

STATE LEGISLATIVE PROGRAM
of the
ADVISORY COMMISSION
ON INTERGOVERNMENTAL
RELATIONS



*Part I. Incorporated in the Programs of Suggested
State Legislation of The Council of
State Governments*

*Part II. Additional State Legislative Proposals of
the Advisory Commission on Intergovernmental
Relations*

*Washington, D. C. 20575
October 1963
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ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
Washington, D. C. 20575

October 1963

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FOREWORD

The Advisory Commission on Intergovernmental Relations is a permanent bipartisan body set up by Act of Congress in 1959 to give continuing study to the relationships among local, State and National levels of government. The Commission's current membership, drawn from all three levels of government, is shown on the opposite page.

Although the Commission is a continuing body it recognizes that its own value and place in the Federal system will be determined by the extent to which it contributes to significant improvements in the relationships between and among Federal, State, and local units of government. Therefore, a considerable share of the Commission's resources are devoted to the promotion of legislative and administrative action to carry out recommendations previously made to the various levels of government.

The Commission seeks to implement its legislative recommendations to the States by translating them into draft bill form for consideration by the 50 State legislatures. The bills are then considered by the Council of State Governments and its Committee of State Officials on Suggested State Legislation. The Committee on Suggested State Legislation consists of members of Commissions on Interstate Cooperation, Commissions on Uniform State Laws, Attorneys General and legislative officials. It receives legislative proposals from individual State officials, organizations of State officials, special State committees or agencies, from Federal agencies through the Bureau of the Budget, and, where appropriate, from representatives of local governments and of nongovernmental organizations.

To the extent that individual Commission proposals are approved by the Committee of State Officials on Suggested State Legislation, they are published and distributed each year by the Council of State Governments to Governors, legislators, and other officials of the several States. The Commission and the Council then make every effort to encourage favorable consideration by the legislative bodies of the 50 States.

This document contains in Part I a compilation of the Commission's 26 legislative proposals which have been approved to date by the Committee of State Officials on Suggested State Legislation. The proposals are divided into three subject matter areas: A. Taxation and Finance. B. Urban Problems. C. Other State-Local Relations. Each group is introduced by a statement of the Commission's general objectives with respect to these subject areas of intergovernmental relations. Each legislative draft is preceded by a policy statement which gives a brief explanation of the purpose and contents of the proposal.

Part II contains three Commission draft legislative proposals which have not as yet been considered by the Committee of State Officials on Suggested State Legislation.

Other National organizations of State and local public officials, in addition to the Council of State Governments, have endorsed many of the Commission's legislative proposals, or have adopted resolutions endorsing their objectives. These endorsements are summarized in a table at the end of the document.

A list of Commission reports containing recommendations upon which the legislative drafts are based is provided on the inside of the back cover. Copies of these reports are available upon request to the Commission.

It is the Commission's hope that this booklet will prove a useful reference aid for State legislative service agencies, State legislators, and other State and local officials and individuals or groups interested in strengthening the legislative framework of State-local relations.

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ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
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A. TAXATION AND FINANCE

An Introductory Statement by the Advisory Commission on Intergovernmental Relations

The Advisory Commission's program for State legislation proceeds from the premise that strong local government, responsive to the needs of its citizens, is the foundation of an enduring federal form of government; and that sound and adequate finances are an essential ingredient of governmental strength. Since States create local governments and determine their share of the governing role, they must see to it that local governments possess financial resources to match their responsibilities. Failing adequate revenues from their own sources, local governments determined to discharge their responsibilities have no alternative other than recourse to the State and National Government. States must see to it, too, that local governments use the powers at their disposal effectively, with appropriate regard for the interests of other local governments and of the State itself.

The financial capabilities of local governments are necessarily determined by and limited to the taxable resources within their borders. Because local governments derive their powers from their respective States, they can draw upon revenue and other financing resources only in ways and within bounds prescribed by their State constitutions and statutes. Because local governments function in close proximity to one another in an interdependent society and economy, the effectiveness with which they employ financing resources is enhanced through intercommunity cooperation and impaired by a lack of it. The extent to which local governments pursue harmonious tax policies and otherwise act in concert is itself shaped and guided by State policies. By the same token, local government effectiveness is to an important degree influenced by the support given it by the State's stronger and more developed administrative facilities. The Commission's legislative proposals and policy guidelines presented below seek to foster constructive tax and financial relationships among local governments, among States, and between local governments and their respective State governments.

The most important single factor in the ability of local governments to finance their activities is the property tax because it provides, on the average, seven-eighths of all locally raised tax revenues. The Commission urges each State to take a hard and critical look at its property tax system and offers guidelines for strengthening and improving it so that States might proceed expeditiously with property tax reform in a manner appropriate to their local circumstances. Local governments are

searching for new tax sources to relieve the pressure on their property taxes. The Commission recommendations aim to maximize the effectiveness of local consumer and other nonproperty taxes in those limited situations where their use is compatible with other important State and local objectives.

In the area of administrative cooperation, the Commission points to ways in which State governments can assist local governments and local and State governments jointly can ease taxpayers' compliance burdens and make more efficient use of amounts appropriated for tax enforcement by coordinating their administrative practices, by sharing with one another the fruits of their enforcement efforts and, in certain specified situations, by contracting to collect one another's taxes.

More business-like management of financial balances to maximize interest earnings can relieve somewhat the pressure for additional local government revenues. States can facilitate this objective by providing local governments with the necessary authority (where they now lack it) to invest their balances at interest and by enabling State officials to share with local officials their expert knowledge acquired in the management of States' investment funds. In the same way, the States can materially assist local government engaged in borrowing operations, particularly smaller units, in those cases where local officials are not acquainted with the complexities of bond markets.

The use of local industrial development bonds by certain local governments to finance the acquisition of industrial plants for lease to private enterprise in an effort to attract industry, if unregulated, may seriously undermine local credit. The Commission's legislative proposal is designed to safeguard the industrial development bond device from abuse for private gain to the detriment of the States and their communities.

The policy statements and suggested legislation that follow were approved by the Committee of State Officials on Suggested State Legislation of the Council of State Governments and are presented as they appear in the Council's publication, Program of Suggested State Legislation, for the years 1963 and 1964.

FINANCIAL AND TECHNICAL ASSISTANCE TO
LOCAL GOVERNMENTS

States are urged to take legislative action in establishing programs, or expanding existing programs, of financial and technical assistance to metropolitan areas in such fields as urban planning, building code modernization, and local government organization and finance.

In its report to the Governors' Conference in 1956 entitled The States and the Metropolitan Problem, the Council of State Governments made the following observation:

The results of continuing population growth, inadequate governmental machinery, and unrelated and sometimes conflicting governmental and private programs of national, state and local extent are readily apparent. In many localities an occasional glance at the newspapers can reveal some of the most obvious deficiencies-- deficiencies that affect people in both metropolitan and nonmetropolitan areas. We have become very familiar with dwindling water supplies and disintegrated means of distribution, water and air pollution, contradictory and uneconomic land-use policies, and large-scale defects in various forms of transportation. Common also are archaic methods of sewage disposal, excessive noise, dirt and congestion, uneven provision of health and other protective services, and disruption of the metropolitan economy by unrelated decisions on industrial and commercial locations. Less publicized but highly important are the inconveniences and excessive costs of these shortcomings, the inequalities imposed upon various sections of metropolitan areas in financing services, and the impotence and frustration of attempts at citizen control.

The metropolitan areas in general have within their borders sufficient administrative ability and financial resources to meet their needs. However, due to fragmentation of responsibility among various units and lack of coincidence between service needs and tax jurisdictions, it is frequently impossible for local government to marshal the technical and financial forces needed to meet the needs of metropolitan area residents. Since a large share of state general revenue comes from metropolitan areas and since, in many instances, the state represents the only single force which can be brought to bear

upon the area as a whole, it is both reasonable and necessary that state governments direct an increased share of their technical and financial resources to problems of metropolitan areas. The need for state technical assistance lies not so much in the absence of technical expertise at the local level as in lack of centralized grasp of problems which are areawide in scope. By becoming a partner with local governments in such fields as urban planning, urban renewal, and building code modernization, the state can play a highly vital and necessary role.

A recent report published by the Council of State Governments, entitled State Technical Assistance to Local Governments,* reviews the technical assistance services available from certain major staff agencies of state government in the fields of finance, legal services, purchasing, planning and personnel. It reports also on technical assistance activities of general agencies concerned with local governments in five states.

* Council of State Governments, State Technical Assistance to Local Governments, RR-9 (Chicago, June, 1962).

PROPERTY TAX ADMINISTRATION

Most, if not all, states could improve their property taxes by legislative and administrative action and contribute thereby to the strength of local government.

A recent report of the Advisory Commission on Intergovernmental Relations¹ details those significant features of each state's property tax system that are potentially useful for other states. The report also contains 29 separate recommendations for strengthening the property tax, to enable each state to identify those lines of action most appropriate to its circumstances. Those recommendations fall into six basic categories, as follows:

(1) To provide, on a regular basis, precise information on the property tax situation throughout all taxing and assessing districts in the state with respect to the utilization of the tax and the quality of assessing, and to make well analyzed and informative reports on these features regularly available to the public.

(2) To amend or change property tax laws that are inequitable, unworkable, unduly restrictive, or otherwise unsatisfactory and to rid constitutions of details that more properly belong in statutes or administrative regulations. This applies equally to laws which determine the tax base, establish limitations and exemptions, and set forth the procedures for administering the tax.

(3) To determine the appropriate role of the property tax in a well-integrated state-local revenue system.

(4) To recast any features of the administrative setup with respect to both organization and personnel, that prevent efficient and equitable administration.

(5) To provide effective state supervision, coordination, and technical assistance to the administration of the property tax and to guard against unfairness in distribution of the property tax burden.

(6) To provide the taxpayer with readily usable and effective means of protecting himself against inequitable assessment.

¹ Advisory Commission on Intergovernmental Relations, The Role of the States in Strengthening the Property Tax, (Washington: Government Printing Office, 1963).

Specifically, the Commission recommends, among other steps, that the states:

(1) Rid the property tax laws of features that are impossible to administer, oblige administrators to condone evasion, and encourage taxpayers to ignore the law.

(2) Remove details about property tax administration from their constitutions.

(3) Take a hard, critical look at tax exemptions which fritter away the property tax base and repeal exemptions for secular purposes which would not be valid as a continuing state budget appropriation.

(4) Reimburse local governments for revenues lost when the state prescribes the tax exemption of property as an expression of its esteem for such groups as veterans or senior citizens.

(5) Consolidate small primary assessment districts into districts large enough to support an efficient assessing operation.

(6) Provide a strong state supervisory and coordinating agency headed by a career administrator of recognized professional ability.

(7) Shift to the state agency responsibility for assessing property which customarily lies in more than one assessing district or requires appraisal specialists not available to most local districts.

(8) Require local assessors to be appointed to office on the basis of professional qualifications.

(9) Conduct continuing studies of the quality of local assessing and publish findings regularly.

(10) Simplify assessment review and appeal procedures for the protection of taxpayers.

Since the state creates local governments and determines their share of the governing role, it must see to it that they possess the financial resources required to match their responsibilities. Its obligation in this regard is inescapable because if the locally raised revenue is inadequate to finance local governments' prescribed duties, the state must provide it or rely on the federal government to provide it.

Inasmuch as local governments continue to rely on the property tax for seven-eighths of all their locally raised tax revenue, it is the most important single factor in their ability to finance local activities. It follows that the state's concern

with the quality of property taxation is direct and inescapable.

States are directly concerned with the quality of property taxation for other reasons as well. The \$20 billion collected from this source this year nearly equals the combined collections from the states' own taxes and accounts for 45 percent of aggregate state and local tax revenues. In short, it is the most important single factor in the impact of non-federal taxes on the pace of industrialization and economic development, on production, income and consumption, and on the distribution of the people's tax burden.

While the proportionate reliance on the property tax in the total state-local revenue system is a matter each state must determine for itself, continued heavy reliance on it is pre-ordained by the unrelenting pressure for more and more revenue to finance local government activities, especially education. If this be true, and few if any contest it, then it is vitally important to rid the property tax of the weaknesses which have plagued it but have been tolerated all these years: needless and harmful constitutional and statutory restrictions and prescriptions, unwarranted exemptions, inoperable administrative provisions, and discriminatory valuations for tax assessment purposes. The burdensomeness of the tax and its stultifying effect on business activity will be reduced as these deficiencies are remedied.

Thwarted local efforts in recent years make it clear that without benefit of strong state support, local governments are severely handicapped in property tax reform. Most are too small to afford the organization and technical skill required to appraise and assess the wide variety of highly specialized properties currently used by industry. Sensitivity to intercommunity competition for business restrains tax reform and encourages competitive underassessment. Moreover, some of the faults of the tax are imbedded in state constitutional and statutory provisions and therefore are mandatory upon local governments.

A survey of the recent successes and failures in property tax reform in different parts of the country, at both the local and state level, leaves no doubt that the tax is capable of reasonably fair operation and administration, that the rate of progress in this direction is strongly influenced by the degree of responsibility assumed on a statewide basis, and that tax officials, practitioners, and scholars are in general agreement about the lines of action states must take to give soundly based local property tax improvement efforts a reasonable chance to succeed. The details of the prescription for strengthening the property tax will vary, however, with the tax institution in each individual state and with the progress toward reform already made.

Each state is urged to take a hard and critical look at its property tax system to identify those features which should and can be improved. Each state should then proceed expeditiously with property tax reform in the manner best calculated to insure maximum progress. Its potentials for strengthening local government warrant the concerted efforts of both state legislatures and executives and of local elective and administrative officials.

INTERLOCAL COORDINATION OF NONPROPERTY TAXES

The persistent pressure for more and costlier governmental services is hitting hardest at local governments because over one-half of this country's expenditures for civil government (as distinguished from expenditures associated with foreign affairs and defense) actually are made by counties, cities, school districts, and other local units of government. Projections of local governments' future needs clearly point to a continuing revenue pressure for years to come. While local property tax collections and the amount of state and federal aids have each increased faster than anticipated, local needs have risen even faster. In consequence, many local governments are resorting to nonproperty taxes. Others are exploring their possibilities.

Recent years have witnessed a mushrooming of all kinds of local nonproperty taxes, those on sales, personal and business incomes, on amusements, cigarettes, and alcoholic beverages, on motor fuels and vehicles, on public utility services, etc. With the exception of some in large cities, these local taxes are not noted for their effectiveness, particularly where individual local units have to "go it alone." Single local jurisdictions are typically too small to permit effective tax enforcement especially at the low rates at which these taxes have to be imposed.

A related factor is the economic interdependence of the separate governmental units clustered within the larger urban and economic areas. The independent use of a tax by any one community is likely to affect its trading position in the area. Appreciation of this possibility, i.e., the shadow of intercommunity competition, restrains many local governments from using these taxes or pressing their collection.

Local taxing jurisdictions within an economic area could improve the efficiency and effectiveness of their nonproperty taxes by pooling their enforcement resources. Cooperative tax enforcement, in turn, would become more practicable if the cooperating local units were free to impose identically structured local taxes.

Neighboring jurisdictions interested in coordinated tax policies and practices are frequently precluded from these routes because of differences in the taxing powers granted them by the constitution, or general legislation, or by charter provisions. Where both jurisdictions are authorized to employ the same tax, they are often free to vary their provisions. This invites intercommunity variations in definitions of the tax base, taxpayers, exemptions, etc., which limit the scope of effective cooperation in administration.

The governing consideration in state-local tax relations is to provide local governments with sufficient taxing authority, to the extent practicable, to enable them to finance local functions from their own resources. The states can effectuate this objective by making available to local governments their generally superior enforcement resources and advice and counsel from their generally more expert knowledge. The states' efforts to assist local governments in these and other ways need not interfere with their promoting the economic use of public funds at the local level; on the contrary, they will affirmatively contribute to the attainment of the important objective.

States are urged to promote interlocal cooperation in tax policies and practices in ways appropriate to their circumstances:

- (1) to facilitate economies in tax administration and to ease the burdens of compliance for taxpayers, the pooling of tax enforcement efforts should be provided, when possible, by permitting (a) the local tax to be added to the state tax for collection purposes where the state imposes the same kind of tax, or (b) authorizing the pooled administration of separate local taxes by a collection agency serving groups of jurisdictions;
- (2) to minimize intercommunity tax differentials, the city and the other jurisdictions comprising metropolitan or other cohesive economic areas should be provided with uniform taxing powers and authority for cooperative tax enforcement;
- (3) to minimize needless varieties among local nonproperty taxes, the states should accompany the authorization for using these taxes with specifications with respect to their structure (taxpayer, tax base exemptions, etc.) and administrative features;
- (4) states should take active leadership in guiding local governments toward sound policies with respect to nonproperty taxes and providing technical assistance to them by organizing training facilities for tax enforcement personnel, advising them on the usefulness of state tax records in local tax enforcement and by serving as a clearinghouse of information of tax experience elsewhere, particularly within the state.

COOPERATIVE TAX ADMINISTRATION AGREEMENTS

Some 80,000 counties, municipalities, towns, townships, school districts, and special districts now levy and collect taxes. Most employ only property taxes. A substantial number impose also one or more nonproperty taxes including sales, income, and excise taxes.

Local jurisdictions particularly the smaller ones, find it difficult to finance adequate tax enforcement to obtain first quality taxpayer compliance and tax collections. The cost of tax enforcement in relation to collections is nonetheless high because the number of taxpayers within individual taxing jurisdictions is relatively small and local tax rates are necessarily relatively low.

In those situations where adjoining local jurisdictions employ the same kind of tax, the pooling of tax enforcement efforts and resources can improve tax collections with reduced cost of administration and reduced compliance burdens for taxpayers. The pooled administration of two or more local jurisdictions' taxes has proven successful in the administration of property taxes, as where the county assesses and/or collects the levies of some of the smaller taxing jurisdictions within its borders. It is potentially useful in other tax areas as well.

In a number of states statutory authority for cooperative tax administration is inadequate or totally lacking. The suggested legislation to authorize it is couched in general terms: (1) to embrace both property taxes and different kinds of nonproperty taxes, and (2) to permit two or more local jurisdictions to provide joint administration or to permit them to contract to administer one another's taxes.

Suggested Legislation

Title should conform to state requirements

(Be it enacted, etc.)

- 1 Section 1. For the purpose of reducing duplication of
- 2 effort and to provide for more effective tax administration,
- 3 a political subdivision of this state including a special
- 4 district or governmental authority may enter into an
- 5 agreement with other political subdivisions of this state
- 6 for the assessment and collection of a tax levied by such

7 jurisdictions. The agreement may provide for joint ad-
8 ministration or for administration by one political
9 subdivision on behalf of one or more political subdivisions
10 that are parties to such an agreement and shall provide
11 for the allocation of the cost of such administration among
12 the parties.

COLLECTION OF LOCAL NON-PROPERTY TAXES BY THE STATE

Over the past few years an increasing number of states have authorized local governments to levy non-property taxes as a means of securing additional revenues. Today many cities, counties, and even school districts levy the same kinds of taxes that are levied by the state. In order to levy such taxes, local governments typically have set up tax collection machinery which creates added administrative costs and increases the cost of tax compliance to the tax-paying public, while at the same time the effectiveness of local tax collection is hampered because of the limited local funds available for tax administration.

In the sales tax field, states such as California, Illinois, Mississippi, New Mexico, and Utah have, for some time, authorized a state agency to collect locally levied sales taxes. In addition to sales taxes, a number of states permit local governments to levy taxes on income, gasoline, alcoholic beverages, cigarettes and tobacco, amusements, motor vehicles, and others. During 1963, Colorado enacted broad legislation which would permit a state agency to collect any non-property tax for a local government where the state and local government levy the same tax.

The suggested legislation below is based on the Colorado statute. It should clearly be noted that this legislation does not in any sense constitute an authorization for local government to levy non-property taxes. It merely provides for a procedure where the state, on a reimbursable basis, can collect local government non-property taxes where such taxes are otherwise authorized by state law.

Suggested Legislation

[Title should conform to state requirements]

(Be it enacted, etc.)

1 Section 1. Authority to contract. The director of
2 [tax department] is hereby authorized to negotiate and con-
3 tract with any political subdivision of the state for the
4 purpose of arranging for the collection by the [tax depart-
5 ment] of any tax levied by a political subdivision of the
6 state which is also levied and collected by the [tax
7 department] for the state. Such agreements shall include

8 a fee to be paid by the political subdivision to the
9 tax department in such amount as may be necessary fully
10 to cover the cost of collection of the local portion of
11 the tax by the tax department. Pursuant to the agree-
12 ment the director shall transmit to such political
13 subdivisions on or before date all taxes so collected on
14 behalf of such political subdivisions less the agreed
15 upon collection fee.

