision authorizing local governments to rescind their acceptance of "permissive" or "optional" state laws.	_____	_____	_____
17. Constitutional amendment removing local debt limits.	_____	_____	_____
18. Constitutional amendment removing local tax limits.	_____	_____	_____
19. Constitutional provision limiting the property tax.	_____	_____	_____
20. Constitutional authorization for local governments to levy a local sales tax.	_____	_____	_____
21. Statutory authorization for local governments to levy a local sales tax.	_____	_____	_____

22. Constitutional provision authorizing local governments to levy a local gross receipts tax.

23. Statutory authorization for local governments to levy a local gross receipts tax.

24. Constitutional authorization for local governments to levy a local income tax.

25. Statutory authorization for local governments to levy a local income tax.

26. Constitutional authorization for local governments to levy a payroll tax.

27. Statutory authorization for local governments to levy a payroll tax.

28. Constitutional provision restricting the authority of the state legislature to grant local property tax exemptions.

III. IMPACT OF GRANTS-IN-AID ON LOCAL FUNCTIONS

State Grants-in-Aid

1. In the past ten years, have state grants-in-aid caused an expansion of existing functions, the addition of new functions, or the contraction or deletion of functions performed by local governments?

UNIT	EXPANSION		ADDITION		CONTRACTION		DELETION	
	YES	NO	YES	NO	YES	NO	YES	NO
a. Cities	_____	_____	_____	_____	_____	_____	_____	_____
b. Towns	_____	_____	_____	_____	_____	_____	_____	_____
c. Villages	_____	_____	_____	_____	_____	_____	_____	_____
d. Townships	_____	_____	_____	_____	_____	_____	_____	_____
e. Boroughs	_____	_____	_____	_____	_____	_____	_____	_____
f. Counties	_____	_____	_____	_____	_____	_____	_____	_____

2. Using the list of functional components, indicate the number of those that have expanded the most.

UNIT	FUNCTIONS EXPANDED				
a. Cities	1. _____	2. _____	3. _____	4. _____	5. _____
b. Towns	1. _____	2. _____	3. _____	4. _____	5. _____
c. Villages	1. _____	2. _____	3. _____	4. _____	5. _____
d. Townships	1. _____	2. _____	3. _____	4. _____	5. _____
e. Boroughs	1. _____	2. _____	3. _____	4. _____	5. _____
f. Counties	1. _____	2. _____	3. _____	4. _____	5. _____

3. Using the list of functional components, indicate the number of the newly added functions.

UNIT	NEW FUNCTIONS ADDED				
a. Cities	1. _____	2. _____	3. _____	4. _____	5. _____
b. Towns	1. _____	2. _____	3. _____	4. _____	5. _____
c. Villages	1. _____	2. _____	3. _____	4. _____	5. _____
d. Townships	1. _____	2. _____	3. _____	4. _____	5. _____
e. Boroughs	1. _____	2. _____	3. _____	4. _____	5. _____
f. Counties	1. _____	2. _____	3. _____	4. _____	5. _____

4. Using the list of functional components, indicate the number of the contracted functions.

UNIT	CONTRACTED FUNCTIONS				
a. Cities	1. _____	2. _____	3. _____	4. _____	5. _____
b. Towns	1. _____	2. _____	3. _____	4. _____	5. _____
c. Villages	1. _____	2. _____	3. _____	4. _____	5. _____
d. Townships	1. _____	2. _____	3. _____	4. _____	5. _____
e. Boroughs	1. _____	2. _____	3. _____	4. _____	5. _____
f. Counties	1. _____	2. _____	3. _____	4. _____	5. _____

Please explain briefly the reason(s) for the contraction(s).

5. Using the list of functional components, indicate the number of the deleted functions.

UNIT	DELETED FUNCTIONS				
a. Cities	1. _____	2. _____	3. _____	4. _____	5. _____
b. Towns	1. _____	2. _____	3. _____	4. _____	5. _____
c. Villages	1. _____	2. _____	3. _____	4. _____	5. _____
d. Townships	1. _____	2. _____	3. _____	4. _____	5. _____
e. Boroughs	1. _____	2. _____	3. _____	4. _____	5. _____
f. Counties	1. _____	2. _____	3. _____	4. _____	5. _____

Please explain briefly the reason(s) for the deletion(s).

Federal Grants-in-Aid

6. In the past ten years, have federal grants-in-aid caused an expansion of existing functions, the addition of new functions, or the contraction or deletion of functions performed by local governments?