EXCHANGE OF TAX RECORDS AND INFORMATION

Administrative cooperation between federal, state and local tax administrations has had legislative and executive endorsement, in principle, at both state and federal levels for more than a generation. Its application, however, has been rather limited to date despite the significant dividends it can yield in terms of increased revenues, enforcement cost economies, and improved taxpayer compliance.

The case for intergovernmental cooperation among state and local tax administrations and between them and the federal government is self-apparent. Tax information assembled by one can be useful to one or more of the others. Moreover, just as taxpayers' respect for federal tax administration has complementary benefits for state administrations, so improved state and local tax enforcement eases the federal task. Conversely, each discouragement to under-reporting of federal tax liability increases the odds against under-reporting to state and local governments and vice versa.

The exchange of tax records and information among states and between the states and the Federal Internal Revenue Service is basic to intergovernmental efforts to secure better reporting by taxpayers. The Revenue Act of 1926 and subsequent Congressional enactments contain explicit authority for giving state tax officials access to federal tax returns. In some states, however, statutory authority for the exchange of tax information is limited and may even be completely lacking as to a specific tax.

Accordingly, states are urged to examine their existing statutes relative to the exchange of tax information with tax officials of other jurisdictions so as to insure that they are clear-cut and adequate. Consideration might also be given to the enactment of a generally applicable statute which would uniformly authorize the exchange of information as to all taxes imposed in the state instead of enacting such authority separately in connection with each different tax. The suggested legislation limits the exchange of information to jurisdictions which reciprocate the service and undertake to use the information solely for tax enforcement purposes.

Suggested Legislation

[Title should conform to state requirements]

(Be it enacted, etc.)

- 1 Section 1. The [tax commissioner] at his discretion may
- 2 furnish to the taxing officials of any other state and its

3 political subdivisions, the political subdivisions of this
4 state, the District of Columbia, the United States and its
5 territories, Canada and the Provinces of Canada any infor-
6 mation contained in tax returns and reports and related
7 schedules and documents filed pursuant to the tax laws of
8 this state, or in the report of an audit or investigation
9 made with respect thereto, provided that said jurisdictions
10 grant similar privileges to this state and provided further
11 that such information is to be used only for tax purposes.

1 Section 2. The political subdivisions of this state may
2 enter into agreements with the Tax Commissioner to provide
3 for exchange of tax information authorized by Section 1 of
4 this act.

INVESTMENT OF IDLE FUNDS ACT

State and local governments in the United States are hard pressed to raise the revenues necessary to keep abreast of an ever broadening and intensifying demand for more governmental services arising from an increasing population and the quickening pace of technological change. It is possible, through a prudent yet vigorous program of investment of idle cash balances, to increase state and local governments' revenues appreciably without raising state or local taxes and without increasing other nontax charges upon the public. The Advisory Commission on Intergovernmental Relations, an intergovernmental body created by the Congress, estimates that from \$35 million to \$100 million of additional annual revenue can be obtained through the placing of additional funds in interest-bearing accounts or investments.

Cash balances of local funds which are in excess of operating needs can either be put to work drawing interest and thereby producing additional revenue for the local government, or they may be allowed to lie idle. If the latter course is followed, a waste of public funds occurs, just as real as an unnecessary or over-priced procurement contract or an uncollected tax obligation. Although considerable improvement has been registered in recent years, the investment of otherwise idle balances constitutes a significant potential revenue source which still is sometimes overlooked completely and is frequently under-utilized. In a number of states, statutory authority for the investment of idle funds of counties, municipalities and other local units of government does not exist or is restrictive or unclear. To continue in effect state legislative restrictions which preclude the investment in a safe and prudent manner by local governments of otherwise idle funds is not only inconsistent with constructive state-local relations in general but deprives local units of government of much-needed revenue. To assist the local governments so affected, the Investment of Idle Funds Act has been developed.

It is the purpose of the suggested act to authorize the governing body of a municipality, county, school district or other local governmental unit or political subdivision to invest and reinvest its funds in certain interest-bearing obligations.

The question of how far to go in the type of investments authorized is a matter of judgement which will vary from state to state. At the very least, as provided in Section 1 of the suggested act, authority is provided for the placement of idle funds in (a) obligations of the United States and of its agencies and instrumentalities; (b) bonds or certificates of indebtedness

of the state concerned and of its agencies and instrumentalities; and (c) shares of any building and loan association insured by the government of the United States or any agency thereof, up to the amount so insured. Particular states may wish to authorize additional types of investment, such as the securities of the local unit of government concerned, the securities of other states, or of municipalities or other local governments within the state, or other types of securities that meet appropriate tests of liquidity and security.

Section 1 provides further that the provisions of the act shall not impair the power of a local unit of government to hold funds in deposit accounts with banking institutions as otherwise authorized by law. In other words, the terms of the suggested act are designed to avoid conflict with other statutory provisions governing the placing of funds with banking institutions.

Section 2 of the suggested act authorizes the governing body of the local unit of government concerned to delegate the investing authority provided by Section 1 to the treasurer or other financial officer charged with custody of the funds of the local government.

Suggested Legislation

[/Title should conform to state requirements,]

(Be it enacted, etc.)

1 Section 1. The governing body of a municipality, county,
2 school district, or other governmental unit or political
3 subdivision, may invest and reinvest money subject to its
4 control and jurisdiction in:
5 (a) Obligations of the United States and of its agencies
6 and instrumentalities;
7 (b) Bonds or certificates of indebtedness of this state
8 and of its agencies and instrumentalities;
9 (c) Shares of any building and loan association insured
10 by an agency of the government of the United States up to the

11 amount so insured;

12 (d) 1

13 (e) 1

14 Provided however that the provisions of this act shall not
15 impair the power of a municipality, county, school district
16 or other local governmental unit or political subdivision
17 to hold funds in deposit accounts with banking institutions
18 as otherwise authorized by law.

1 Section 2. The governing body may delegate the invest-
2 ment authority provided by Section 1 of this act to the
3 treasurer or other financial officer charged with custody
4 of the funds of the local government, who shall thereafter
5 assume full responsibility for such investment transactions
6 until the delegation of authority terminates or is revoked.

1 Individual states may wish to augment the list of
authorized investments set forth in this Section.

TECHNICAL ASSISTANCE TO SMALL LOCAL GOVERNMENTS
ON THE INVESTMENT OF IDLE FUNDS

Considerable improvement continues to be registered in the investment of idle cash balances in state and local governments' accounts. By investing funds not needed in the near future to cover obligations, these governments are earning interest income and obtaining urgently required revenue without increasing taxes or otherwise burdening their citizens. The opportunity for securing income from this source continues to expand as the size of governments' financial operations and the volume of their debt financing rise. Where bonds are sold to finance construction operations, part of the funds may not actually be needed for one or more years after bonds are sold.

The income potential of this source, however, remains unavailable to some governments, particularly the smaller local jurisdictions, or is under-utilized by them. Where local governments lack statutory authority to invest idle funds or where their authority is unduly restrictive or unclear, the barrier would be removed by the enactment of legislation along the lines of the suggested "Investment of Idle Funds Act" included in this Program, beginning on page 19.

Some local governments fail to avail themselves of this opportunity to earn interest income because their officials, particularly in the smaller governmental units far removed from the financial centers, are not sufficiently familiar with the opportunities and mechanics for investing governmental funds for short periods. These governmental units typically operate with small staffs. Their officials often perform a combination of different functions which in the larger jurisdictions are shared by a number of officials. Some of them are understandably reluctant to invest government funds in their custody in investment media with which they are unfamiliar.

Since many state governments regularly invest their free balances in short-term obligations, their officials possess technical expertness in this activity. It is urged that states consider authorizing and directing their appropriate officials to share their specialized knowledge in the investment of short-term public funds with the appropriate financial officials of the smaller subdivisions by: (1) taking the leadership in explaining these investment opportunities to them; (2) acquainting them with the state's practice and experience in investing short-term funds; and (3) organizing machinery for making technical assistance available to local jurisdictions which request it on a continuing basis.

In some states the investment of public funds is conducted under the general guidance of an investment board or committee composed of state officials and leaders in the financial community. In these situations the guidance of the group could be made available to local officials as well.

States are urged also to consider the possibility of providing facilities to enable as many local jurisdictions as elect to participate to pool their funds for short-term investment.

In some cases the efficient investment of idle funds is handicapped by statutory provisions or local ordinances requiring different public funds to be maintained in separate accounts. Appropriate state and local legislation permitting the cash balances in the separate funds to be pooled for investment purposes would meet this problem.

STATE TECHNICAL ASSISTANCE ON LOCAL GOVERNMENT
DEBT ISSUANCES

States have an inescapable interest in and concern with the quality of debt management practices of their local governments. Each community's practice is a matter of statewide concern because a blemish on its credit standing, perhaps on only a single bond issue, tends to affect the money market's judgment of other local bond issues in that state. It is appropriate and desirable therefore that state governments provide technical assistance in debt management to their cities, towns, counties and other local units in forms and in extent appropriate for their particular circumstances.

The specific state agency best equipped to perform this function can only be determined by each state on the basis of its own governmental organization.

Variations in state-local fiscal relations and institutional practices in the fifty states and among local jurisdictions within the same state preclude the formulation of generally applicable procedures suitable for all situations. The variety of aids already provided local governments in several states testifies to this fact. In some jurisdictions, the validity of a bond issue may be tested in a declaratory judgment action. The availability of such a procedure facilitates marketability of the bonds by providing a ready means of disposing of disputes. It also makes it possible to counter obstructionist tactics of minority groups who may seek means of forestalling flotation of an authorized issue. In other states, the marketability of local issues is enhanced by provision for the state to assume responsibility for interest and principal payments on a local bond issue in the event of default with accompanying authority to reimburse the state from state aid funds allocated to the defaulting jurisdiction.

Clearly, debt management is not separable from other aspects of fiscal management. The quality of a government's credit standing, the extent to which investors bid for its securities, is influenced also by the quality of other fiscal management operations, including budgeting, accounting, auditing, and reporting. This does not, however, diminish the importance of debt management.

Individual states have developed and stressed different forms of technical assistance. However, procedures developed in one state may have potential usefulness in others. Therefore, in developing programs of technical assistance to their local governments in debt management, states are urged to consider the potential usefulness, among others, of the following procedures

presently employed in one or more states:

(1) The designated state agency, in cooperation with associations of public officials, private professional organizations, university faculties and other specialists, can sponsor, at regular intervals, training and educational programs on debt management procedures and practices for the benefit of local officials.

(2) The designated state agency can maintain a central file of debt and related data for all local governments to provide ready access to official data, on a comparable basis, for the benefit of security underwriters, investors, security analysts and interested citizens. In addition to information on outstanding debt, data might be maintained currently also on bond elections and security offerings planned for the fiscal year. The ready availability of this information would benefit local governments by insuring that those evaluating their obligations had access to information on their fiscal situation.

(3) The designated state agency can advise a local government on procedures for improving its debt management, when it appears that its borrowing practices, with respect to method of financing, size of the issue, maturity schedule, coupon rate structure, timing of sale, advertising, etc., do not accord with the local unit's self-interest.

(4) The designated state agency can be directed to handle the marketing of the security offerings of local units on a request basis. Communities with infrequent recourse to the money markets can in this way be given access to highly specialized skills involved in preparing a bond issue for sale and timing it so as to secure for it the best terms available in a continually changing money market. This procedure also permits the pooling of the bond offerings of several local jurisdictions, thereby expanding the likely participation of large national firms in the bidding for the issue.

STANDARDS FOR OFFICIAL STATEMENTS ON LOCAL
DEBT OFFERINGS

All indicators point to continued pressure upon local governments for sizeable capital outlays. A substantial proportion of these outlays will necessarily have to be financed by the sale of bonds. This makes it very important that local governments be able to sell their bonds on the most favorable terms possible.

Local governments, particularly small ones, are frequently penalized in the cost of their borrowing--the rate of interest they pay--because the official statements which announce their offer to sell bonds and invite underwriters' bids do not contain adequate economic, financial and other information to permit the quality of their credit to be fully recognized. Potential purchasers of municipal bonds need to be able to appraise the borrowing jurisdiction's ability to meet its debt obligations in terms of comparable data, covering several recent years, on revenues by sources, tax rates and collection experience, expenditures by purposes, outstanding debt and debt service requirements, limitations on taxing and borrowing powers, etc. They need data to permit an appraisal of the jurisdiction's prospects for economic growth and development, and in the case of revenue bond offerings, require additional information bearing on the ability of the particular activity, say a water system, to support additional debt.

Smaller jurisdictions generally borrow infrequently and often do not have access, through their own financial staffs and locally available advisors, to the specialized techniques involved in preparing a debt offering "prospectus." Some do not even appreciate the importance attached by the bond market to a comprehensive official statement--that whenever some key item of information is omitted and is not readily available elsewhere, the bond market and the investor necessarily make the conservative assumption and resolve any doubt against the borrowing government. As a result, local governments in relatively strong economic and financial condition sometimes fail to cash in on their credit quality and are obliged to sell their bonds on less favorable terms than is their worth only because information germane to the appraisal of the quality of their credit has not been provided.

To enable local governments to borrow as cheaply as possible and to enable investors and taxpayers to form intelligent opinions about the quality of the credit of the borrowing jurisdiction, states should establish by law a standard procedure for the preparation and the minimum content of official statements or "prospectuses" issued by local governments when they offer to sell long term obligations. Such legislation should leave the

development of reporting schedules and other specifications to the administrative discretion of the state agency charged with this responsibility. Professional and underwriting organizations, including the Municipal Finance Officers Association and the Investment Bankers Association of America, have developed recommended reporting standards which will assist the responsible state agency in prescribing minimum standards appropriate to each particular situation.

The state agency charged with this responsibility should be directed also to guide local governments into the practice of reporting regularly on their financial condition and sending such reports to investment bankers, newspapers, large investors and credit or rating agencies in order that their credit standing might be maintained on a continuing basis.

The specific state agency best equipped to discharge these responsibilities can only be determined by each state in the light of its own governmental organization. The agency engaged in providing local governments with technical assistance in debt management, or supervising the preparation of reports on the financial transactions of local governments or the agency responsible for the marketing of the state's own obligations may each be a qualified candidate for administering the state's statutory standards for the minimum content of official statements on local debt offerings.

LOCAL INDUSTRIAL DEVELOPMENT BOND FINANCING

Local governments in twenty-seven states are authorized to issue bonds to finance industrial plants for lease to private enterprise. Although the total amount of local industrial development bonds outstanding is still under \$500 million, this method of attracting industry to a community is rapidly increasing. Four of the states in which local industrial development bond financing is now authorized enacted their programs in 1963.

If allowed to expand without proper safeguards, the use of industrial development bond financing by local governments may impair tax equities, competitive business relationships, and conventional financing institutions out of proportion to its contribution to economic development and employment.

In recent years, a number of abuses have been identified with industrial development bond financing, often attracting unfavorable public notice to the detriment of the public's regard for local government administration, particularly for the financial administration of the localities which participate in the practice. Some communities have used development bonds to finance enterprises in excess of their employment needs, and which impose demands for public services the community cannot supply without overburdening its taxpayers and saddling itself with excessive contingent liabilities in the form of debt service on the bonds. The practice has been subject to other abuses: financing plants for national corporations with adequate credit resources; pirating established firms by one community from another; and enabling specially incorporated areas with relatively few residents to develop tax havens at the expense of neighboring communities. Abuse of the practice for private advantage tends to reflect on the tax exemption of municipal securities generally and has brought forth suggestions that Congress police the practice by federal legislation.

The accompanying suggested act would establish safeguards against the kinds of abuses enumerated above, by: (1) subjecting all industrial development bond issues to approval by a state supervising agency; (2) restricting authority to issue such bonds to local units of general government (counties, municipalities, and organized townships); (3) giving priority to communities with chronic surplus labor, outside the area of the effective operation of conventional credit; (4) limiting the total amount of such bonds which may be outstanding at any one time in the state; (5) prohibiting such financing for the pirating of industrial plants by one community from another; and (6) providing machinery for informing the public as to proposed industrial development bond projects, and to enable citizens to initiate referenda on such projects.

The development of the draft act was stimulated by a study completed by the Advisory Commission on Intergovernmental Relations. The subject to which it is addressed is, of course, but one of a number of devices and procedures designed to stimulate economic development. Such stimulation as its use might contribute to the economy of a local area must not be diluted by its potential abuses. As the ACIR warned in its report--

We conclude that the industrial development bond tends to impair tax inequities, competitive business relationships and conventional financing institutions out of proportion to its contribution to economic development and employment. It is therefore a device which the Commission does not endorse or recommend. However, the Commission recognizes the widespread and growing nature of this practice and the unlikelihood of its early cessation. Therefore, we conclude that if the practice is to continue, a number of safeguards are absolutely essential. These safeguards are required to minimize intergovernmental friction, to insure that the governmental resources deployed for this purpose bear a reasonable relationship to the public purpose served, and that the governmental powers employed are not diverted for private advantage. We believe that the need for these safeguards is urgent.

The Committee of State Officials on Suggested State Legislation is aware that the use of local industrial development bond financing is under study by other state government officials and organizations of officials. The comments and criticisms of such officials would be appreciated.

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act relating to industrial development bonds."⁷

(Be it enacted, etc.)

1 Section 1. Purpose. The legislature hereby finds and
2 declares that the issuance of industrial development bonds
3 as herein described must be placed under proper safeguards
4 in order that the fiscal integrity of the state and its
5 political subdivisions be preserved, that the conventional
6 credit facilities of private enterprise not be displaced,

7 and that local government financing not be abused. It
8 is the intent of this act, therefore:

9 (a) To insure that the issuance of local government
10 industrial development bonds is conducted in such a
11 manner as to make a maximum contribution to the orderly
12 industrial development of the state;

13 (b) To avoid overextension of local government in-
14 dustrial development credit;

15 (c) To prevent abuse of tax-exempt local government
16 industrial development bonds; and

17 (d) To provide technical assistance to local units
18 of general government choosing to utilize industrial de-
19 velopment bond financing.

1 Section 2. Definitions.

2 (a) "Industrial development bond" means any general
3 obligation or revenue bond issued by any local unit of
4 general government of the state for the purpose of financing
5 the purchase of land, the purchase or construction, in-
6 cluding reconstruction, improvement, expansion, extension
7 and enlargement, of buildings and appurtenances and the
8 purchase and installation of machinery, equipment or
9 fixtures, the purpose of such purchases being primarily for
10 sale or continuing lease to a private individual, partner-
11 ship or corporation for use in connection with the operation
12 of an industrial enterprise, except docks, wharves and
13 marine warehouses, airport terminal and hangar facilities,

14 other transportation facilities, municipal stadiums,
15 theaters, or ...7.

16 (b) "Local unit of general government" means a county
17 or a city or a town, township, borough, etc.7

18 (c) "Governing body" means the body or board charged
19 with exercising the legislative authority of a local unit
20 of general government.

21 (d) "Agency" means insert name of the appropriate agency
22 of state government, normally the agency, if any, that is
23 charged generally with concern or oversight regarding local
24 government debt, provides technical assistance to local
25 governments in the sale of their bonds, or that provides
26 general services or assistance to local governments⁷.

1 Section 3. Authorization. Industrial development bonds
2 may be issued only by local units of general government
3 located in such areas designated by the agency as having
4 chronic surplus labor and as being outside the area of
5 regular and effective operation of existing conventional
6 credit facilities which are able to provide credit in ade-
7 quate amounts.¹ Such local units of general government are

¹ Some states may wish to designate as eligible under this provision all local units of general government having surplus labor that are outside any standard metropolitan statistical area, as defined by the U. S. Bureau of the Census, on the ground that conventional credit facilities may be presumed adequate in the large urban areas. States may also wish the agency to take into consideration projects that are being constructed or proposed under such federal programs as the Area Redevelopment Administration and Small Business Administration.

8 hereby authorized to issue industrial development bonds
9 subject to the conditions of this act.

1 Section 4. Statutory limitations imposed upon the
2 borrowing powers of local units of general government
3 shall be construed as not being applicable with respect
4 to the issuance of industrial development bonds. In
5 addition to the limitations on the powers of local units
6 of general government provided in this act, the agency
7 shall limit the aggregate volume of industrial develop-
8 ment bonds outstanding at any time on behalf of all local
9 units of general government in the state to an amount not
10 to exceed percent of the personal income of the
11 population in the state as last determined by the United
12 States Department of Commerce⁷ or percent of
13 total state and local tax collections in the state during
14 the preceding fiscal year⁷ dollars⁷. The
15 agency shall determine from time to time the aggregate
16 volume of industrial development bonds which may be issued
17 pursuant to this limitation and in the light of employment
18 needs and industrial development prospects shall allot
19 among all eligible local units of general government the
20 amount of industrial development bonds each may issue.

1 Section 5. The agency may employ personnel necessary
2 to carry out the provisions of this act. The agency is
3 empowered to issue rules and regulations and to require
4 information necessary for the administration of this act.

5 Section 6. All departments, divisions, boards, bureaus,
6 commissions or other agencies of the state government shall
7 provide such assistance and information as the agency may
8 require to enable it to carry out its duties under this
9 act. In its deliberations incident to the administration
10 of this act the agency shall consider the advice of the
11 state planning and development agencies and local planning
12 agency regarding resource utilization and developmental
13 plans for the various areas of the state.

1 Section 7. No local unit of general government may
2 issue industrial development bonds without first having
3 been issued a certificate of convenience and necessity
4 therefor. Such certificate shall be issued by the agency
5 upon a petition of the governing body of the local unit of
6 general government proposing to issue industrial development
7 bonds upon the agency finding:

8 (a) That the local unit of general government has
9 a contract, approved by its governing body, with an indivi-
10 dual, partnership or corporation to lease the property to
11 be acquired with the proceeds of the industrial development
12 bonds for occupancy and use in connection with the conduct
13 of an industrial enterprise for a period of years, and for
14 the lessee to pay an annual rental adequate to meet interest
15 and principal payments falling due during the term of the
16 lease;

17 (b) That the lessee of the property is a responsible
18 party;

19 (c) That the contract for lease of the property provides
20 for:

21 1. The reasonable maintenance, less normal wear
22 and tear, of the property by the lessee;

23 2. Insurance to be carried on the said property and
24 the use and disposition of insurance moneys;

25 3. The rights of the local unit of general government
26 and the lessee respecting the disposition of the property
27 financed by the proposed industrial development bonds upon
28 retirement of the bonds or termination of the contract by
29 expiration or failure to comply with any of the provisions
30 thereof;

31 (d) In addition to the above, the contract may provide
32 for the rights of the bondholders; the care and disposition
33 of rental receipts; and such other safeguards as are deemed
34 to be necessary by the agency;

35 (e) That opportunities for employment are inadequate
36 in the area from which the proposed industrial plant would
37 reasonably draw its labor force and that there exists in
38 that area a condition of substantial and persistent unemploy-
39 ment or underemployment;

40 (f) That the proposed project will provide employment
41 having a reasonable relationship to the volume of the bonds
42 issued as compared to investment per employee of comparable
43 industrial facilities;

44 (g) That financing by banks, other financial institutions

45 or other parties, of the property required by the lessee
46 is not readily available to the lessee on ordinary commer-
47 cial terms in adequate amounts either on the local market
48 or on the national market;

49 (h) That no portion of the proposed industrial develop-
50 ment bond issue will be purchased by the lessee or any
51 affiliate or subsidiary of the lessee at the time of the
52 initial marketing;

53 (i) That the facility offered the lessee is intended
54 to accommodate expansion of an enterprise located elsewhere
55 or a new enterprise and not primarily the relocation of an
56 existing facility.

57 (j) That adequate provision is being made to meet any
58 increased demand upon community public facilities that
59 might result from the proposed project; and

60 (k) That the issuance of the proposed bonds and the opera-
61 tion of the enterprise of the lessee will not disrupt the
62 fiscal stability of the issuing local unit of general
63 government in the event it should become necessary for it
64 to assume responsibility for payment of the interest and
65 principal of the proposed industrial development bonds.

1 Section 8. (a) Within [] days after a local unit
2 of general government files a petition, completed in accord-
3 ance with the rules and regulations authorized by Section 5,
4 the [appropriate state agency] shall upon due notice, hold
5 a hearing upon the petition. The [appropriate state agency]

6 shall reasonably expedite any such hearing and shall advise
7 the petitioning local unit of general government of its
8 decision within [] days of the adjournment of a
9 hearing. If the [appropriate state agency] approves the
10 petition a certificate of convenience and necessity shall
11 be issued forthwith. Failure of the agency to advise the
12 petitioning local unit of general government of its decision
13 within [] days of the conclusion of the hearing shall
14 constitute approval of such petition, and the local unit
15 of general government shall be entitled to receive such
16 certificate. Decisions of the [appropriate state agency]
17 shall be [reviewable as provided in the state administrative
18 procedure act] [final as to findings of fact].

19 (b) A certificate of convenience and necessity issued
20 as provided in this act shall expire in twelve months from
21 the date of its issuance provided that, upon written appli-
22 cation by the local unit of general government to the
23 [appropriate state agency], supported by a resolution of
24 such local unit's governing board and such information as
25 the [appropriate state agency] may require, the [appropriate
26 state agency] may in its discretion extend the expiration
27 date of such certificate for a period not to exceed []
28 months.² If, at any time during the life of such certificate,

² States including Section 9 (b) in their acts may wish to consider a longer period of initial life for a certificate in order to accommodate the time intervals necessary for the referendum procedure.

29 the authority of the local unit of general government to
30 proceed thereunder is contested in any judicial proceeding,
31 the court in which such proceeding is pending or, upon
32 proper application, to the appropriate state agency, the
33 appropriate state agency may issue an order extending the
34 life of such certificate for a period not to exceed the
35 time from the initiation of such proceeding to final judg-
36 ment or other termination thereof.

1 Section 9. (a) A local unit of general government
2 which holds a certificate of convenience and necessity
3 issued and in force pursuant to this act may incur bonded
4 indebtedness, subject to the limitations and procedures
5 of this act and of other applicable laws.

6 (b) Prior to authorization of the incurring of bonded
7 indebtedness pursuant to this act by resolution of the
8 local governing board, public notice as provided in cite
9 appropriate sections of state law shall be given. In
10 addition to any other items which the notice is required
11 to or may contain, such notice shall include: the nature
12 of the project; the amount of bonds to be issued; whether
13 such bonds are to be revenue bonds or general obligation
14 bonds; the right, as provided herein, of petition for a
15 referendum; and the place at which a true copy of the
16 contract is available for examination. If, within 60
17 days thereafter, no petition for a referendum has been
18 received the governing body may proceed with the issuance

19 of the bonds.

20 (c) Except to the extent that they are in conflict with
21 this act, the [cite statutes empowering local governments
22 to issue bonds and prescribing applicable procedures]
23 shall apply to the authorization, and issuance and sale of
24 industrial development bonds by the local units of general
25 government.

1 Section 10. If within the time limits prescribed in
2 Section 9 (b), [] percent of the eligible voters
3 resident of the unit of government proposing to issue in-
4 dustrial development bonds, by signing a petition to the
5 governing body, shall request that the proposal to issue
6 the said bonds be subjected to referendum of the electorate,
7 an election shall be ordered in accordance with [cite those
8 sections of the law applicable to bond elections], except
9 that, notwithstanding any other provisions of law, a
10 majority of the qualified voters voting on the question
11 shall resolve it. If a majority of those voting on the
12 question vote "no" the certificate of convenience and
13 necessity shall be void.

1 Section 11. The [appropriate state agency] shall make
2 an annual report to the Governor and the legislature, in-
3 cluding recommendations to further the purposes of this
4 act.

1 Section 12. Sections [insert any legal citations authorizing
2 other issuance of industrial development bonds] are hereby
3 repealed.

1 Section 13. Insert separability clause.

1 Section 14. Insert effective date.

B. URBAN PROBLEMS

An Introductory Statement by the Advisory Commission on Intergovernmental Relations

At no point in the structure of the American Federal system of government are problems of intergovernmental relations so marked, varied, and difficult as in the large metropolitan area, where the activities of all levels of government function in close proximity. Within such areas, Federal, State, county, and municipal agencies often supplemented by a small host of special-purpose units of local government, must carry on their functions in close juxtaposition, subject to an extremely complicated framework of Federal, State, and local laws and administrative regulations.

The States have fundamental responsibility for enabling and assisting their metropolitan areas to deal with the increasingly difficult problems they face. This is especially true because the present complex patterns of local governmental structure, authorities and restrictions in metropolitan areas are by and large the handiwork of the State governments. The Commission therefore recommends that the Governors and legislatures of the several States assert strong leadership with regard to urban problems, including the rendering of financial and technical assistance and, where necessary, the imposition of State regulation and control to meet the jurisdictional and other problems arising in the country's metropolitan areas.

In the legislative proposals presented in this section, the Commission sets forth no single "pat" solution for easing the problems of political and structural complexity in metropolitan areas. The Commission is convinced that no single approach can be identified as the most desirable, whether from a National standpoint or within a given State. Neither does the Commission believe it can be a profitable effort for the legislature of any State having within its borders a number of metropolitan areas to endeavor to legislate a single solution; rather the approach recommended by the Commission is one of legislative provision by the State of permissive authority to all of its metropolitan areas to employ whichever of these principal methods is determined by the residents of the areas and their political leaders to be the preferable one in the light of all attendant circumstances.

In brief, the Commission proposes enactment by State legislatures of a "package" of permissive powers to be utilized by the residents of the metropolitan areas as they see fit. Additionally, through legislative proposals presented herein, the Commission proposes that States establish within the structure of State government a dual function of oversight and technical assistance

to local units of government, thereby asserting a determination to assist continually and to intervene where necessary in ameliorating political jurisdictional problems in the metropolitan areas. Finally, given the many uncoordinated sources of development activities and the number of local units in metropolitan areas, the Commission has urged the use of metropolitan planning and coordinating machinery effectively geared into the political decision-making processes within the entire metropolitan area.

The policy statements and suggested legislation that follow were approved by the Committee of State Officials on Suggested State Legislation of the Council of State Governments and are presented as they appear in the Council's publication, Program of Suggested State Legislation, for the years 1963 and 1964.

ASSERTION OF LEGISLATIVE AUTHORITY

Because of the rapid changes taking place in metropolitan areas, it is necessary that the state be in a position to afford leadership, stimulation and, where necessary, supervision with respect to metropolitan area problems. This is especially the case where the metropolitan area embraces more than one county, so that no governmental authority short of the state can be brought to bear upon the whole area involved. Constitutional provisions that, in conferring home rule municipalities or counties, and spell out functions of government concerning which the state legislatures may not intervene, have the effect of placing handcuffs upon the state in helping the local area meet functional problems that grow beyond effective local administration. For example, if water supply and sewage disposal are among municipal-type functions enumerated in a constitutional home rule provision for municipalities, the state becomes powerless in the attempt to exert any authority with respect to an areawide approach to water supply or sewage disposal. In other words, some problems today have grown beyond city limits but the city's power to cope with a situation ends abruptly at its boundary lines. The complexity of the problems, and the inability of many smaller units to cope with them, defeat the essential theory of local home rule with popular control. One may ask, where everybody is concerned but no one unit has the power to act, of what avail is local popular control?

States are urged, when considering general constitutional revision or undertaking constitutional changes with regard to local home rule, to reserve sufficient state authority to enable legislative action where necessary to modify responsibilities of and relationships among local units of government located within metropolitan areas, in the best interests of the people of the area as a whole.

MUNICIPAL INCORPORATIONS

In Suggested State Legislation - Program for 1963, it was pointed out that:

Only the states have the power to halt the chaotic spread of small municipalities within existing and emerging metropolitan areas. Accordingly, it is... urged that states enact legislation providing rigorous statutory standards for the establishment of new municipal corporations within the geographic boundaries of metropolitan areas.... It is also suggested that proposed new incorporations...be subject to the review and approval of the unit of state government concerned with local or metropolitan area affairs...

The suggested legislation which follows specifically implements the recommendations of last year. Since that time the Georgia and Kansas legislatures have passed laws setting up minimum standards of municipal incorporation which are consistent with the suggested legislation.

The standards provided in the suggested legislation specify establishment of minimums of area, total population, and population density for new incorporations, with higher standards being imposed for areas within a designated distance of larger cities. In addition to nondiscretionary standards, the suggested legislation provides a comprehensive set of discretionary standards as a guide to state action in approving new incorporations. (No specific standards of population, density, area, or nearness to existing urban areas are suggested here because such factors vary considerably from state to state and area to area.)

The suggested legislation proposes that such new incorporations be subject to the review and approval of a state unit of government. This office should be located in the department of the state government concerned with local or metropolitan area affairs if such an agency exists in the state. The state would thus be able to insure that (a) statutory standards are being compiled with fully, and (b) the proposed incorporation would assist, not hinder, the orderly development of local government within metropolitan areas.

The state office would be required to affirm or deny a petition. If it denied the petition, no petition for incorporation of any part of the same area could be submitted within two years. If the state office affirmed the petition, it could be submitted to referendum. A favorable vote of a majority of those voting in the area of the proposed incorporation would be required for final approval.

Only one task has been assigned to the proposed state Office of Municipal Incorporation Review. However, some states either now or at a later time may want to expand the function of the office to include such related duties as: review of petitions for annexation to municipalities of contiguous unincorporated and incorporated property; review of proceedings for detachment of property from a municipality; determination whether areas should be annexed to existing municipalities or incorporated as separate entities due to change or growth in population as indicated by official census.

The suggested legislation is based in large part on Chapter 414, Laws of Minnesota, 1959.

Suggested Legislation

1 Title should conform to state requirements. The fol-
2 lowing is a suggestion: An act establishing a state office
3 to review petitions for the incorporation of municipalities.]

1 (Be it enacted, etc.)

1 Section 1. Purpose. Because of the growing urban popu-
2 lation with subsequent increased demands for services, and
3 because of the fragmented approach to fulfilling these demands
4 due to the proliferation of municipalities, it is the purpose
5 of this act to establish procedures for the review of new
6 demands for municipal incorporations. The term municipalities
7 as used herein includes [villages, towns, townships, boroughs,
8 cities of all classes.]

1 Section 2. Creation of an Office of Municipal Incorpora-
2 tion Review. There is hereby created an Office of Municipal
3 Incorporation Review [in the department of state government in
4 charge of local affairs if such exists] to review petitions

5 for the incorporation of territory into municipalities.¹

6 The Office shall be administered by a Director who shall
7 be appointed by the Governor. The staff of the Office shall
8 be appointed by the Director subject to state civil service
9 regulations.

1 Section 3. Incorporation Procedure and Standards. Sub-
2 section(a). Standards for Initiating Petition.² If the pro-
3 posed area for incorporation is found to be square
4 miles in area, to include a population of with a
5 density of per square mile, a petition may be
6 prepared and submitted to the Director of the Office of

1 An alternative to an Office of Municipal Incorporation Review administered by a Director, would be a multi-member Municipal Incorporation Review Commission appointed by the Governor, serving at his pleasure, located in the state office of local affairs or such other office as the Governor may designate. Provision would have to be made for frequency of meetings, part-time or full-time, method of payment, etc. In the case of a Commission, the staff operations would be administered by a full-time staff director serving at the pleasure of the Commission.

2 For example, the following minimums have been adopted by several jurisdictions: (1) California: 500 population except Los Angeles County which requires 1500; (2) Minnesota: 500 population; (3) Ontario: village - 500 population, town - 2000, city - 15,000 or 25,000 depending upon present status; (4) Wisconsin: metropolitan village - area of 2 square miles with 2500 population and density of 500 per square mile, metropolitan city - area of 3 square miles with 5000 population and density of 750 per square mile, if within 10 miles of city of first class or 5 miles of city of second or third class - minimum area is 4 and 6 square miles for village and city respectively; (5) Oregon: need consent of central city of 5000 population (or less) if within 3 air miles, or of city of 5000 (or more) if within 6 air miles.

7 Municipal Incorporation Review requesting him to hold a
8 hearing on the proposed incorporation. The petition shall
9 have attached a statement containing the following informa-
10 tion regarding the proposed municipality: the quantity of
11 land embraced, platted and unplatted land, assessed valua-
12 tion of the property, both platted and unplatted, number of
13 actual residents, proposed name, a brief description of
14 existing facilities including water supply, sewage disposal,
15 fire and police protection. The petition shall include a
16 map setting forth the boundaries of the territory. It shall
17 be signed by at least [] qualified voters who are
18 residents of the area to be incorporated.

19 Subsection (b). Hearing and Notice. Upon receipt of a
20 petition, made pursuant to Subsection (a) of this section, the
21 Director shall designate a time and place for a hearing on the
22 petition, such time to be not less than 30 nor more than 60
23 days from the date the petition was received. The place of
24 the hearing shall be within the county in which the greater
25 proportion of the territory to be incorporated is situated
26 and shall be established for the convenience of the parties
27 concerned. The Director shall cause a copy of the petition
28 together with a notice of the hearing to be sent, at least
29 fourteen days in advance of such hearing, to the Chairman of
30 the county board, the governing body of all other governmental
31 jurisdictions in which all or part of the territory to be
32 incorporated is located, the governing body of any municipality

33 of [] population within [] miles of the pro-
34 posed incorporation, and any duly constituted municipal or
35 regional planning commission exercising planning authority
36 over all or part of the territory to be incorporated. Any
37 persons so notified may submit briefs, prior to the hearing,
38 for or against the proposed incorporation. Notice shall be
39 posted not less than 20 days before the hearing in three
40 public places in the area described in the petition, with a
41 notice fourteen days prior to the hearing to be published in
42 a newspaper qualified as a medium of official and legal publi-
43 cation of general circulation in the area to be incorporated.

44 Subsection (c). Director's Order. Pursuant to a hearing
45 on a petition for the incorporation of a municipality under
46 Subsection (a), the Director shall affirm the petition for
47 incorporation if he finds the territory to be incorporated so
48 conditioned as to be properly subjected to municipal government
49 and otherwise in the public interest. As a guide in arriving
50 at a determination, the Director shall consider the following
51 factors among others: (1) population and population density
52 of the area within the boundaries of the proposed incorporation;
53 (2) land area, topography, natural boundaries, and drainage
54 basins of the proposed incorporation; (3) area of platted land
55 relative to unplatted with assessed value of platted land
56 relative to assessed value of unplatted areas; (4) extent of
57 business, commercial, and industrial development; (5) past
58 expansion in terms of population and construction;

59 (6) likelihood of significant growth in the area, and in
60 adjacent areas, during the next ten years; (7) the present
61 cost and adequacy of governmental services and controls in
62 the area and the probable effect of the proposed action and
63 of alternative courses of action on the cost and adequacy of
64 local governmental services and regulation in the area and in
65 adjacent areas; (8) effect of the proposed action, and of
66 alternative actions, on adjacent areas, and on the local
67 governmental structure of the entire urban community.

68 The Director shall have authority to alter the boundaries
69 of the proposed incorporation by increasing or decreasing the
70 area to be incorporated so as to include only that property
71 which is so conditioned as to be properly subjected to municipal
72 government. In the event boundaries are to be increased, notice
73 shall be given to property owners encompassed within the area
74 to be added, by mail within five days, and the hearings shall
75 reconvene within ten days after the transmittal of such notice,
76 unless within ten days those entitled to notice give their
77 written consent to such action.

78 The petition for incorporation shall be denied if it is
79 determined by the Director that annexation to an adjoining
80 municipality, or some other alternative modification of govern-
81 mental structure in accord with the laws of the state, would
82 better serve the interest of the area, or that the proposed
83 incorporation would be otherwise contrary to the public interest.

84 If the proposed corporation is to assume any property
85 and obligations of a unit of government [such as county or
86 township] having jurisdiction within any part of the proposed
87 incorporation area prior to the incorporation, the Director
88 shall apportion such property and obligations in such manner
89 as shall be just and equitable having in view the value of
90 all such property, if any, located in the area to be
91 incorporated, the assessed value of all the taxable property
92 in each of the jurisdictions concerned, both within and with-
93 out the area to be incorporated, the indebtedness, the taxes
94 due and the delinquent and other revenue accrued but not paid
95 to such jurisdictions. Subsequent to the apportionment, the
96 area incorporated will not be liable for the remaining debts
97 of such jurisdictions.

98 The Director shall enter an order affirming or denying
99 the petition. He shall issue the order within a reasonable
100 time after the termination of the hearing. If the petition
101 is denied, no petition for incorporation may be submitted
102 which includes all or a part of the same area, within two
103 years after the date of the Director's order. If the petition
104 is denied in part, no petition for annexation to the newly
105 formed municipality as hereinafter provided, which includes
106 all or a part of the area deleted from the original petition,
107 may be submitted within two years after the date of the
108 denial order.