UNIT	EXPANSION		ADDITION		CONTRACTION		DELETION	
	YES	NO	YES	NO	YES	NO	YES	NO
a. Cities	_____	_____	_____	_____	_____	_____	_____	_____
b. Towns	_____	_____	_____	_____	_____	_____	_____	_____
c. Villages	_____	_____	_____	_____	_____	_____	_____	_____
d. Townships	_____	_____	_____	_____	_____	_____	_____	_____
e. Boroughs	_____	_____	_____	_____	_____	_____	_____	_____
f. Counties	_____	_____	_____	_____	_____	_____	_____	_____

7. Using the list of functional components, indicate the number of those that have expanded the most.

UNIT	FUNCTIONS EXPANDED				
a. Cities	1. _____	2. _____	3. _____	4. _____	5. _____
b. Towns	1. _____	2. _____	3. _____	4. _____	5. _____
c. Villages	1. _____	2. _____	3. _____	4. _____	5. _____
d. Townships	1. _____	2. _____	3. _____	4. _____	5. _____
e. Boroughs	1. _____	2. _____	3. _____	4. _____	5. _____
f. Counties	1. _____	2. _____	3. _____	4. _____	5. _____

8. Using the list of functional components, indicate the number of the newly added functions.

UNIT	NEW FUNCTIONS ADDED				
a. Cities	1. _____	2. _____	3. _____	4. _____	5. _____
b. Towns	1. _____	2. _____	3. _____	4. _____	5. _____
c. Villages	1. _____	2. _____	3. _____	4. _____	5. _____
d. Townships	1. _____	2. _____	3. _____	4. _____	5. _____
e. Boroughs	1. _____	2. _____	3. _____	4. _____	5. _____
f. Counties	1. _____	2. _____	3. _____	4. _____	5. _____

9. Using the list of functional components, indicate the number of the contracted functions.

UNIT	CONTRACTED FUNCTIONS				
a. Cities	1. _____	2. _____	3. _____	4. _____	5. _____
b. Towns	1. _____	2. _____	3. _____	4. _____	5. _____
c. Villages	1. _____	2. _____	3. _____	4. _____	5. _____
d. Townships	1. _____	2. _____	3. _____	4. _____	5. _____
e. Boroughs	1. _____	2. _____	3. _____	4. _____	5. _____
f. Counties	1. _____	2. _____	3. _____	4. _____	5. _____

Please explain briefly the reason(s) for the contraction(s).

10. Using the list of functional components, indicate the number of the deleted functions.

UNIT	DELETED FUNCTIONS				
a. Cities	1. _____	2. _____	3. _____	4. _____	5. _____
b. Towns	1. _____	2. _____	3. _____	4. _____	5. _____

- c. Villages 1. _____ 2. _____ 3. _____ 4. _____ 5. _____
- d. Townships 1. _____ 2. _____ 3. _____ 4. _____ 5. _____
- e. Boroughs 1. _____ 2. _____ 3. _____ 4. _____ 5. _____
- f. Counties 1. _____ 2. _____ 3. _____ 4. _____ 5. _____

Please explain briefly the reason(s) for the deletion(s).

IV. AUTHORITIES ON LOCAL GOVERNMENT LAW IN YOUR STATE

A. University or College Professors

Name _____

Position _____

Organization _____

Address _____

Telephone _____

B. State Officials

Name _____

Position _____

Organization _____

Address _____

Telephone _____

C. Local Government Officials

Name _____

Position _____

Organization _____

Address _____

Telephone _____

D. Consultants

Name _____

Position _____

Organization _____

Address _____

Telephone _____

Appendix B

Table B-1
REASONS FOR ADOPTING A NEW CHARTER, BY RELATIVE IMPORTANCE AND REGION,
1979*

Relative Importance	Northeast						North Central						South						West					
	A	B	C	D	E	F	A	B	C	D	E	F	A	B	C	D	E	F	A	B	C	D	E	F
First	7 39%	2 11%	2 11%	1 6%	7 39%	0 0%	9 43%	4 19%	4 19%	1 5%	4 19%	0 0%	12 43%	7 25%	4 14%	2 7%	1 4%	2 7%	13 57%	4 17%	4 17%	4 17%	1 4%	2 9%
Second	8 44%	3 17%	2 11%	4 22%	2 11%	0 0%	8 38%	6 29%	4 19%	1 5%	2 10%	1 5%	10 36%	5 18%	5 18%	3 11%	4 15%	0 0%	3 13%	8 35%	1 4%	5 22%	5 22%	0 0%
Third	1 6%	4 22%	2 11%	3 17%	2 11%	3 18%	4 19%	3 14%	4 19%	5 24%	3 14%	0 0%	5 18%	7 25%	4 14%	4 15%	4 15%	0 0%	3 13%	5 22%	3 13%	4 17%	3 13%	0 0%
Fourth	1 6%	3 17%	1 6%	3 17%	4 22%	0 0%	0 0%	3 14%	3 14%	5 24%	3 14%	0 0%	0 0%	4 14%	7 25%	6 22%	2 7%	1 4%	2 9%	3 13%	6 26%	3 13%	1 4%	1 4%
Fifth	0 0%	0 0%	2 11%	2 11%	0 0%	0 0%	0 0%	2 10%	1 5%	4 19%	5 24%	0 0%	0 0%	0 0%	4 14%	8 30%	7 26%	0 0%	1 4%	1 4%	5 22%	3 13%	6 26%	0 0%

A = To achieve greater administrative or structural discretion.
 B = To achieve greater functional discretion.
 C = To achieve greater financial discretion.
 D = To achieve greater responsiveness on the part of elected officials by changing the electoral system.
 E = To concentrate authority in the executive branch of government.
 F = Other(s).