109 Subsection (d). Referendum. An order affirming a
110 petition made pursuant to Subsection (a) shall fix a day not
111 less than twenty days nor more than sixty days after the
112 entry of such order when a referendum shall be held at a
113 place or places designated by the Director within the area
114 to be incorporated. He shall cause a copy of the order
115 affirming the petition, as submitted or as amended, including
116 notice of the referendum, to be posted not less than twenty
117 days before the referendum in three public places in the area
118 described in the petition, and shall cause a notice of the
119 referendum, fourteen days in advance, to be published in a
120 newspaper qualified as a medium of official and legal publication,
121 of general circulation in the area to be incorporated. The
122 governing body of the appropriate county or counties shall make
123 appropriate provision for election, officers and personnel,
124 polling hours, and general election practices for the referendum.
125 Only voters residing within the territory described in the order
126 shall be entitled to vote. The ballot shall bear the words,
127 "For Incorporation" and "Against Incorporation".

128 Subsection (e). Filing of Incorporation Document.
129 Immediately upon the completion of the counting of the ballots,
130 the Board of Elections shall execute a signed and verified
131 certificate declaring the time and place of holding the
132 referendum, that it has canvassed the ballots cast, and the
133 number cast both for and against the proposition, and it shall
134 then file the certificate with the Director of the Office of

135 Municipal Incorporation Review. The Director shall attach
136 the certificate to the original petition, the original order
137 affirming the petition as submitted or as amended in the
138 order, and the original proofs of the posting of the election
139 notice. If the certificate shows that a majority of the votes
140 cast were "For Incorporation", the Director shall forthwith
141 make and transmit to appropriate state officials and to the
142 governing bodies of all other jurisdictions affected by the
143 incorporation, a certified copy of the documents to be then
144 filed as a public record, at which time the incorporation shall
145 be deemed complete. If the certificate shows that a majority
146 of the votes cast were "Against Incorporation", the provisions
147 of Subsection (c) restricting subsequent incorporation petitions
148 shall be applicable.

1 Section 4. Appeals to the Supreme Court from Orders of
2 the Director.¹ The ̄Court̄ shall have original jurisdiction
3 upon appeal to review the final orders of the Director. Any
4 party may appeal to the ̄Court̄ within thirty days after
5 service of a copy of such order by service of a written notice
6 of appeal on the Director of the Office of Municipal Incorpor-
7 ation Review. Upon service of the notice of appeal, the
8 Director shall file with the clerk of the ̄Court̄ a certified
9 copy of the order appealed from, together with the findings
10 of fact and the record, on which the same is based. The person

1 As an alternative to Section 4, if the state has an Administrative Procedure Act providing for judicial review, orders of the Director should be made subject to that act.

11 serving such notice of appeal shall, within five days after
12 the service thereof, file the same with proof of service with
13 the clerk of the Court ; thereupon the Court shall have
14 jurisdiction over the appeal.

15 In reviewing the order of the Director, the Court
16 shall limit its review to questions affecting the juris-
17 diction of the Office of Municipal Incorporation Review, the
18 regularity of the proceedings, and, as to the merits of the
19 order, whether the determination was arbitrary, oppressive,
20 unreasonable, fraudulent, or without substantial evidence to
21 support it. The Court may reverse and remand the decision
22 of the Director with directions as it may deem appropriate and
23 permit him to take additional evidence, or to make additional
24 findings in accordance with law. Such appeal shall not stay
25 or supersede the order appealed from unless the Court upon
26 examination of the order and the return made on the appeal,
27 and after giving the respondent notice and opportunity to be
28 heard, shall so direct; however, in no event shall the Court
29 so direct, when an order contemplates a referendum until sub-
30 sequent to the said election.

31 In the absence of an appeal as provided, the Director's
32 order shall be deemed final and complete.

1 Section 5. Separability. Insert separability clause

1 Section 6. Effective Date. Insert effective date

SECURING AND PRESERVING "OPEN SPACE"

Legislation is suggested to states which would (a) provide for acquisition by the states of interests or rights in real property which could include, among other interests or rights, conservation easements designed to remove from urban development key tracts of land in and around existing and potential metropolitan areas and (b) authorize local units of government to acquire interests or rights in real property within existing metropolitan areas for the purpose of preserving appropriate open areas and spaces within the pattern of metropolitan development.

It is widely recognized that, for economic, conservation, health, and recreational purposes, adequate amounts of open land need to be retained within metropolitan areas as the spread of population reaches ever outward from the central city. In some instances, acquisition and preservation of open land areas could be justified on the basis of watershed protection alone: many of the areas most likely to be selected for preservation would be stream valleys; the protection of some of these valleys from intensive urban development is essential from the standpoint of drainage, flood control, and water supply. The need for adequate amounts of open land for parks and recreational purposes is also obvious. Finally, provision of adequate open space within the general pattern of metropolitan development helps to prevent the spread of urban blight and deterioration. All of these are compelling economic and social reasons for appropriate steps by various levels of government to acquire and preserve open land.

The states should equip themselves to take positive action in the form of direct acquisition of land or property rights by the state itself, especially in (a) the emerging and future areas of urban development and (b) those emergency situations within existing metropolitan areas where, for one reason or another, local governments cannot or will not take the necessary action. Also recommended is the enactment of state legislation authorizing (where such authority does not now exist) such action by local governments. Additionally, zoning powers can be employed in a variety of ways to achieve some of the objectives cited above. Envisaged in these proposals is not only outright acquisition of land but also the acquisition of interests less than the fee which will serve the purpose of preserving the openness and undeveloped character of appropriate tracts of land. By the acquisition of easements, development rights and other types of interests in real property less than the fee land can continue to be used for agricultural and other nonurban purposes but protected against subdivision and other types of urban development. This type of direct approach is often more effective and subject to less difficulty than are various tax incentive plans designed to encourage owners of farmland to withhold their land from real estate developers and subdividers.

The suggested legislation which follows authorizes public bodies to acquire real property or any interests or rights in real property that would provide a means for the preservation or provision of permanent open-space land or to designate real property in which they have an interest for open-space land use. The public bodies would also be authorized to accept and utilize federal assistance for their permanent open-space land programs. The suggested legislation has been prepared by the State and Local Relations Division, Office of General Counsel, Housing and Home Finance Agency, Washington, D. C., to assist state and local officials. It can be used as a pattern in drafting state legislation to make states and public bodies eligible for federal assistance under the federal open-space land program.

The term "open-space land" is defined to mean land which is provided or preserved for (1) park or recreational purposes, (2) conservation of land or other natural resources, (3) historic or scenic purposes, or (4) assisting in the shaping of the character, direction, and timing of community development.

The use of real property for permanent open-space land is required to conform to comprehensive planning being actively carried on for the urban area in which the property is located. The term "comprehensive planning" would be defined to include the requirements in the federal law to make a public body eligible for grants. These are (1) preparation of long-range general physical plans for the development of the urban area in which the open-space land is located, (2) programing and financing plans for capital improvements for the area, (3) coordination of planning in the area, and (4) preparation of regulatory and administrative measures in support of the comprehensive planning. A section is included in the bill authorizing comprehensive planning for urban areas and the establishment of planning commissions for this purpose. This section would not be needed in states that have adequate planning laws.

The provisions of the draft bill are broad enough to authorize acquisition and designation of real property which has been developed, and its clearance by the public body for use as permanent open-space land. This provision is broader than the present federal open-space law since federal grants cannot be given under that law to assist acquisition and clearance of completely developed property. However, some localities may desire this authority in order to provide open space in central cities or other places where there is a need for more open-space land.

The bill prohibits conversion or diversion of real property from present or proposed open-space land use unless equivalent open-space land is substituted within one year for that converted or diverted.

Where title to land is retained by the owner subject to an easement or other interest of a public body under the proposed legislation, tax assessments would take into consideration the change in the market value of the property resulting from the easement or other interest of the public body.

A public body is given for the purposes of the act the power to use eminent domain, to borrow funds, to accept federal financial assistance, and to maintain and manage the property. It would also be authorized to act jointly with other public bodies to accomplish the purposes of the act. Public bodies that have taxing powers and authority to issue general obligations could use those powers for open-space land.

This draft is silent on several questions of state policy in relations with their subdivisions. It is suggested that in considering this draft, states will want to determine whether any additional provisions should be added dealing with state approvals, review of local grant applications, and related matters.

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act to provide for the acquisition and designation of real property by the state, counties, and municipalities¹ for use as permanent open-space land."7

(Be it enacted, etc.)

1 Section 1. Short title. This act shall be known and
2 may be cited as the "Open-Space Land Act."

1 Section 2. Findings and purposes. The legislature
2 finds that the rapid growth and spread of urban develop-
3 ment are creating critical problems of service and finance
4 for the state and local governments; that the present and
5 future rapid population growth in urban areas is creating

1 If any specific public bodies, such as park authorities, or certain districts, are included in the definition of "public body" in section 9(a) and in that manner authorized to carry out the purposes of the bill, appropriate reference to the public bodies should be inserted in the title at this point.

6 severe problems of urban and suburban living; that the
7 provision and preservation of permanent open-space land are
8 necessary to help curb urban sprawl, to prevent the spread
9 of urban blight and deterioration, to encourage and assist
10 more economic and desirable urban development, to help pro-
11 vide or preserve necessary park, recreational, historic and
12 scenic areas, and to conserve land and other natural re-
13 sources; that the acquisition or designation of interests
14 and rights in real property by public bodies to provide or
15 preserve permanent open-space land is essential to the solu-
16 tion of these problems, the accomplishment of these purposes,
17 and the health and welfare of the citizens of the state; and
18 that the exercise of authority to acquire or designate in-
19 terests and rights in real property to provide or preserve
20 permanent open-space land and the expenditure of public
21 funds for these purposes would be for a public purpose.

22 Pursuant to these findings, the legislature states that
23 the purposes of this act are to authorize and enable public
24 bodies to provide and preserve permanent open-space land
25 in urban areas in order to assist in the solution of the
26 problems and the attainment of the objectives stated in its
27 findings.

1 Section 3. Acquisition and preservation of real property
2 for use as permanent open-space land. To carry out the
3 purposes of this act, any public body may (a) acquire by
4 purchase, gift, devise, bequest, condemnation, grant or

5 otherwise title to or any interests or rights in real property
6 that will provide a means for the preservation or provision
7 of permanent open-space land and (b) designate any real prop-
8 erty in which it has an interest to be retained and used for
9 the preservation and provision of permanent open-space land.
10 The use of the real property for permanent open-space land
11 shall conform to comprehensive planning being actively carried
12 on for the urban area in which the property is located.

1 Section 4. Conversions and Conveyances. (a) No open-
2 space land, the title to, or interest or right in which has
3 been acquired under this act or which has been designated
4 as open-space land under the authority of this act shall be
5 converted or diverted from open-space land use unless the
6 conversion or diversion is determined by the public body
7 to be (1) essential to the orderly development and growth
8 of the urban area, and (2) in accordance with the program
9 of comprehensive planning for the urban area in effect at
10 the time of conversion or diversion. Other real property
11 of at least equal fair market value and of as nearly as
12 feasible equivalent usefulness and location for use as
13 permanent open-space land shall be substituted within a
14 a reasonable period not exceeding one year for any real
15 property converted or diverted from open-space land use.
16 The public body shall assure that the property substituted
17 will be subject to the provisions of this act.

18 (b) A public body may convey or lease any real property

19 it has acquired or which has been designated for the purposes
20 of this act. The conveyance or lease shall be subject to
21 contractual arrangements that will preserve the property as
22 open-space land, unless the property is to be converted or
23 diverted from open-space land use in accordance with the
24 provisions of subsection (a) of this section.

1 Section 5. Exercise of Eminent Domain. For the purposes
2 of this act, any public body may exercise the power of
3 eminent domain in the manner provided in []
4 and acts amendatory or supplemental to those provisions.
5 No real property belonging to the United States, the state,
6 or any political subdivision of the state may be acquired
7 without the consent of the respective governing body.

1 Section 6. General Powers. (a) A public body shall have
2 all the powers necessary or convenient to carry out the pur-
3 poses and provisions of this act, including the following
4 powers in addition to others granted by this act:

5 (1) to borrow funds and make expenditures necessary to
6 carry out the purposes of this act;

7 (2) to advance or accept advances of public funds;

8 (3) to apply for and accept and utilize grants and any
9 other assistance from the federal government and any other
10 public or private sources, to give such security as may be
11 required and to enter into and carry out contracts or agree-
12 ments in connection with the assistance, and to include in

13 any contract for assistance from the federal government such
14 conditions imposed pursuant to federal laws as the public
15 body may deem reasonable and appropriate and which are not
16 inconsistent with the purposes of this act;

17 (4) to make and execute contracts and other instruments
18 necessary or convenient to the exercise of its powers under
19 this act;

20 (5) in connection with the real property acquired or de-
21 signated for the purposes of this act, to provide or to
22 arrange or contract for the provision, construction, main-
23 tenance, operation, or repair by any person or agency,
24 public or private, of services, privileges, works, streets,
25 roads, public utilities or other facilities or structures
26 that may be necessary to the provision, preservation, main-
27 tenance and management of the property as open-space land;

28 (6) to insure or provide for the insurance of any real
29 or personal property or operations of the public body against
30 any risks or hazards, including the power to pay premiums on
31 the insurance;

32 (7) to demolish or dispose of any structures or facilities
33 which may be detrimental to or inconsistent with the use of
34 real property as open-space land; and

35 (8) to exercise any or all of its functions and powers
36 under this act jointly or cooperatively with public bodies
37 of one or more states, if they are so authorized by state
38 law, and with one or more public bodies of this state, and

39 to enter into agreements for joint or cooperative action.

40 (b) For the purposes of this act, the state, or a city,
41 town, other municipality, or county may:

42 (1) appropriate funds;

43 (2) levy taxes and assessments;

44 (3) issue and sell its general obligation bonds in the
45 manner and within the limitations prescribed by the appli-
46 cable laws of the state; and

47 (4) exercise its powers under this act through a board
48 or commission, or through such office or officers as its
49 governing body by resolution determines, or as the Governor
50 determines in the case of the state.

1 Section 7. Planning for the Urban Area.² The state,
2 counties, cities, towns, or other municipalities in an
3 urban area, acting jointly or in cooperation, are authorized
4 to perform comprehensive planning for the urban area and to
5 establish and maintain a planning commission for this pur-
6 pose and related planning activities. Funds may be appro-
7 priated and made available for the comprehensive planning,
8 and financial or other assistance from the federal govern-
9 ment and any other public or private sources may be accepted
and utilized for the planning.

1 Section 8. Taxation of open-space land. Where an in-
2 terest in real property less than the fee is held by a

2 This section is not necessary if the planning laws of the state provide adequate authority.

3 public body for the purposes of this act, assessments made
4 on the property for taxation shall reflect any change in
5 the market value of the property which may result from the
6 interest held by the public body. The value of the interest
7 held by the public body shall be exempt from property taxa-
8 tion to the same extent as other property owned by the
9 public body.

1 Section 9. Definitions. The following terms whenever
2 used or referred to in this act shall have the following
3 meanings unless a different meaning is clearly indicated
4 by the context:

- 5 (a) "Public body" means ³
6 (b) "Urban area" means any area which is urban in charac-
7 ter, including surrounding areas which form an economic and
8 socially related region, taking into consideration such
9 factors as present and future population trends and patterns
10 of urban growth, location of transportation facilities and
11 systems, and distribution of industrial, commercial, re-
12 sidential, governmental, institutional and other activities.

3 "Public body" can be defined as desired by the proponents
of the bill to include any or all of the following: the state,
counties, cities, towns, or other municipalities, and any other
public bodies they wish to specify, such as park authorities, or
other specific authorities or districts. If any specified public
body (other than the state or cities, towns or other municipalities)
included in the definition has, under another law, taxing powers
or other financing powers that could be used for the purposes of
open-space land a subsection (c) should be added to section 6 to
authorize that public body to use those powers for the purposes
of this act.

13 (c) "Open-space land" means any land in an urban area
14 which is provided or preserved for (1) park or recreational
15 purposes, (2) conservation of land or other natural resources,
16 (3) historic or scenic purposes, or (4) assisting in the
17 shaping of the character, direction, and timing of community
18 development.

19 (d) "Comprehensive planning" means planning for develop-
20 ment of an urban area and shall include (1) preparation,
21 as a guide for long-range development, of general physical
22 plans with respect to the pattern and intensity of land
23 use and the provision of public facilities, including trans-
24 portation facilities, together with long-range fiscal plans
25 for such development; (2) programing and financing plans
26 for capital improvements; (3) coordination of all related
27 plans and planned activities at both the intragovernmental
28 and intergovernmental levels; and (4) preparation of re-
29 gulatory and administrative measures in support of the
30 foregoing.

1 Section 10. Separability; Act Controlling. Notwith-
2 standing any other evidence of legislative intent, it is
3 hereby declared to be the controlling legislative intent
4 that if any provision of this act or the application there-
5 of to any person or circumstances is held invalid, the re-
6 mainder of the act and the application of such provision
7 to persons or circumstances other than those as to which
8 it is held invalid, shall not be affected thereby.

9 Insofar as the provisions of this act are inconsistent
10 with the provisions of any other law, the provisions of
11 this act shall be controlling. The powers conferred by
12 this act shall be in addition and supplemental to the powers
13 conferred by any other law.

MASS TRANSPORTATION IN METROPOLITAN AREAS

It is suggested that states take legislative and administrative action to extend technical and financial assistance to their metropolitan areas for the planning and administration of mass transportation facilities and services. In his Message on Transportation to the Congress on April 4, 1962, President Kennedy stated that Executive Branch investigations of urban transportation needs revealed that, in addition to extension of federal aid for mass transportation and revisions in federal highway legislation, the studies "give dramatic emphasis. . . to the need for greater local initiative and to the responsibility of the states and municipalities to provide financial support and effective governmental auspices for strengthening and improving urban transportation."

The states have a traditional responsibility for assuring that adequate arrangements exist for the provision of basic local governmental services, including adequate mass transportation. The states have an important stake in, and can play a key role in meeting existing and emerging metropolitan mass transportation needs. State policies with respect to taxation of transportation properties and the regulation of transportation rates and service have an important bearing upon the ability of private and public enterprise to provide adequate mass transportation service to metropolitan area residents. The state government is in a strong position to help resolve problems among conflicting local jurisdictions in providing coordinated mass transportation facilities and supporting adequate transportation planning on an areawide basis. Finally, the health and welfare of many urban areas, and the effective use of state funds for public works, housing, education and health may be jeopardized by the deterioration or inadequate provision of urban transportation facilities and services.

It is recommended that the states extend technical and financial assistance to their metropolitan areas for the comprehensive planning, development, and administration of mass transportation facilities and services. To provide legislative authority for the provision of such services the following draft legislation would authorize the establishment or designation of an agency of the state government (1) to advise and assist the Governor in the formulation of over-all mass transportation policies, (2) make necessary studies and render technical assistance to local governments, (3) consult with the appropriate state, local and private officials carrying out programs affecting mass transportation, (4) participate in regulatory proceedings affecting mass transportation, and (5) develop proposals for retaining urban and commuter transportation facilities.

The text of the suggested legislation is based in part on the provisions of Chapter 16, Laws of 1959, State of New York.

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act to extend state technical and financial assistance to metropolitan areas for planning, development and administration of mass transportation facilities and services."]

(Be it enacted, etc.)

1 Section 1. Purpose. The legislature hereby finds and
2 declares that (a) adequate and efficient mass transportation
3 services are essential in the economic growth of the metro-
4 politan areas of the state and the well-being of its people;
5 (b) the state should have a general mass transportation
6 policy growing from consultation among the various depart-
7 ments and agencies of the state, and with the communities
8 of the state, neighboring states and the federal government;
9 (c) financial and technical assistance should be provided to
10 the urban communities of the state with respect to organizing
11 and financing adequate mass transportation facilities and
12 services; and (d) responsibility for leadership and direction
13 should be vested in an agency of the state to assist and
14 advise the Governor and the legislature in the development
15 of such programs and policies.

1 Section 2. General functions and powers. The Director
2 of the Office of Local Government or the head of such other
3 agency of the state government as the Governor may designate],

4 (hereinafter referred to as the Director), shall have the
5 following functions, powers and duties: (1) to advise and
6 assist the Governor in (a) formulating a mass transportation
7 policy for the state, including coordination of policies and
8 activities among the state departments and agencies,
9 (b) developing policies and proposals designed to help meet
10 and resolve special problems of mass transportation within
11 the state, (c) recommending programs of financial and technical
12 assistance for the comprehensive planning, development, and
13 administration of mass transportation facilities and services;
14 (2) to make such studies of mass transportation problems and
15 to render such technical assistance as may be requested by
16 units of local government; (3) to consult and cooperate with
17 officials and representatives of neighboring states, of the
18 federal government, and of interstate agencies on problems
19 affecting mass transportation in the state and with officials
20 and representatives of carriers and transportation facilities
21 in the state and other persons, organizations and groups
22 utilizing, served by, interested in, or concerned with mass
23 transportation facilities and services; (4) to appear and
24 participate, with the approval of the Governor, in proceedings
25 before any federal, state, or local regulatory agencies
26 involving or affecting mass transportation in the state;
27 (5) to foster experimentation in developing new mass trans-
28 portation facilities and services; (6) to recommend policies,
29 programs and actions designed to improve utilization of urban

30 and ~~commuter~~ mass transportation facilities; and (7) to
31 exercise such other functions, powers and duties in connection
32 with mass transportation problems as the Governor may require.

1 Section 3. Assistance from other agencies. All depart-
2 ments, divisions, boards, bureaus, commissions or other
3 agencies of the state or any political subdivisions thereof
4 or any public authorities are authorized and directed to
5 provide such assistance and data to the Director as will enable
6 him to carry out his functions, powers and duties.

1 Section 4. Inspections; investigations and hearings;
2 witnesses; books and documents. The Director at reasonable
3 times may inspect the property and examine the books and papers
4 dealing with the type and adequacy of services of any person,
5 firm or corporation engaged in operating a public mass trans-
6 portation facility or system in whole or in part within the
7 state; and may hold investigations and hearings within or
8 without the state. The provisions of this Section shall not
9 be construed to include any authority or responsibility to
10 exercise the regulatory power of the state with respect to
11 transportation rates and services.

1 Section 5. Studies; surveys. The Director is authorized
2 to undertake such studies, inquiries, surveys or analyses
3 as he may deem relevant. In so doing, he may cooperate with
4 any public or private agencies, including educational, civic

5 and research organizations.

1 Section 6. Reports. The Director shall make an annual
2 report to the Governor and the legislature, including
3 recommendations for executive and legislative action to
4 further the purposes of this act.

1 Section 7. Separability. [Insert separability clause.]

1 Section 8. Effective Date. [Insert effective date.]

METROPOLITAN STUDY COMMISSIONS

The 1963 Program of Suggested State Legislation contained a policy statement affirming that: "State constitutions and statutes should permit the people residing in metropolitan areas to examine and, if they so desire, to change their local government structure to meet their needs for effective local government." It was further suggested that states enact legislation authorizing the establishment of locally initiated metropolitan area study commissions "to develop proposals for revising and improving local government structure and services in the metropolitan area concerned." The suggested legislation which follows is designed to carry out the 1963 policy statement.

Many studies of governmental problems in urban areas have been made in recent years, some authorized by state and local governments, some by interested citizen groups. These studies frequently have produced greater public awareness of need for readjustment among the local units of government, but frequently authority has been lacking for the formal submission of resulting proposals to the voters of the area. Moreover, many of the studies have not been conducted to determine areawide needs but rather have confined themselves to individual problems of a municipality or an urban function, resulting in piecemeal approaches to the problem.

The draft legislation is directed toward permitting consideration of problems of local government services and structure in urban areas by residents of the area as a whole, acting on their own initiative. The formal status accorded the study commissions and the procedure for submission of their recommendations provide a basic assurance that areawide problems can be brought before the voters of the area affected, while guarding against irresponsible and precipitous action.

The legislation provides that metropolitan study commissions may be brought into existence by a majority vote at an election initiated by resolution of the governing bodies of the local units of government of the area, or by petition of the voters. Representation on a commission is designed to assure equitable recognition of population groups and governmental constituencies. Commission members are appointed by governing bodies of counties, the mayor and council of each city, and the governing bodies of other units of government acting jointly. A final member, the chairman, is chosen by the other members. Officials and employees of local government are not allowed to be commission members so that power to determine matters of basic governmental structure and authority may be exercised by the citizens directly rather than by their elected or appointed local representatives.

The commission is required to determine the boundaries within which it proposes that one or more metropolitan services be

provided, and within two years of its establishment must prepare a comprehensive program for furnishing such metropolitan services as it deems desirable. Its recommendations may include proposals for carrying out the program, such as transfers of functions between local units; provision of metropolitan services by county governments; consolidation of municipalities, cities and counties, or special districts; and creation of a permanent urban area council of local officials. Public hearings are required on the commission's program. Appeal may be had to the courts for any grievance arising from the adjustment of property and debts proposed as part of the program.

To become effective, commission proposals for creation of a new unit of government such as a special district must be approved at a referendum by a majority of those voting on the issue in the jurisdiction of the proposed unit. Other proposals, such as abolishing or consolidating existing units, changing boundaries, or providing a new areawide service, require approval by a majority of those voting on the issue in each of the units affected.

Local units of government in the metropolitan area are authorized to appropriate funds for the commission's activities. A state agency is authorized to provide up to 50 percent matching funds as an encouragement to the study commissions and in recognition of the state's overall interest in the product of their deliberations.

The draft legislation is based on H. B. 1231, as amended, approved by the Oregon Legislative Assembly in 1963.

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act providing for the creation of metropolitan study commissions to study and propose means of improving essential governmental services in urban areas."7

(Be it enacted, etc.)

1 Section 1. Declaration of Policy, Purpose. (a) It is
2 hereby declared to be the public policy of the State of _____
3 to provide for the residents of the metropolitan areas in the
4 state the means of improving their local governments so that
5 they can provide essential services more effectively and
6 economically. The growth of urban population and the move-
7 ment of people into suburban areas has created problems

8 relating to water supply, sewage disposal, transportation,
9 parking, parks and parkways, police and fire protection, re-
10 fuse disposal, health, hospitals, welfare, libraries, air
11 pollution control, housing, urban renewal, planning and zon-
12 ing. These problems when extending beyond the boundaries of
13 individual units of local government frequently cannot be ad-
14 equately met by such individual units.

15 (b) It is the purpose of this act to provide a method
16 whereby the residents of the metropolitan areas may adopt
17 local solutions to these common problems in order that proper
18 growth and development of the metropolitan areas of the state
19 may be assured and the health and welfare of the people resid-
20 ing therein secured.

1 Section 2. Definitions. As used in this act:

2 (a) "Central city" means the city having the largest pop-
3 ulation in the tentative metropolitan area according to the
4 latest Federal decennial census.

5 (b) "Central county" means the county in which the great-
6 est number of inhabitants of a central city reside.

7 (c) "Commission" means a metropolitan study commission
8 established pursuant to section 3 of this act.

9 (d) "Component county" means a county having territory
10 within the tentative metropolitan area.

11 (e) "Component city" means a city having territory within
12 the tentative metropolitan area.

13 (f) "Metropolitan area" means an area the boundaries of

14 which are determined by a metropolitan study commission pur-
15 suant to sections 9 and 10 of this act.

16 (g) "Metropolitan services" means any one or more of the
17 following services when provided for all or substantially all
18 of an entire metropolitan area or an entire metropolitan area
19 exclusive of incorporated cities lying therein: (1) planning;
20 (2) sewage disposal; (3) water supply; (4) parks and recrea-
21 tion; (5) public transportation; (6) fire protection; (7)
22 police protection; (8) health; (9) welfare; (10) hospitals;
23 (11) refuse collection and disposal; (12) air pollution con-
24 trol; (13) libraries; (14) housing; (15) urban renewal; (16)
25 other.

26 (h) "Tentative metropolitan area" means the territory of a
27 central city over population according to the
28 latest Federal decennial census, together with all adjoining
29 territory lying within miles of any point on the
30 boundaries of the central city.¹

31 (i) "Unit of local government" means a county, city or
32 insert name of other units of general government, such as

1 The population minimum should be small enough to include just emerging smaller urban areas as well as larger, established ones. The area should cover a substantial part of the developed territory around the central city. The Oregon metropolitan study commission law provides that the central city shall have a population of 25,000 or more and that the limits of the tentative metropolitan area are within 10 miles of the central city boundaries. As an alternative to defining the tentative metropolitan area by distance from the central city, states may wish to use the "standard metropolitan statistical area" employed by the U. S. Bureau of the Census in the most recent nationwide Census of the Population.

33 village, township, or borough[]] lying, in whole or in part,
34 within a metropolitan area which is providing one or more
35 governmental services listed in subsection (g).

1 Section 3. Initiating Election to Establish a Metropolitan

2 Study Commission. (a) A metropolitan study commission may
3 be established by vote of the qualified voters residing in a
4 tentative metropolitan area. An election to authorize the
5 creation of a metropolitan area study commission may be
6 called pursuant to resolution or petition in the following
7 manner:

8 (1) A joint resolution requesting such an election may be
9 adopted by a majority of the governing bodies of the counties,
10 cities, [[]insert names of other types of units of government
11 exercising general government powers[]] having any jurisdiction
12 within the tentative metropolitan area. A certified copy of
13 such resolution or certified copies of such concurring reso-
14 lutions shall be transmitted to the [[]insert name of governing
15 body[]] of the central county; or

16 (2) A petition requesting such an election shall be signed
17 by at least [[]_____[]] percent of all the qualified voters
18 residing within the tentative metropolitan area, and shall be
19 filed with the (official) of the central county.

20 Upon receipt of such a petition, the (official) shall ex-
21 amine the source and certify to the sufficiency of the sig-
22 natures thereon. Within 30 days following receipt of such
23 petition, the (official) shall transmit the same to the board

24 of commissioners of the central county together with his
25 certificate as to the sufficiency thereof. ²

26 (b) Only one commission may be established for each tenta-
27 tive metropolitan area at any one time.

1 Section 4. Election on Establishing Metropolitan Study
2 Commission. The election on the formation of the metropoli-
3 tan study commission shall be conducted by the (officials) of
4 the component counties in accordance with the general elec-
5 tion laws of the state and the results thereof shall be can-
6 vassed by the county canvassing board of the central county,
7 which shall certify the result of the election to the insert
8 name of governing body⁷ of the central county, and shall
9 cause a certified copy of such canvass to be filed in the
10 office of the secretary of state. Notice of the election
11 shall be published in one or more newspapers of general cir-
12 culation in each component county in the manner provided in
13 the general election laws. No person shall be entitled to
14 vote at such election unless he is a qualified voter under
15 the laws of the state in effect at the time of such election
16 for at least thirty days preceding the date of the election.
17 The ballot proposition shall be substantially in the follow-
18 ing form:

19 Establishment of Metropolitan Study Commission

20 "Shall a metropolitan study commission be established for

² Alternatively, establishment of a commission might be au-
thorized by joint or concurrent resolution of governing bodies in
the tentative metropolitan area.

21 the area described in a (joint resolution adopted by the
22 governing bodies of [insert names of counties, cities,
23 other units]) (petition filed with (official) of _____
24 county on the ____ day of _____ 19__)?

25 YES

26 NO"

27 If a majority of the persons voting on the proposition
28 residing within the tentative metropolitan area shall vote
29 in favor thereof, the metropolitan study commission shall
30 be deemed to be established.

31 When the tentative metropolitan area extends beyond the
32 central county, the expenses of the election shall be
33 prorated among all the counties according to each county's
34 share of the total population of the tentative metropolitan
35 area.

1 Section 5. Selection of Metropolitan Study Commission.

2 (a) Any study commission established pursuant to this
3 act for a tentative metropolitan area shall consist of
4 members to be selected as follows:

5 (1) One member selected by the [insert name of
6 governing body] of each component county.

7 (2) One member selected by the mayor and city
8 council of each component city of at least 2,500 population;
9 provided that any city having more than [] popu-
10 lation by the last official United States census shall be
11 entitled to one more member for each additional []

12 of population or fraction thereof.

13 (3) One member representing all cities under
14 2,500 population and insert name of other types of units
15 of general government³ to be selected by the insert name
16 of chief elected official, such as mayor or council
17 president³ of such cities and insert name of other units³;
18 provided that if the combined population of such cities
19 and insert name of other units³ exceeds _____³,
20 they shall be entitled to one more member for each
21 _____³ additional population or fraction thereof.
22 The members from such cities and insert name of other
23 units³ shall be elected as follows: The insert name of
24 chief elective official³ of all such units of government
25 shall meet on the second Tuesday following the establishment
26 of a metropolitan study commission and thereafter on (date)
27 of each even-numbered year at _____³ o'clock at the
28 office of the insert name of governing body³ of the
29 central county. The chairman of such county governing body³
30 shall preside. After nominations are made, ballots shall be
31 taken and the _____³ candidate(s) receiving the
32 highest number of votes cast shall be considered elected.³

33 (4) One member, who shall be chairman of the
34 metropolitan study commission, selected by the other members
35 of the commission.

³ If it is desired that each type of general government unit have separate representation -- for example, villages or townships -- a separate subsection may be provided for each, with same general provisions as in (3).

36 (b) Each member shall reside at the time of his appoint-
37 ment in the insert name of unit by which appointed.

38 (c) No member shall be an official or employee of any
39 unit of local government.

1 Section 6. Time of Appointment. The members of a
2 metropolitan study commission shall be appointed within 60
3 days after the election establishing the Commission.

1 Section 7. Meetings of Commission. (a) Not later than
2 80 days after the election establishing a commission, the
3 members of a commission shall meet and organize at a time
4 which shall be set by the governing body of the central
5 county.

6 (b) At the first meeting of each commission the member
7 appointed by the insert name of governing body of the
8 central county shall serve as temporary chairman. As its
9 first official act the commission shall elect a chairman.
10 The commission shall also elect a vice chairman from among
11 its members.

12 (c) Further meetings of the commission shall be held
13 upon call of the chairman, the vice chairman in the absence
14 or inability of the chairman, or a majority of the members
15 of the commission.

1 Section 8. Vacancies, Compensation, Open Meetings,
2 Quorum, Rules. (a) In case of a vacancy for any cause, a
3 new member shall be appointed in the same manner as the

4 member he replaced.

5 (b) Members of a commission shall receive no compen-
6 sation but shall receive actual and necessary travel and other
7 expenses incurred in the performance of official duties.

8 (c) All meetings of a commission shall be open to the
9 public.

10 (d) A majority of the members of the commission shall
11 constitute a quorum for the transaction of business.

12 (e) Each member shall have one vote. A favorable vote
13 by not less than a majority of the entire commission shall
14 be necessary for any action permitted by section 15 of this
15 act; but other actions may be by a majority of those
16 present and voting. Each commission may adopt such other
17 rules for its proceedings as it deems desirable.

1 Section 9. Metropolitan Service Boundaries. A commission
2 shall determine the boundaries within which it proposes that
3 one or more metropolitan services be provided. In fixing
4 such boundaries the commission need not conform to the
5 boundaries of the tentative metropolitan area. The boundaries
6 proposed by the commission shall not include part of any city,
7 [insert names of other units of general government, excluding
8 county] unless the whole city, [repeat previous insertion]
9 is included, and shall not divide any existing water, sanitary,
10 park and recreation, fire protection or other special service
11 district unless the comprehensive program, prepared by the
12 commission pursuant to section 11 of this act, will include

13 provisions for the continuance of such service in that
14 part of any such district not included within the
15 boundaries as determined by the commission.

1 Section 10. Considerations in Setting Boundaries. In
2 recommending boundaries and determining the need for fur-
3 nishing metropolitan services, a commission shall study
4 and take into consideration:

5 (a) The area within which metropolitan services are
6 needed at the time of establishment of the commission and
7 for orderly growth of the metropolitan area;

8 (b) The extent to which needed services are or can be
9 furnished by existing units of local government and the
10 relative cost to the taxpayer and user of such services of
11 having them provided by existing units of local government
12 or as metropolitan services;

13 (c) The boundaries of existing units of local govern-
14 ment;

15 (d) Population density, distribution and growth;

16 (e) The existing land use within a metropolitan area,
17 including the location of highways and natural geographic
18 barriers to and routes for transportation;

19 (f) The true cash value of taxable property and
20 differences in valuation under various possible boundaries
21 for a metropolitan area;

22 (g) The area within which benefits from metropolitan
23 services would be received and the costs of services borne;

24 (h) Maintenance of citizen accessibility to, control-
25 lability of, and participation in local government;

26 (i) Such other matters as might affect provision of
27 metropolitan services on an equal basis throughout the
28 area, and provide more efficient and economical administra-
29 tion thereof.

1 Section 11. Comprehensive Program. The commission
2 shall prepare a comprehensive program for the furnishing of
3 such metropolitan services as it deems desirable in the
4 metropolitan area.

1 Section 12. Recommendations to Implement Program. In
2 preparing its comprehensive program for furnishing metro-
3 politan services, a commission may recommend one or more of
4 the following courses of action, to take effect at the same
5 or at different times, in accordance with approval procedures
6 provided in sections 14 and 15:

7 (a) Consolidation of any existing [insert names of units
8 of general government other than county] with any other
9 existing [repeat insert];

10 (b) Consolidation of any [insert names of units of
11 general government other than county] with the county in which
12 it lies;

13 (c) Consolidation of two or more counties;

14 (d) Annexation of unincorporated territory to any exist-
15 ing city;

16 (e) Consolidation of any existing special service
17 district with one or more other special service districts
18 to perform all of the services provided by any of them;

19 (f) Creation of a new special service district to per-
20 form one or more metropolitan services, with provision for
21 the dissolution of any existing special service districts
22 performing like service or services within the proposed
23 boundaries of such new district;

24 (g) Performance of one or more metropolitan services
25 by any existing unit of local government;

26 (h) Consolidation of specified metropolitan services
27 by transfer of functions, by creation of joint administrative
28 agencies or by contractual agreements;

29 (i) Creation of a permanent urban area council, consisting
30 of members of governing bodies of units of local government
31 within the metropolitan area; and

32 (j) Any other change it considers desirable involving
33 creation, dissolution, or consolidation of units of local
34 government in the metropolitan area, or involving alteration
35 of their boundaries, powers, and responsibilities, consistent
36 with provisions of the constitution of this State.

1 Section 13. Adjustment of Property and Debts. (a) The
2 Commission shall determine the value and amount of all
3 property used in performing any metropolitan service and all
4 bonded and other indebtedness of units of local government
5 attributable to the acquisition of such property and affected

6 by its comprehensive program for metropolitan services and
7 shall determine and provide in its comprehensive program
8 an equitable adjustment of such property and debts of each
9 unit of local government.

10 (b) After the hearings provided for in section 14 of
11 this act and the adoption by the commission of its compre-
12 hensive program, any person aggrieved by the provisions of
13 the program relating to equitable adjustment of property
14 and debts as provided for in subsection (a) of this section
15 may appeal from such provisions to the insert name of
16 court of general jurisdiction. Notice of the appeal shall
17 be given to the chairman of the commission 10 days before
18 the appeal is filed with the court. The court shall
19 determine the constitutionality and equity of the adjustment
20 or adjustments proposed and to direct the commission to
21 alter such adjustment or adjustments found by the court to
22 be inequitable or violative of any provision of the
23 Constitution, but any such determination shall not otherwise
24 affect the comprehensive program adopted by the commission.

1 Section 14. Public Hearings on Proposed Program. Within
2 two years after the date of its organization, a commission
3 shall complete the preparation of its preliminary determi-
4 nation of boundaries and program for furnishing metropolitan
5 services, and shall provide for adequate publication and
6 explanation of the program. The commission shall fix the
7 dates and places for public hearings on the program. Notice

8 of hearings shall be published once each week for at
9 least two weeks preceding a hearing, in at least one
10 newspaper of general circulation in each component county.
11 The notice of hearing shall state the time and place for
12 the hearing.

1 Section 15. Submission of Recommendations. After
2 public hearing, the commission may submit proposals con-
3 tained in its comprehensive program for approval as
4 follows: (a) proposals including charters, charter
5 amendments, or any other necessary legal instrument for
6 creation of a new unit of local government shall require
7 approval by a majority of eligible voters voting thereon in
8 the jurisdiction of the proposed new unit; (b) proposals
9 for abolishing or consolidating existing units of local
10 government, or changing their boundaries, shall require
11 approval by a majority of the eligible voters voting in each
12 of the units affected; (c) any other proposals which are
13 submitted by the commission and which under existing law can
14 be carried into effect by action of the governing bodies of
15 the units affected, shall be effective if approved by a
16 majority of eligible voters voting thereon in each of the
17 units affected.⁴ Referendums shall be held at the next state
18 general or primary election, occurring not sooner than 60 days

4 Alternatively, the states may wish to consider the Oregon example. Under Oregon law, a commission is authorized to submit proposals to the voters in cases when existing law authorizes initiative and referendum on such proposals. On other proposals, a commission may recommend necessary enabling legislation or charter amendments to the appropriate governing body or the Legislative Assembly.

19 after submission of the proposals by the commission.⁵

1 Section 16. Effect of Approval. Any proposal approved
2 pursuant to section 15 shall take effect at the time fixed
3 in the proposal, and all laws and charters, and parts
4 thereof, shall be superseded by any proposals adopted under
5 provisions of this act to the extent that they are incon-
6 sistent with the proposals adopted.