*Percentages relate to number of responses to the question in each region: Northeast 18, North Central 21, South 28, and West 23.

Table B-2
**RESTRICTIVENESS OF STATE TAX LIMITS ON LOCAL GOVERNMENTS,
BY REGION, 1979**

Region	Very Restrictive		Moderately Restrictive		Slightly Restrictive		Unrestrictive	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Northeast	5	28	5	28	4	22	4	22
North Central	6	22	20	74	1	4	0	0
South	12	29	16	38	6	14	8	19
West	12	39	12	39	5	16	2	7
Total	35	30	53	45	16	14	14	12

Note: Percentages may not add to 100% due to rounding.

Table B-3
**METHODS OF EXCEEDING STATE TAX LIMITS ON LOCAL GOVERNMENTS,
BY REGION, 1979**

Region	Voter Approval		State Agency Approval		Voter and State Agency Approval		No Method	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Northeast	5	45	0	0	0	0	6	55
North Central	15	60	2	8	0	0	8	32
South	16	43	0	0	0	0	21	57
West	13	45	1	3	2	7	13	45
Total	49	48	3	3	2	2	48	48

Note: Percentages may not add to 100 % due to rounding.

Table B-4
**RESTRICTIVENESS OF STATE DEBT LIMITS ON LOCAL GOVERNMENTS,
BY REGION, 1979**

Region	Very Restrictive		Moderately Restrictive		Slightly Restrictive		Unrestrictive	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Northeast	1	5	9	45	7	35	3	15
North Central	8	32	15	60	2	8	0	0
South	8	20	22	54	7	17	4	10
West	7	23	13	43	9	30	1	3
Total	24	21	59	51	25	22	8	7

Note: Percentages may not add to 100% due to rounding.

Table B-5
**METHODS OF EXCEEDING STATE DEBT LIMITS ON LOCAL GOVERNMENTS,
BY REGION, 1979**

Region	Voter Approval		State Agency Approval		Voter and State Agency Approval		No Method	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Northeast	2	13	1	7	3	20	9	60
North Central	5	21	0	0	0	0	19	79
South	10	28	1	3	0	0	25	69
West	7	27	1	4	0	0	18	69
Total	24	24	3	3	3	3	71	70

Table B-6
**RELAXATION OF STATE TAX AND DEBT LIMITS BY THE LEGISLATURE AT
LOCAL REQUEST, BY REGION, 1979**

Region	Seldom		Occasionally		Often		Never	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Northeast	5	26	1	5	1	5	12	63
North Central	1	4	5	22	0	0	17	74
South	1	11	3	8	1	3	28	78
West	3	10	0	0	0	0	26	90
Total	10	10	9	9	2	2	83	80

Note: Percentages may not add to 100% due to rounding.

Table B-7
**CONSTITUTIONAL RESTRICTIONS ON THE LEGISLATURE'S ABILITY TO
SOLVE METROPOLITAN PROBLEMS, BY REGION, 1979**

Region	Yes		No	
	Number	Percent	Number	Percent
Northeast	5	24	16	76
North Central	4	15	23	85
South	9	21	35	79
West	8	26	23	74
Total	26	21	97	79

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What is ACIR ?

The Advisory Commission on Intergovernmental Relations (ACIR) was created by the Congress in 1959 to monitor the operation of the American federal system and to recommend improvements. ACIR is a permanent national bipartisan body representing the executive and legislative branches of Federal, state and local government and the public.

The Commission is composed of 26 members—nine representing the Federal government, 14 representing state and local government, and three representing the public. The President appoints 20—three private citizens and three Federal executive officials directly and four governors, three state legislators, four mayors, and three elected county officials from states nominated by the National Governors' Association, the National Conference of State Legislatures, the National League of Cities, U.S. Conference of Mayors, and the National Association of Counties. The three Senators are chosen by the President of the Senate and the three Congressmen by the Speaker of the House.

Each Commission member serves a two year term and may be reappointed.

As a continuing body, the Commission approaches its work by addressing itself to specific issues and problems, the resolution of which would produce improved cooperation among the levels of government and more effective functioning of the federal system. In addition to dealing with the all important functional and structural relationships among the various governments, the Commission has also extensively studied critical stresses currently being placed on traditional governmental taxing practices. One of the long range efforts of the Commission has been to seek ways to improve Federal, state, and local governmental taxing practices and policies to achieve equitable allocation of resources, increased efficiency in collection and administration, and reduced compliance burdens upon the taxpayers.

Studies undertaken by the Commission have dealt with subjects as diverse as transportation and as specific as state taxation of out-of-state depositories; as wide ranging as substate regionalism to the more specialized issue of local revenue diversification. In selecting items for the work program, the Commission considers the relative importance and urgency of the problem, its manageability from the point of view of finances and staff available to ACIR and the extent to which the Commission can make a fruitful contribution toward the solution of the problem.

After selecting specific intergovernmental issues for investigation, ACIR follows a multistep procedure that assures review and comment by representatives of all points of view, all affected levels of government, technical experts, and interested groups. The Commission then debates each issue and formulates its policy position. Commission findings and recommendations are published and draft bills and executive orders developed to assist in implementing ACIR policies.