1 Section 17. Resubmission and New Program. If any
2 election directed by the commission pursuant to section 15
3 of this act results in a negative vote, the commission may:

4 (a) Direct the resubmission of the same issue at a new
5 election to be held not earlier than one year from the
6 date of the election at which such negative vote was cast; or

7 (b) Withdraw its comprehensive program, or that part
8 thereof rejected at such election, and devise a new program
9 which the commission believes will be more acceptable and
10 proceed thereon as specified in sections 14 and 15 of this
11 act.

1 Section 18. Additional Powers and Duties. A commission
2 shall have the following additional powers and duties:

3 (a) To contract and cooperate with such other agencies,
4 public or private, as it considers necessary for the
5 rendition and affording of such services; facilities, studies

5 States may also wish to provide for submission at special elections.

6 and reports to the commission as will best assist it to
7 carry out the purposes for which the commission was
8 established. Upon request of the chairman of a commission,
9 all state agencies and all counties and other units of
10 local government, and the officers and employees thereof,
11 shall furnish such commission such information as may be
12 necessary for carrying out its functions and as may be
13 available to or procurable by such agencies or units.

14 (b) To consult and retain such experts, and to employ
15 such clerical and other staff as, in the commission's
16 judgment, may be necessary.

17 (c) To accept and expend moneys from any public or
18 private source, including the Federal Government. All
19 moneys received by the commission shall be deposited with
20 the county treasurer of the central county. The county
21 treasurer is authorized to disburse funds of the commission
22 on its order.

23 (d) To do any and all other things as are consistent
24 with and reasonably required to perform its functions under
25 this act.

1 Section 19. Appropriations. The units of local govern-
2 ment of the tentative metropolitan area may appropriate
3 funds for the necessary expenses of the commission.

1 Section 20. State Matching Funds. In order to encourage
2 and assist in the establishment and operation of metropolitan

3 study commissions, the if State has office of local
4 government, insert its name⁷ is authorized to enter into
5 contracts to make grants to metropolitan study commissions
6 to help finance their activities. The amount of any such
7 grant may equal but not exceed the amount of funds appropri-
8 ated by local units of government pursuant to section 19.

1 Section 21. Term of Commission. All commissions shall
2 terminate four years from the date of their establishment.
3 However, a commission, upon completion of its duties, may
4 terminate earlier by a vote of three-fourths of the members
5 favorable to such earlier termination.

1 Section 22. Separability clause.⁷

1 Section 23. Effective date.⁷

METROPOLITAN AREA PLANNING COMMISSIONS

The suggested legislation is based on the concept that planning, regardless of the level of government at which it is undertaken, is a staff function which facilitates the policy formulating process. Planning is a necessary tool for many of the technical and administrative judgments, both political and economic, which units of local government in the large metropolitan areas are required to make continually. To be worthwhile and to serve a useful rather than an academic purpose, the respective facets of metropolitan area planning must be closely geared into the practical decision-making process regarding land use, tax levies, public works, transportation, welfare programs, and the like.

The proposed legislation is based on the assumption that while long-range planning must be undertaken for all of a metropolitan area viewed as an entity, the individual authority and responsibilities of local units of government must be respected and reconciled with over-all interests. State legislation should therefore permit local latitude in the agreements whereby metropolitan area planning commissions are established, while at the same time setting minimum standards for the organization and powers of such commissions.

The suggested act below sets a minimum standard for the number of local jurisdictions which must participate in order to ensure a sufficiently wide basis for effective planning and enforcement. Membership on the commission is specified as consisting of elected officials in order to "gear planning into the practical decision-making process," with provision made for appointment of some public members as well.

In designation of a metropolitan planning area, reference is made to the federal definition of a "standard metropolitan statistical area," with a footnote indicating that some states may prefer to substitute a different definition in order to apply the act to areas not currently identified as SMSA's. Whatever definition is used should ensure that the planning area is large enough to include an integrated trading and employment area, as defined by such measures as density of resident population, the pattern of journey-to-work, and retail trading territory. In adapting the proposed legislation to their particular needs, states may wish to define its applicability in any of the following ways: (1) all metropolitan areas of the state, present or future; (2) metropolitan areas listed by name; (3) specified classes of cities and their environs.

The powers and duties section takes into account Congressional enactments designed to strengthen intergovernmental coordination in the use of federal planning and project grants.

It should be noted that the Congress in the Housing Act of 1961 has granted advance consent to interstate compacts for urban planning functions in interstate metropolitan areas. For a further discussion of state legislative provisions necessary to qualify for federal assistance see the proposal on "Urban and Transportation Planning Grants" in this Program at page

Provision is made for the adoption of metropolitan area plans by local units of government, and conversely, for advisory review or approval by the metropolitan area planning commission of local plans and projects. However, the suggested legislation also provides at this point, that if an interlocal agreement authorizes the metropolitan area planning commission to require conformity with its own comprehensive or master plan, such a degree of regulation can be undertaken only with respect to those communities party to the agreement.

In order to encourage local communities to take a proper degree of initiative and to determine for themselves the nature of their cooperative activities, the proposal is that the actual establishment and functioning of metropolitan area planning commissions be accomplished by the drafting and execution of interlocal agreements, pursuant to authorizing state statute. In this connection, it should be pointed out that the Program of Suggested State Legislation for 1957 contains an Interlocal Cooperation Act which provides a general authorization for cooperative undertakings of such kinds as the localities themselves may determine within the framework of their existing statutory and constitutional powers. As is the case of the legislation suggested below, the instrument authorized for achieving the cooperative purposes is the interlocal agreement. The Interlocal Cooperation Act deals with a number of matters, such as financing, representation, approval of interlocal agreements by the appropriate state officials, and liability for performance under the agreement which should be incorporated in any authorizing statute.

It is suggested that states could proceed to use the statute suggested below and that in the Program for 1957 in any one of several ways: (1) if a statute similar to the Interlocal Cooperation Act has been enacted, or is to be enacted, the suggested act following this explanatory statement could be used as a guide in drafting some of the provisions of the implementing interlocal agreements; (2) if the interlocal cooperation that a state wishes to authorize is only in the field of planning, the Interlocal Cooperation Act could be adapted to apply only to that subject, and the draft below could be used as a guide in formulating the implementing agreements; or (3) the draft act below could be used as the authorizing statute. In the last named event, the Interlocal Cooperation Act should be consulted to determine which of its provisions should be added to the authorizing statute.

In comparing the suggested act below and the Interlocal Cooperation Act for use in interstate metropolitan areas, it should be noted that a somewhat different approach is contemplated. The concluding portion of Section 6 of the suggested act below presumes that a metropolitan area planning commission must be created for the portion of the metropolitan area lying within the single state, and that such commission would then cooperate with localities on the other side of the state line. In contrast, the Interlocal Cooperation Act provides authorization for the establishing of a metropolitan area commission whose jurisdiction would extend throughout the entire metropolitan area, including the portions in the two or more states affected.

Another approach to organizing for the provision of planning services within a metropolitan area is provided by the "Metropolitan Functional Authorities" proposal in this Program on page 107.

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act providing for the establishment of metropolitan area planning bodies."]

(Be it enacted, etc.)

1 Section 1. Purpose. The legislature recognizes the
2 social and economic interdependence of the people residing
3 within metropolitan areas and the common interest they
4 share in its future development. The legislature further
5 recognizes that plans and decisions made by local govern-
6 ments within metropolitan areas with respect to land use,
7 circulation patterns, capital improvements and the like,
8 affect the welfare of neighboring jurisdictions and there-
9 fore should be developed jointly. It is, therefore, the
10 purpose of this act to provide a means for: (1) formulation
11 and execution of objectives and policies necessary for the
12 orderly growth and development of the metropolitan area as
13 a whole; and (2) coordination of the objectives, plans and

14 policies of the separate units of government comprising
15 the area.

1 Section 2. Creation of a Metropolitan Area Planning
2 Commission. A metropolitan area planning commission may be
3 established pursuant to the following procedures:

4 (a) Two or more adjacent incorporated municipalities,
5 two or more adjacent counties, or one or more counties and
6 a city or cities within or adjacent to the county or counties
7 may, by agreement among their respective governing bodies,
8 create a metropolitan area planning commission, provided (1)
9 that in the case of municipalities and cities, the largest
10 one within the metropolitan planning area, as defined in
11 Section 3, shall be a party to the agreement; and (2) that
12 the number of counties, cities, other municipalities, town-
13 ships, school and other special districts or independent
14 governmental bodies party to the agreement shall equal 60
15 per cent or more of the total number of such counties, cities
16 and other local units of government within the metropolitan
17 area, ¹ as defined in Section 3. The agreement shall be
18 effected through the adoption by each governing body con-
19 cerned, acting individually, of an appropriate resolution.
20 A copy of such agreement shall be filed with the chief state
21 records officer, state office of local affairs and state

1 Particular states may find it appropriate and desirable to require fewer kinds of local units of government to be initial parties to the agreement, thereby reducing the total number needed for establishment of a commission under this act.

22 planning agency.⁷

23 (b) Any city, other municipality or county may, by
24 legislative action of its governing body, transfer or
25 delegate any or all of its planning powers and functions
26 to a metropolitan area planning commission; or a county
27 and one or more municipalities may merge their respective
28 planning powers and functions into a metropolitan area
29 planning commission, in accordance with the provisions of
30 this act.

31 Any additional county, municipality, town, township,
32 school district or special district within the metropolitan
33 planning area, as defined in Section 3, may become party
34 to the agreement.

1 Section 3. Designation of a Metropolitan Planning Area.

2 "Metropolitan area" as used herein is an area designated as
3 a "standard metropolitan statistical area" by the U. S.
4 Bureau of the Census in the most recent nationwide Census
5 of the Population.² The specific geographic area in which
6 a metropolitan area planning commission shall have juris-
7 diction shall be stipulated in the agreement by which it is
8 established.

2 Particular states may find it appropriate and desirable to apply a somewhat different definition from this, tailored to their particular circumstances. For example, a 1961 Enactment in Colorado (H.R. 221) defines a metropolitan area as "a contiguous area consisting of one or more counties in their entirety, each of which has a population density of at least 15 persons per square mile." Other quantitative factors may be used in a metropolitan area definition, such as percentage of county residents employed in the central city.

1 Section 4. Membership and Organization. Except as
2 provided below, membership of the commission shall consist
3 of representatives from each participating government or
4 stipulated combinations thereof, in number and for a term
5 to be specified in the agreement. Such representatives
6 shall consist of elected officials, except that the Commission
7 may appoint not to exceed members from the general
8 public, such members to have demonstrated outstanding leader-
9 ship in community affairs. A representative of the state
10 government may be designated by the Governor to attend
11 meetings of the commission. Members of the commission shall
12 serve without compensation, but shall be reimbursed for
13 expenses incurred in pursuit of their duties on the commission.
14 The commission shall elect its own chairman from among its
15 members, and shall establish its own rules and such committees
16 as it deems necessary to carry on its work. Such committees
17 may have as members persons other than members of the
18 commission and other than elected officials. The commission
19 shall meet as often as necessary, but no less than four times
20 a year.

21 The commission shall adopt an annual budget, to be sub-
22 mitted to the participating governments which shall each
23 contribute to the financing of the commission according to a
24 formula specified in the agreement. Subject to approval of
25 any application therefor by the appropriate state agency ,
26 a metropolitan area planning commission established pursuant

27 to this act may make application for, receive and utilize
28 grants or other aid from the federal government or any
29 agency thereof.³

1 Section 5. Director and Staff. The commission shall
2 appoint a director, who shall be qualified by training and
3 experience and shall serve at the pleasure of the commission.
4 The director shall be the chief administrative and planning
5 officer and regular technical advisor of the commission,
6 and shall appoint and remove the staff of the commission.
7 The director may make agreements with local planning agencies
8 within the jurisdiction of the metropolitan area planning
9 commission for temporary transfer or joint use of staff em-
10 ployees, and may contract for professional or consultant
11 services from other governmental and private agencies.

1 Section 6. Powers and Duties. The metropolitan area
2 planning commission shall:

3 (a) Prepare and from time to time revise, amend, extend
4 or add to a plan or plans for the development of the metro-
5 politan area. Such plans shall be based on studies of
6 physical, social, economic and governmental conditions and
7 trends, and shall aim at the coordinated development of the
8 metropolitan area in order to promote the general health,

3 Consideration should also be given to providing for state aid either by making such a commission an eligible agency to apply for and receive state aid or by providing that local governmental units party to the agreement may apply for such aid on behalf of the commission.

9 welfare, convenience and prosperity of its people. The
10 plans shall embody the policy recommendations of the
11 metropolitan area planning commission, and shall include,
12 but not be limited to:

13 (1) A statement of the objectives, standards and
14 principles sought to be expressed in the plan.

15 (2) Recommendations for the most desirable pattern
16 and intensity of general land use within the metropolitan
17 area, in the light of the best available information con-
18 cerning natural environmental factors, the present and
19 prospective economic and demographic bases of the area, and
20 the relation of land use within the area to land use in
21 adjoining areas. The land use pattern shall include pro-
22 vision for open as well as urban, suburban, and rural
23 development.

24 (3) Recommendations for the general circulation
25 pattern for the area, including land, water and air
26 transportation and communication facilities, whether used
27 for movement within the area or to and from adjoining areas.

28 (4) Recommendations concerning the need for and
29 proposed general location of public and private works and
30 facilities, which by reason of their function, size, extent
31 or for any other cause are of a metropolitan as distinguished
32 from purely local concern.

33 (5) Recommendation for the long-range programming and
34 financing of capital projects and facilities.

35 (6) Such other recommendations as it may deem
36 appropriate concerning current and impending problems as
37 may affect the metropolitan area.

38 (b) Prepare, and from time to time revise, recommended
39 zoning and subdivision and platting regulations which
40 would implement the metropolitan area plan.

41 (c) Prepare studies of the area's resources, both
42 natural and human, with respect to existing and emerging
43 problems of industry, commerce, transportation, population,
44 housing, agriculture, public service, local governments
45 and any other matters which are relevant to metropolitan
46 area planning.

47 (d) Collect, process and analyze at regular intervals,
48 the social and economic statistics for the metropolitan
49 area which are necessary to planning studies, and make the
50 results of such collection processing and analysis available
51 to the general public.

52 (e) Participate with other government agencies, edu-
53 cational institutions and private organizations in the
54 coordination of metropolitan research activities defined
55 under (c) and (d).

56 (f) Cooperate with, and provide planning assistance to
57 county, municipal or other local governments, instrumentali-
58 ties or planning agencies within the metropolitan area and
59 coordinate metropolitan area planning with the planning
60 activities of the state and of the counties, municipalities,

61 special districts or other governmental local units within
62 the metropolitan area, as well as neighboring metropolitan
63 areas and the programs of federal departments and agencies.

64 (g) Provide information to officials of departments,
65 agencies and instrumentalities of federal, state and local
66 governments, and to the public at large, in order to
67 foster public awareness and understanding of the objectives
68 of the metropolitan area plan and the functions of metro-
69 politan and local planning, and in order to stimulate public
70 interest and participation in the orderly, integrated
71 development of the region.

72 (h) Receive and review for compatibility with metropolitan
73 area plans all proposed comprehensive land use, circulation,
74 and public facilities plans and projects, zoning and
75 subdivision regulations, official maps and building codes
76 of local governments in the geographic area and all amendments
77 or revisions of such plans, regulations and maps, and make
78 recommendations for their modification where deemed necessary
79 to achieve such compatibility.

80 (i) Review participating local government applications
81 for capital project financial assistance from state and
82 federal governments, and comment upon their consistency with
83 the metropolitan development plan; and review and comment
84 upon state plans for highways and public works within the
85 area to promote coordination of all intergovernmental
86 activities in the metropolitan area on a continuing basis.

87 (j) Exercise all other powers necessary and proper for
88 the discharge of its duties.

89 The metropolitan planning commission may exercise its
90 powers jointly or in cooperation with agencies or political
91 subdivisions of this state or any other state, or with
92 agencies of the United States, subject to statutory pro-
93 visions applicable to interjurisdictional agreements.

1 Section 7. Certification and Implementation of Metro-
2 politan Area Plans. All comprehensive metropolitan area
3 plans as defined under Section 6(a) as well as zoning,
4 subdivision and platting regulations, proposed under Section
5 6(b) shall be adopted by the metropolitan area planning
6 commission after public hearing, and certified by the
7 commission to all local governments, governmental districts
8 and special purpose authorities within the metropolitan
9 area. The agreement creating the metropolitan area planning
10 commission shall specify that these plans be implemented in
11 the following way: The metropolitan area plans and regu-
12 lations, or parts thereof, may be officially adopted by any
13 local government, governmental district or special purpose
14 authority within the metropolitan area, and when so adopted
15 shall supersede previous local plans and regulations.

1 Section 8. Cooperation by Local Governments and Planning
2 Agencies. Any local government, governmental district or
3 special purpose authority within the metropolitan area may,

4 and all participating local governments, governmental
5 districts and special purpose authorities shall, file with
6 the metropolitan planning commission all current and
7 proposed plans, zoning ordinances, official maps, building
8 codes, subdivision regulations, and project plans for
9 capital facilities and amendments to and revisions of any
10 of the foregoing, as well as copies of their regular and
11 special reports dealing with planning matters. Each
12 governmental unit within the geographic area over which a
13 metropolitan area planning commission has jurisdiction
14 shall afford such commission a reasonable opportunity to
15 comment upon any such proposed plans, zoning, subdivision
16 and platting ordinances, regulations and capital facilities
17 projects and shall consider such comments, if any, prior
18 to adopting any such plan, ordinance, regulation or project.
19 By appropriate provision of an agreement, the parties
20 thereto may require that as a condition precedent to their
21 adoption, any or all proposed plans, zoning, subdivision
22 and platting ordinances, regulations, and capital facilities
23 projects of their respective jurisdictions be determined by
24 the metropolitan area planning commission to be in confor-
25 mity with not in conflict with the relevant plan of the
26 commission, but any power so to pass upon proposed plans,
27 ordinances, regulations or projects shall be exercisable
28 only with respect to the jurisdictions party to the agreement.

1 Section 9. Annual Report. The metropolitan area
2 planning commission shall submit an annual report to the
3 chief executive officers, legislative bodies and planning
4 agencies of all local governments within the metropolitan
5 area, and to the Governor.

1 Section 10. Separability. /Insert separability clause./

1 Section 11. Effective Date. /Insert effective date./

EXTRATERRITORIAL PLANNING, ZONING,
AND SUBDIVISION REGULATION

Uncontrolled development at unincorporated fringes of municipalities can have serious effects on adjoining municipalities and on the orderly growth of a whole metropolitan area. Some fringe areas are "shanty towns" with unsanitary conditions, mud-rut streets in incompletd subdivisions, and unplanned mixtures of industrial, commercial, and residential property uses. Others are havens for gambling and vice, or represent fire hazards at the city doorstep. Many have deficiencies that are not so readily apparent yet constitute unsatisfactory and dangerous conditions.

Where counties have not exercised authority to control unincorporated fringes through effective county planning, zoning, and subdivision regulation, the extraterritorial exercise of planning, zoning, and subdivision regulation by municipalities can be an important method of preventing development of these problem areas around individual cities, and for easing eventual transition to a sound governmental structure in the entire urban area.

About 30 states have authorized extraterritorial subdivision regulation, and approximately eight have authorized extraterritorial zoning. In addition, extraterritorial planning authority may be exercised in some states under the municipal planning enabling statute. Some of the existing statutory grants, however, are limited in application to one or at most a few municipalities. A recent example of a grant of extraterritorial authority is a 1963 act of the Texas Legislature giving cities subdivision control over territory within one-half to five miles of their boundaries, the distance depending on the size of the city.

The suggested legislation is in the form of an amendment to existing state statutes on planning, zoning, and subdivision regulation. It is adapted from a 1959 North Carolina statute on extraterritorial zoning¹ recommended by the Municipal Government Study Commission of the North Carolina Assembly² and an earlier North Carolina statute on extraterritorial subdivision regulation.³

1 North Carolina, Session Laws (1959), c. 1204.

2 Report (Raleigh, N. C., 1958), pp. 18-19.

3 North Carolina, General Statutes (1961), sec. 160-226.

The draft provides for representation of the unincorporated territory on the planning and zoning commission and the zoning adjustment body for participation in all matters pertaining to plans, recommendations, and regulations for such extraterritorial areas which fall within the jurisdiction of these boards and commissions. The fact that the unincorporated area has representation with respect to these matters gives a considerable measure of protection against arbitrary action by the municipality. Of course the existing powers of the municipal governing body regarding formal adoption and action on plans, zoning regulations and subdivision regulations as provided in the existing statutory law of the state would remain unchanged.

Although the North Carolina pattern of enabling authority for local planning and zoning bodies and of their relation to parent municipal governing bodies is fairly common, a number of different patterns exist. The distribution of authority to make recommendations and to make final decisions and rulings may vary not only from state to state but within a given state. Furthermore, the number and names of specific boards and commissions involved varies. The planning commission may be responsible not only for developing plans but also for developing recommendations regarding zoning ordinances. In this case a zoning commission is not provided for. In some cases final approval of subdivision plats is given by the planning commission. In other cases the municipal governing bodies grant this approval. Similarly, in some instances the board of zoning adjustment or appeals can give approval to variances whereas in others final approval must be given by the municipal body.

These varying patterns depend on the basic enabling statutes granting authority to plan, zone, and exercise subdivision regulations to municipalities. The suggested legislation being in the form of an amendment is intended merely to extend this authority for a designated distance outside municipal boundaries and does not affect the basic provisions, which should be stressed. However, before adopting the suggested legislation as an amendment the basic law governing must be carefully examined to assure that any specific adoptions necessary are made. For example, in some states the statutes provide that a specific number of affirmative votes must be received for a variance to be approved. If additional representatives are participating from the extraterritorial area, specific provision would have to be made for a different requirement for adoption.

Even with provision for fringe area representation on the planning and zoning commission and zoning adjustment board, granting of extraterritorial zoning authority might stimulate a movement toward unsound "defensive" incorporations. This is a risk that seems worth taking in view of the possible advantages to be gained by orderly fringe development. Also, any action directed toward greater control over the unincorporated area,

whether it be giving municipalities greater initiative in annexation proceedings or, as in this case, greater control through extraterritorial zoning, should be accompanied by simultaneous strengthening of the state's regulation of new incorporations, as provided in suggested legislation on control of municipal incorporations (see page 43).

States desiring to enact legislation on extraterritorial planning, zoning, and subdivision regulation may find it helpful also to consult a report by Frank S. Sengstock, Extraterritorial Powers in the Metropolitan Area, published by the Legislative Research Center of the University of Michigan Law School in 1962. It contains numerous citations to state statutes and court decisions affecting extraterritorial jurisdiction.

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "Amendment to state legislation to authorize municipalities to exercise planning, zoning, and subdivision regulation powers beyond their corporate limits, except in counties where county planning, zoning, or subdivision regulation already exist."

(Be it enacted, etc.)

1 Section 1. (Appropriate citation to existing plan-
2 ning, zoning, and subdivision regulation law) is hereby
3 amended by adding the following new sections at the end
4 thereof:

5 "Section _____ Extraterritorial Jurisdiction.

6 (a) Planning. In any county not having a county
7 planning agency with jurisdiction in the unincorporated
8 territory, the legislative body of any municipality whose
9 population at the time of the latest decennial census of the
10 United States was (____) or more may exercise the comprehen-
11 sive planning powers granted in [cite appropriate statutes]
12 not only within its corporate limits but also within (____)

13 mile(s) in all directions of its corporate limits and not
14 located in any other municipality;

15 (b) Zoning Ordinance. In any county not having a
16 county zoning ordinance applicable to the unincorporated
17 territory, the legislative body of any municipality whose
18 population at the time of the latest decennial census of the
19 United States was (____) or more may exercise the zoning
20 powers granted in [cite appropriate statutes] not only within
21 its corporate limits but also within (____) mile(s) in all
22 directions of its corporate limits and not located in any
23 other municipality;

24 (c) Subdivision Regulations. In any county not
25 having county subdivision regulations applicable to the
26 unincorporated territory, the legislative body of any munici-
27 pality whose population at the time of the latest decennial
28 census of the United States was (____) or more may exercise
29 the subdivision regulation powers granted in [cite appro-
30 priate statutes] not only within its corporate limits but
31 also within (____) mile(s) in all directions of its corporate
32 limits and not located in any other municipality;

33 Provided, that any ordinance intended to have applica-
34 tion beyond the corporate limits of the municipality shall
35 expressly so provide, and provided further that such ordinance
36 be adopted in accordance with the provisions set forth
37 therein.

38 "Section [] [] Boundary Lines. In the case of
39 land lying outside a municipality and lying within a distance

40 of (____) mile(s) of more than one municipality, the juris-
41 diction of each such municipality shall terminate at a
42 boundary line equidistant from the respective corporate
43 limits of such municipalities, or at such line as is agreed
44 to by the governing bodies of the respective municipalities.

45 "Section [] Representation on Boards and
46 Commissions.

47 (a) Planning and Zoning. As a prerequisite to the
48 exercise of such powers, the membership of the [planning
49 board] [zoning commission] charged with the preparation of
50 proposed comprehensive planning, zoning, and subdivision
51 regulations for the (____) mile area outside the corporate
52 limits shall be increased to include additional members who
53 shall represent such outside area. The number of additional
54 members representing such outside area shall be [equal in
55 number to the members of the (planning board) (zoning
56 commission) appointed by the governing body of the munici-
57 pality]; provided, that if the extraterritorial area includes
58 parts of two or more counties, the area included from each
59 county shall have additional members [equal in number to the
60 members of the (planning board) (zoning commission) appointed
61 by the governing body of the municipality]. Such additional
62 members shall be residents of the (____) mile area outside
63 the corporate limits and shall be appointed by the board of
64 county commissioners of the county wherein the unincorporated
65 area is situated. Such members shall have equal rights,

66 privileges, and duties with the other members of the planning board/zoning commission in all matters pertaining
67 to the plans and regulations of the area in which they
68 reside, both in preparation of the original plans and regulations and in consideration of any proposed amendments to
69 such plans and regulations.¹

72 (b) Zoning Adjustment. In the event that a municipal governing body adopts zoning regulations for the area outside
73 its corporate limits, it shall increase the membership of
74 the board of zoning adjustment by adding additional members equal in number to the members of the (board of zoning
75 adjustment) appointed by the governing body of the municipality; provided that if the extraterritorial area includes
76 parts of two or more counties, the area included from each
77 county shall have additional members equal in number to the
78 members of the (board of zoning adjustment) appointed by the
79 governing body of the municipality. Such members shall be
80 residents of the () mile area outside the corporate

1 In states where the planning board or commission gives final approval in specific cases of subdivision regulation, additional language may be needed to assure that its extraterritorial authority is not limited to the preparation of proposed regulations or amendments but also includes final action on matters when such authority is included in the existing statutory law which this amend .

84 limits and shall be appointed by the board of county commis-
85 sioners of the county wherein the unincorporated area is
86 situated. Such members shall have equal rights, privileges,
87 and duties with the other members of the board of zoning
88 adjustment in all matters pertaining to the regulation of
89 such area. The concurring vote of a majority of the members
90 of such enlarged board shall be necessary to reverse any
91 order, requirement, decision, or determination of any adminis-
92 trative official charged with the enforcement of an ordinance.

93 Section [] Enforcement. Any municipal
94 governing body exercising the powers granted by this section
95 may provide for the enforcement of its regulations for the
96 outside area in the same manner as the regulations for the
97 area inside the municipality are enforced."

1 Section 2. Separability. [Insert separability
2 clause.]

1 Section 3. Effective Date. [Insert effective date.]

METROPOLITAN FUNCTIONAL AUTHORITIES

A notable phenomenon of the past decade has been the proliferation of local public "authorities" or "special districts," generally created to provide a single type of governmental service or facility, e.g., housing, some phase of natural resources activity, sewage disposal, parks, hospital service, water supply, or other utility services. Between 1952 and 1957, the number of special district governments in the United States increased from 12,319 to 14,405. Much of this development took place in metropolitan areas; between 1952 and 1957, the number of special districts in the 174 areas officially recognized as SMSA's in 1957 increased from 2,661 to 3,180 or 22 per cent. Most of the special districts identified with metropolitan areas in 1957 were located outside the central city boundaries, but approximately 300 of them served or included the central city.

The spread of functional authorities has caused concern among public administrators, scholars, and political leaders in metropolitan areas. The authority approach has been denounced as "supergovernment," arrogant and irresponsible. The severity with which particular authorities are condemned is frequently correlated directly with their size, success, and power. Three principal arguments are advanced against the use of functional authorities. (1) It is a piecemeal approach to metropolitan problems. The practice of pulling out single functions for independent handling could, if carried to its logical conclusion, lead to a whole "nest" of powerful authorities, each operating with respect to a particular function and each unrelated in planning, programming and financial management to all of the others. (2) The creation of authorities adds to the number of local units of government within the metropolitan area, where there are already too many. (3) Authorities, being typically governed by a board of directors of private citizens appointed for staggered terms, are not directly responsive to the will of the people and to a considerable extent are beyond the reach of any one level of government.

The problems and limitations of the authority device, as it has been widely used, cannot be taken lightly. They need to be recognized and avoided in any legislation designed to permit metropolitan areas to utilize this device where it seems more desirable or feasible than alternative changes in the existing pattern of local government. Accordingly, the draft legislation which follows, providing for the permissive establishment of metropolitan service corporations, contains safeguards against the three arguments most often cited against authorities. The metropolitan service corporation proposed could be of a multi-functional type that would meet the argument that the authority inevitably leads to a piecemeal and fragmented approach. In the form proposed it would be susceptible, if the area residents so

chese, of handling numerous areawide services and functions. Secondly, by providing for a board of directors made up of members ex officio from boards of county commissioners, city councils, and mayors, the affairs of the corporation would be kept in the hands of elected officials and not entrusted to an independent, "untouchable" body. Poor performance of the corporation would carry the possibility of retribution at the polls for its board of directors. Third, the corporation could at the most result in the addition of a single unit of government in any given metropolitan area, while holding the potentiality of absorbing the functions and responsibilities of a considerable number of separate organizational units within the existing units of local government in the area.*

In summary: (1) the draft bill would authorize the establishment of a "metropolitan service corporation" on the basis of a majority vote in the area to be served by the corporation, pursuant to an election resulting either from resolution of the governing bodies of major local governments or from petition. (2) The corporation would be empowered by statute, subject to local voter approval, to carry on one or more of several metropolitan functions, such as sewage disposal, water supply, transportation, or planning. If the function of comprehensive planning were voted to the corporation, performance on a metropolitan area basis would be required, in contrast to permission for a smaller "service area" in the case of other functions. (3) The corporation would be governed by a metropolitan council consisting of representatives from the boards of county commissioners, and from the mayors and councils of component cities. (4) The corporation would have power to impose service charges and special-benefit assessments, and to issue bonds. Whether the corporation would also possess property-taxing power would depend on the range and nature of its authorized functional responsibilities.

The text of the suggested legislation is based on the provisions of Chapter 213, Law of 1957, State of Washington.

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act providing for the creation and operation of metropolitan service corporations

*This legislation would not, obviously, provide for all the problems involved where an authority is needed to serve metropolitan territory in two or more states. However, some of the principles expressed in this proposed statute might well be extended to any legislation providing explicitly for such agencies.

1 Section 2. As used herein:

2 (a) "Metropolitan service corporation" means a municipi-
3 pal service corporation of the state of []

4 created pursuant to this act.

5 (b) "Metropolitan area" as used herein is an area
6 designated as a "standard metropolitan statistical area"
7 by the U.S. Bureau of the Census in the most recent nation-
8 wide Census of the Population.¹

9 (c) "Service area" means the area contained within the
10 boundaries of an existing or proposed metropolitan service
11 corporation.

12 (d) "City" means an incorporated city or town.

13 (e) "Component city" means an incorporated city or
14 town within a service area.

15 (f) "Component county" means a county of which all or
16 part is included within a service area.

17 (g) "Central city" means the city with the largest
18 population in a service area.

19 (h) "Central county" means the county containing the
20 city with the largest population in a service area.

21 (i) "Special district" means any municipal corporation

1 Particular states may find it appropriate and desira-
ble to apply a somewhat different definition from this, tailored
to their particular circumstances. For example, a 1961 enactment
in Colorado (H.B. 221) defines a metropolitan area as "a contiguous
area consisting of one or more counties in their entirety, each of
which has a population density of at least fifteen persons per
square mile."

20 of the state of [] other than a city, town,
21 county, school district, or metropolitan service corporation.

22 (j) "Metropolitan council" means the legislative body
23 of a metropolitan service corporation.

24 (k) "City council" means the legislative body of any
25 city or town.

26 (l) "Population" means the number of residents as
27 shown by the figures released from the most recent official
28 Federal Census of Population.

29 (m) "Metropolitan function" means any of the functions
30 of government named in Title I, Section 2 of this act.

31 (n) "Authorized metropolitan function" means a metro-
32 politan function which a metropolitan service corporation
33 shall have been authorized to perform in the manner provided
34 in this act.

Title II

Area and Functions of a Metropolitan Service Corporation

1 Section 1. A metropolitan service corporation may be
2 organized to perform certain metropolitan functions, as
3 provided in this act, for a service area consisting of con-
4 tiguous territory which comprises all or part of a metro-
5 politan area and includes the entire area or two or more
6 cities, of which at least one has a population of $\overline{50,000}$ /
7 or more; Provided, that if a metropolitan service corpora-
8 tion shall be authorized to perform the function of metro-
9 politan comprehensive planning it shall exercise such power,

10 to the extent found feasible and appropriate, for the
11 entire metropolitan area rather than only for some smaller
12 service area. No metropolitan service corporation shall
13 have a service area which includes only a part of any city,
14 and every city shall be either wholly included or wholly
15 excluded from the boundaries of a service area. No terri-
16 tory shall be included within the service area of more than
17 one metropolitan service corporation.

1 Section 2. A metropolitan service corporation shall
2 have the power to perform any one or more of the following
3 functions, when authorized in the manner provided in this
4 act:

- 5 (a) Metropolitan comprehensive planning.
- 6 (b) Metropolitan sewage disposal.
- 7 (c) Metropolitan water supply.
- 8 (d) Metropolitan public transportation.
- 9 (e) Metropolitan garbage disposal.
- 10 (f) Metropolitan parks and parkways.
- 11 (g) [/] [/]
- 12 (h) [/] [/]

1 Section 3. With respect to each function it is author-
2 ized to perform, a metropolitan service corporation shall
3 make services available throughout its service area on a
4 uniform basis, or subject only to classifications or dis-
5 tinctions which are applied uniformly throughout the service

6 area and which are reasonably related to such relevant
7 factors as population density, topography, types of users,
8 and volume of services used. As among various parts of
9 the service area, no differentiation shall be made in the
10 nature of services provided, or in the conditions of their
11 availability, which is determined by the fact that particu-
12 lar territory is located within or outside of a component
13 city.

1 Section 4. In the event that a component city shall
2 annex territory which, prior to such annexation, is out-
3 side the service area of a metropolitan service corpora-
4 tion, such territory shall by such annexation become a
5 part of the service area.

Title III

Establishment and Modification of a Metropolitan Service Corporation

1 Section 1. A metropolitan service corporation may be
2 created by vote of the qualified electors residing in a
3 metropolitan area in the manner provided in this act. An
4 election to authorize the creation of a metropolitan service
5 corporation may be called pursuant to either a resolution
6 or a petition, as follows:

7 (a) A resolution or concurring resolutions calling for
8 such an election may be adopted by either:

9 (1) The city council of a central city; or

10 (2) The city councils or two or more component cities
11 other than a central city; or

12 (3) The board of commissioners of a central county.
13 A certified copy of such resolution or certified copies
14 of such concurring resolutions shall be transmitted to the
15 board of commissioners of the central county.

16 (b) A petition calling for such an election shall be
17 signed by at least 4 per cent of the qualified voters
18 residing within the metropolitan area and shall be filed
19 with the appropriate official of the central county.

20 Any resolution or petition calling for such an election
21 shall describe the boundaries of the proposed service area,
22 name the metropolitan function or functions which the
23 metropolitan service corporation shall be authorized to
24 perform in the service area. After the filing of a first
25 sufficient petition or resolution with such county
26 official or board of county commissioners respectively,
27 action by such official or board shall be deferred on any
28 subsequent petition or resolution until after the election
29 has been held pursuant to such first petition or resolution.

30 Upon receipt of such a petition, the official shall
31 examine the same and certify to the sufficiency of the
32 signatures thereon. Within thirty days following the
33 receipt of such petition, the official shall transmit
34 the same, together with his certificate as to the suf-
35 ficiency thereof, to the legislative body of each county
36 and city within the metropolitan area.

1 Section 2. The election on the formation of the
2 metropolitan service corporation shall be conducted by the
3 /appropriate official/ of the central county in accordance
4 with the general election laws of the state and the results
5 thereof shall be canvassed by the county canvassing board
6 of the central county, which shall certify the result of the
7 election to the board of county commissioners of the
8 central county, and shall cause a certified copy of such
9 canvass to be filed in the office of the secretary of
10 state.² Notice of the election shall be published in one
11 or more newspapers of general circulation in each component
12 county in the manner provided in the general election laws.
13 No person shall be entitled to vote at such election unless
14 he is a qualified voter under the laws of the state in
15 effect at the time of such election and has resided within
16 the service area for at least /Thirty/ days preceding the
17 date of the election. The ballot proposition shall be sub-
18 stantially in the following form:

19 FORMATION OF METROPOLITAN SERVICE CORPORATION

20 Shall a metropolitan service corporation be established
21 for the area described in a resolution of the board of
22 commissioners of / / county adopted on

2 In a state where this procedure might face constitutional difficulties, provision would be made, instead, for individual county canvassing, and certification to the central county or the secretary of state.

23 the [] day of [] / 19 [] to perform
24 the metropolitan functions of [] here insert the title
25 of each of the functions to be authorized as set forth
26 in the petition or initial resolution/?

27 YES..... []

28 NO []

29 If a majority of the persons voting on the proposition
30 residing within the service area shall vote in favor
31 thereof, the metropolitan service corporation shall there-
32 upon be established and the board of commissioners of the
33 central county shall adopt a resolution setting a time and
34 place for the first meeting of the metropolitan council
35 which shall be held not later than thirty days after the
36 date of such election. A copy of such resolution shall be
37 transmitted to the legislative body of each component city
38 and county and of each special district which shall be
39 affected by the particular metropolitan functions
40 authorized.

1 Section 3. A metropolitan service corporation may be
2 authorized to perform one or more metropolitan functions
3 in addition to those which it has previously been author-
4 ized to perform, with the approval of the voters at an
5 election, conducted in the manner provided by Title III,
6 Sections 1 and 2 of this act concerning an election on the
7 original formation of a metropolitan service corporation.

8 If a majority of the persons voting on the proposition
9 shall vote in favor thereof the metropolitan service corpo-
10 ration shall be authorized to perform such additional metro-
11 politan function or functions.

1 Section 4. The service area of a metropolitan service
2 corporation may be extended, subject to the general geo-
3 graphical conditions stated in Title II, Section 1, in the
4 manner provided in this section.

5 (a) The metropolitan council of a metropolitan service
6 corporation may make or authorize studies to ascertain the
7 desirability and feasibility of extending the service area
8 of the corporation to include particular additional terri-
9 tory within the metropolitan area which is contiguous to
10 the existing service area of the corporation. If such
11 studies appear to justify, the metropolitan council may
12 adopt a resolution stating that it has formally under con-
13 sideration the annexation of certain territory to the service
14 area. The resolution shall clearly describe the area or
15 areas concerned, and shall specify the time and place of a
16 public hearing to be held on the matter by the metropolitan
17 council. Such resolution shall be published in one or more
18 newspapers having general circulation in the metropolitan
19 area, at least /_thirty/ days before the date set for the
20 public hearing.

21 (b) The metropolitan council shall hold the public
22 hearing so announced, to receive testimony on the question

23 of extending the boundaries of the service area, and it
24 may hold further public hearings on the matter, subject
25 in each instance to published notice in a newspaper having
26 general circulation in the area, at least three days in
27 advance.

28 (c) Following such hearings, the metropolitan council
29 may, by resolution, authorize the annexation to the serv-
30 ice area of all or any portion of the territory which was
31 considered for annexation in accordance with the foregoing
32 paragraphs of this section. Such resolution shall clearly
33 describe the area or areas to be annexed and shall specify
34 the effective date of the annexation, which shall in no
35 event be sooner than either: (1) six months from the
36 date when such resolution is published; or (2) one
37 month after the date of the next regular primary or general
38 election to be held throughout the metropolitan area. The
39 resolution shall be published in one or more newspapers
40 having general circulation in the metropolitan area.

41 (d) Any annexation to the service area of a metro-
42 politan service corporation which is authorized in the
43 manner provided above shall become effective on the date
44 specified unless nullified pursuant to a popular referendum
45 conducted as follows:

46 To be sufficient, a petition calling for a popular refer-
47 endum on the prospective annexation of particular territory
48 to the service area of a metropolitan service corporation

49 shall be signed by at least either: (1) 47 per cent of
50 the qualified voters residing within the entire service
51 area of the corporation as prospectively enlarged; or
52 (2) 20 per cent of the qualified voters residing within
53 the territory concerning which a referendum is proposed.
54 The petition shall indicate such territory, in terms of
55 any one or more entire areas specified for annexation by
56 the metropolitan council resolution which is described in
57 paragraph (3) above. Such petition shall be filed with
58 the appropriate official of the central county within
59 thirty days of the publication of the annexation reso-
60 lution by the metropolitan council. The official shall
61 examine the same and certify to the sufficiency of the
62 signatures thereon. If a sufficient petition is filed,
63 the question specified by such petition shall be submitted
64 at the next regular primary for general election held
65 throughout the metropolitan area. If, at such election,
66 a majority of the vote cast on the question within the
67 service area of the metropolitan service corporation as
68 prospectively enlarged shall vote against the annexation
69 of a particular area or areas, the action of the metropoli-
70 tan council with respect to such area or areas shall thereby
71 be nullified.³

³ An alternative type of referendum requirement may be found desirable by some states.

Title IV

Organization and Governing Body of a
Metropolitan Service Corporation

1 Section 1. A metropolitan service corporation shall
2 be governed by a metropolitan council composed of the
3 following:⁴

4 (a) One member selected by, and from, the board of
5 commissioners of each component county;

6 (b) One member who shall be the mayor of the central
7 city;

8 (c) One member from each of the three largest compo-
9 nent cities other than the central city, selected by, and
10 from, the mayor and city council of each of such cities;

11 (d) [] [] members representing all component cities
12 other than the four largest cities to be selected from the
13 mayors and city councils of such smaller cities by the
14 mayors of such cities in the following manner: The mayors
15 of all such cities shall meet on the second Tuesday follow-
16 ing the establishment of a metropolitan service corporation
17 and thereafter on [] date [] of each even-numbered year at
18 [] [] o'clock at the office of the board of county
19 commissioners of the central county. The chairman of such
20 board shall preside. After nominations are made, ballots

⁴ Numbers of members coming from cities as contrasted to counties, as well as the total size of the metropolitan council should, of course, be adjusted in terms of the general pattern of local government prevalent within the metropolitan areas of the particular state.

21 shall be taken and the [] candidate(s)
22 receiving the highest number of votes cast shall be con-
23 sidered selected;

24 (e) One member, who shall be chairman of the metro-
25 politan council, selected by the other members of the
26 council. He shall not hold any additional public office
27 other than that of notary public or member of the military
28 forces of the United States or of the state of [],
29 not on active duty.

1 Section 2. At the first meeting of the metropolitan
2 council following the formation of a metropolitan service
3 corporation, the mayor of the central city shall serve as
4 temporary chairman. As its first official act the council
5 shall elect a chairman. The chairman shall be a voting
6 member of the council and shall preside at all meetings.
7 In the event of his absence or inability to act the coun-
8 cil shall select one of its members to act as chairman
9 pro tempore. A majority of all members of the council
10 shall constitute a quorum for the transaction of business.
11 A smaller number of council members than a quorum may
12 adjourn from time to time and may compel the attendance
13 of absent members in such manner and under such penalties
14 as the council may provide. The council shall determine
15 its own rules and order of business, shall provide by
16 resolution for the manner and time of holding all regular
17 and special meetings and shall keep a journal of its

18 proceedings which shall be a public record. Every legis-
19 lative act of the council of a general or permanent nature
20 shall be by resolution.

1 Section 3. The chairman shall hold office until
2 date of each even-numbered year and may, if re-elected,
3 serve more than one term. Each member of a metropolitan
4 council selected under provisions of Section 1, paragraphs
5 (a) and (c) of this title shall hold office at the pleasure
6 of the body which selected him. No member other than the
7 chairman may hold office after he ceases to hold the posi-
8 tion of mayor, commissioner, or councilman.

1 Section 4. A vacancy in the office of a member of the
2 metropolitan council shall be filled in the same manner as
3 provided for the original selection. The meeting of mayors
4 to fill a vacancy of the member selected under the pro-
5 visions of Section 1 (d) of this title shall be held at
6 such time and place as shall be designated by the chairman
7 of the metropolitan council after ten days' written notice
8 mailed to the mayors of each of the cities specified in
9 Section 1 (d) of this title.

1 Section 5. The chairman of the metropolitan council
2 shall receive such compensation as the other members of the
3 metropolitan council shall provide. Members of the council
4 other than the chairman shall receive compensation for
5 attendance at metropolitan council or committee meetings

6 of [] dollars per diem but not exceeding a
7 total of [] dollars in any one month, in addi-
8 tion to any compensation which they may receive as offi-
9 cers of component cities or counties: PROVIDED, That
10 officers serving in such capacities on a full time basis
11 shall not receive compensation for attendance at metro-
12 politan council or committee meetings. Members of the
13 council may be reimbursed for expenses actually incurred
14 by them in the conduct of official business for the metro-
15 politan service corporation.

1 Section 6. The name of a metropolitan service corpora-
2 tion shall be established by its metropolitan council.
3 Each metropolitan service corporation shall adopt a corpo-
4 rate seal containing the name of the corporation and the
5 date of its formation.

1 Section 7. All the powers and functions of a metro-
2 politan service corporation shall be vested in the metro-
3 politan council unless expressly vested in specific officers,
4 boards, or commissions by this act. Without limitation of
5 the foregoing authority, or of other powers given it by this
6 act, the metropolitan council shall have the following
7 powers:

8 (a) To establish offices, departments, boards and
9 commissions in addition to those provided by this act which
10 are necessary to carry out the purposes of the metropolitan

11 service corporation, and to prescribe the functions,
12 powers and duties thereof.

13 (b) To appoint or provide for the appointment of,
14 and to remove or to provide for the removal of, all offi-
15 cers and employees of the metropolitan service corpora-
16 tion except those whose appointment or removal is other-
17 wise provided for by this act [subject to the civil
18 service provisions of ⁵]/.

19 (c) To fix the salaries, wages and other compensation
20 of all officers and employees of the metropolitan service
21 corporation except those otherwise fixed in this act
22 [subject to the civil service provisions of ⁵]/.

23 (d) To employ such engineering, legal, financial, or
24 other specialized personnel as may be necessary to accom-
25 plish the purposes of the metropolitan service corporation.

Title V

Duties of a Metropolitan Service Corporation

1 Section 1. As expeditiously as possible after its
2 establishment or its authorization to undertake additional
3 metropolitan functions, the metropolitan service corpora-
4 tion shall develop plans with regard to the extent and
5 nature of the services it will initially undertake with
6 regard to each authorized metropolitan function, and the
7 effective dates when it will begin to perform particular
8 functions. Such initial basic plans shall be adopted by
9 resolution of the metropolitan council.

5 Cite appropriate civil service statute provisions.

1 Section 2. The metropolitan service corporation shall
2 plan for such adjustment or extension of its initial
3 assumption of responsibilities for particular authorized
4 functions as is found desirable, and the metropolitan
5 council may authorize such changes by resolution.

1 Section 3. It shall be the duty of a metropolitan
2 service corporation to prepare comprehensive plans for the
3 service area with regard to present and future public
4 facility requirements for each of the metropolitan functions
5 it is authorized to perform.

1 Section 4. If a metropolitan service corporation shall
2 be authorized to perform the functions of metropolitan
3 comprehensive planning, it shall have the following duties,
4 in addition to the other duties and powers granted by this
5 act:

6 (a) To prepare a recommended comprehensive land use
7 plan and public capital facilities plan for the metropoli-
8 tan area as a whole.

9 (b) To review proposed zoning ordinances and resolu-
10 tions or comprehensive plans of component cities and
11 counties and make recommendations thereon. Such proposed
12 zoning ordinances and resolutions or comprehensive plans
13 must be submitted to the metropolitan council prior to
14 adoption and may not be adopted until reviewed and returned
15 by the metropolitan council. The metropolitan council shall

16 cause such ordinances, resolutions and plans to be reviewed
17 by the planning staff of the metropolitan service corpora-
18 tion and return such ordinances, resolutions and plans,
19 together with their findings and recommendations thereon,
20 within ninety days following their submission.

21 (c) To provide planning services for component cities
22 and counties upon request and upon payment therefor by the
23 cities or counties receiving such service.

1 Section 5. A metropolitan service corporation shall
2 offer to employ every person who on the date such corpo-
3 ration acquires a metropolitan facility is employed in the
4 operation of such facility by a component city or county
5 or by a special district. Where a metropolitan service
6 corporation employs a person employed immediately prior
7 thereto by a component city or county, or by a special
8 district, such employee shall be deemed to remain an
9 employee of such city, county or special district for the
10 purposes of any pension plan of such city, county, or
11 special district, and shall continue to be entitled to all
12 rights and benefits thereunder as if he had remained as an
13 employee of the city, county, or special district, until
14 the metropolitan service corporation has provided a pension
15 plan and such employee has elected, in writing, to par-
16 ticipate therein. Until such election, the metropolitan
17 service corporation shall deduct from the remuneration of

18 such employee the amount which such employee is or may
19 be required to pay in accordance with the provisions of
20 the plan of such city, county, or special district and
21 the metropolitan service corporation shall pay to the
22 city, county, or special district any amounts required to
23 be paid under the provisions of such plan by employer and
24 employee.

Title VI

General Powers of a Metropolitan Service Corporation

1 Section 1. In addition to the powers specifically
2 granted by this act a metropolitan service corporation
3 shall have all powers which are necessary to carry out the
4 purposes of the metropolitan service corporation and to
5 perform authorized metropolitan functions.

1 Section 2. A metropolitan service corporation may sue
2 and be sued in its corporate capacity in all courts and in
3 all proceedings.

1 Section 3. A metropolitan service corporation shall
2 have power to adopt, by resolution of its metropolitan
3 council, such rules and regulations as shall be necessary
4 or proper to enable it to carry out authorized metropolitan
5 functions and may provide penalties for the violation thereof.
6 Actions to impose or enforce such penalties may be brought
7 in the [] court of the state of []
8 in and for the central county.

1 Section 4. A metropolitan service corporation shall
2 have power to acquire by purchase, condemnation, gift, or
3 grant and to lease, construct, add to, improve, replace,
4 repair, maintain, operate and regulate the use of facili-
5 ties requisite to its performance of authorized metropoli-
6 tan functions, together with all lands, properties, equip-
7 ment and accessories necessary for such facilities.
8 Facilities which are owned by a city or special district
9 may, with the consent of the legislative body of the city
10 or special districts owning such facilities, be acquired
11 or used by the metropolitan service corporation. Cities
12 and special districts are hereby authorized to convey or
13 lease such facilities to a metropolitan service corporation
14 or to contract for their joint use on such terms as may be
15 fixed by agreement between the legislative body of such city
16 or special district and the metropolitan council, without
17 submitting the matter to the voters of such city or
18 district.

1 Section 5. A metropolitan service corporation shall have
2 power to acquire by purchase and condemnation all lands and
3 property rights, both within and without the metropolitan
4 area, which are necessary for its purposes. Such right of
5 eminent domain shall be exercised by the metropolitan council
6 in the same manner and by the same procedure as is or may be
7 provided by law for cities of the []/ class,
8 except insofar as such laws may be inconsistent with the
9 provisions of this act.

1 Section 6. A metropolitan service corporation shall
2 have power to construct or maintain metropolitan facilities
3 in, along, on, under, over, or through public streets,
4 bridges, viaducts, and other public rights-of-way without
5 first obtaining a franchise from the county or city having
6 jurisdiction over the same: PROVIDED, That such facilities
7 shall be constructed and maintained in accordance with the
8 ordinances and resolutions of such city or county relating
9 to construction, installation and maintenance of similar
10 facilities in such public properties.

1 Section 7. Except as otherwise provided herein, a
2 metropolitan service corporation may sell or otherwise
3 dispose of any real or personal property acquired in con-
4 nection with any authorized metropolitan function and which
5 is no longer required for the purposes of the metropolitan
6 service corporation in the same manner as provided for
7 cities of the [] class. When the metro-
8 politan council determines that a metropolitan facility or
9 any part thereof which has been acquired from a component
10 city or county without compensation is no longer required
11 for metropolitan purposes, but is required as a local
12 facility by the city or county from which it was acquired,
13 the metropolitan council shall by resolution transfer it
14 to such city or county.

1 Section 8. A metropolitan service corporation may
2 contract with the United States or any agency thereof, any
3 state or agency thereof, any other metropolitan service
4 corporation, any county, city, special district, or
5 other governmental agency for the operation by such entity
6 of any facility or the performance on its behalf of any
7 service which the metropolitan service corporation is
8 authorized to operate or perform, on such terms as may be
9 agreed upon by the contracting parties.

Title VII

Financial Powers of a Metropolitan Service Corporation⁶

1 Section 1. A metropolitan service corporation shall
2 have power to set and collect charges for services it sup-
3 plies and for the use of metropolitan facilities it provides.

1 Section 2. A metropolitan service corporation shall
2 have the power to issue bonds for any authorized capital
3 purpose of the metropolitan service corporations: PROVIDED,
4 That a proposition authorizing the issuance of such bonds
5 shall have been submitted to the electors of the metropoli-
6 tan service corporation at a special election and assented

6 In the event that the authorized functions of the corporation extend beyond those subject to financing solely from user charges, benefit assessments, or borrowing, specific further provision for general property taxing power should be included.

7 to by a majority of the persons voting on said proposition
8 at said election.⁷

1 Section 3. The metropolitan service corporation shall
2 have the power to levy special assessments payable over a
3 period of not exceeding / years on all
4 property within the service area specially benefited by an
5 improvement, on the basis of special benefits conferred,
6 to pay in whole or in part the damages or costs of any
7 such improvement.

1 Section 4. A metropolitan service corporation shall
2 have the power when authorized by a majority of all mem-
3 bers of the metropolitan council to borrow money from any
4 component city or county and such cities or counties are
5 hereby authorized to make such loans or advances on such
6 terms as may be mutually agreed upon by the metropolitan
7 council and the legislative bodies of such component city
8 or county.

1 Section 5. All banks, trust companies, bankers, savings
2 banks and institutions, building and loan associations,
3 savings and loan associations, investment companies, and

7 Additional provisions concerning borrowing power and procedures will commonly be found desirable, with their nature depending upon other laws and practices of the state. Such state consideration should carefully review the bonding power granted to the service corporation as it relates to general local debt limitations and general local bonding authority.

4 other persons carrying on a banking or investment
5 business, all insurance companies, insurance associations,
6 and other persons carrying on an insurance business, and
7 all executors, administrators, curators, trustees and other
8 fiduciaries, may legally invest any sinking funds, moneys,
9 or other funds belonging to them or within their control
10 in any bonds or other obligations issued by a metropolitan
11 service corporation pursuant to this act. Such bonds and
12 other obligations shall be authorized security for all pub-
13 lic deposits in the state of /_ _ _ _ _/.

1 Section 6. A metropolitan service corporation shall
2 have the power to invest its funds held in reserves or
3 sinking funds or any such funds which are not required for
4 immediate disbursement, in property or securities in which
5 mutual savings banks may legally invest funds.

Title VIII

Separability and Effective Date

1 Section 1. /_Insert effective date_./

1 Section 2. /_Insert separability clause_./

C. OTHER STATE-LOCAL RELATIONS

An Introductory Statement by the Advisory Commission on Intergovernmental Relations

The powers available to local government, the way in which such powers are exercised, and the availability of local revenues are, by and large, determined by State constitutional, statutory and administrative requirements. Often these requirements are unduly restrictive in that they (1) inhibit local governments from cooperating with each other or with other levels of government; (2) do not permit exercise of sufficient local discretion commensurate with local responsibility; and (3) place upon local governments, particularly smaller units of local government, responsibilities for resolving complex problems without providing the means for securing and retaining the necessary skilled personnel. Recommendations of the Advisory Commission generally are aimed at reducing or eliminating restrictions that diminish the strength of local government, in order to provide ample authority for the solution of local problems at the local level and to provide for the effective exercise of decision-making on the part of local government.

To a great extent local governments have been subjected to undue legal restrictions which hinder or prevent them from adapting their structure and functions to meet widely varying and changing conditions. Restrictions on organization and functions of county government are particularly troublesome in light of the increasing responsibilities of county government in many areas. Also, with exception of the largest jurisdictions, local governments often cannot afford to employ the technical competence needed in resolving difficult problems. Accordingly, it is essential that the States make available to their local governments technical services which they are unable to provide economically for themselves.

The Commission believes that local governments should have authority broad enough to cope adequately with their problems, thus reducing the tendency to turn to higher levels of government for the solution. A significant but unnecessary restriction upon local action is that local governments often are legally enjoined from working together in resolving problems that extend beyond their individual territorial boundaries. Such restrictions should be eliminated. Overall considerations of State-local and interlocal relations require a considerable degree of flexibility and the closest degree of cooperation among and between the State and local levels of government.

The policy statements and suggested legislation that follow were approved by the Committee of State Officials on Suggested State Legislation of the Council of State Governments and are presented as they appear in the Council's publication, Program of Suggested State Legislation, for the years 1963 and 1964.

OFFICE OF LOCAL AFFAIRS (Revision)

In its report to the Governors' Conference in 1956 entitled The States and the Metropolitan Problem, the Council of State Governments recommended creation or adaptation of an agency of state government to "aid in determining the present and changing needs of metropolitan and nonmetropolitan areas in the states." Draft legislation for the creation of an Office of Local Affairs was contained in Suggested State Legislation -- Program for 1957 of the Committee on Suggested State Legislation. A somewhat modified version of that bill is presented below.

This suggested legislation has been drawn on the premise that there is an urgent need for systematic, interrelated and continuing consideration of many matters that affect metropolitan and nonmetropolitan areas, through a new or reorganized state agency. The Office of Local Affairs created here, it should be noted, can function as the state-level research and recommendation agency most directly concerned with the activities mentioned above.

Two points regarding the suggested legislation deserve emphasis:

(1) The applicability of the act is not confined to states that have metropolitan areas. A number of its provisions are important to the strengthening of local governments generally, whether or not they are located in metropolitan areas. The act can be used in states that presently do not have metropolitan areas by rewording and deleting part of the language of the proposed legislation.

(2) The enumerated functions should be assigned to a single agency in a state. The legislation is drafted in terms of a new office in the Office of the Governor, but attention is directed to footnote 2 which indicates other possible locations.

Suggested Legislation

Title should conform to state requirements

(Be it enacted, etc.)

- 1 Section 1. Purpose. It is the purpose of this act to
2 provide a continuing means of assisting local governments
3 and citizens in the determination of present and changing

4 governmental needs of metropolitan and nonmetropolitan areas
5 by establishing an agency of state government concerned with
6 collecting information and making evaluations about metro-
7 politan and local conditions and relations and aiding in the
8 development of both remedial and preventive programs.7¹

1 Section 2. Creation of the Agency. There is hereby
2 created the Office of Local Affairs to be located in the
3 office of the Governor7.²

1 Section 3. Chief and Staff of Agency. The Office of
2 Local Affairs shall be directed by a chief who shall be
3 appointed by the Governor and who shall serve at his
4 pleasure7. The staff of the Office shall be appointed by
5 the chief subject to state civil service regulations7.

1 Section 4. Functions. The Office of Local Affairs shall
2 have the following functions and duties:

3 (a) To assist and advise the Governor in coordinating
4 those activities and services of agencies of the state

1 This bracketed section concerning purpose may be
helpful in some states; in other states it may be unnecessary.

2 The Office could be located in or the functions
assigned to an existing department of administration; depart-
ment of finance, planning or planning and development agency,
or agency responsible for the financial supervision of local
governments. Or, the functions that are enumerated in
Section 4 of this Act could be assigned to a new permanent
commission composed of public officials or private citizens or
both, or to an existing or new joint legislative interim
committee that operates on a continuing basis.

5 which involve significant relationships with local govern-
6 ments.

7 (b) To encourage and, when requested, to assist in
8 efforts of local governments, to develop mutual and
9 cooperative solutions to their common problems.

10 (c) To study existing legal provisions that affect the
11 structure and financing of local government, and those state
12 activities that involve significant relationships with local
13 government units; and to recommend to the Governor and the
14 legislature such changes in these provisions and activities
15 as may seem necessary to strengthen local government and
16 permit its better adaptation to diverse and changing con-
17 ditions. Particular attention in such studies and
18 recommendations shall be given to problems of local govern-
19 ment for metropolitan areas and other areas where major
20 changes in population or economic activity are taking place.

21 (d) To serve as a clearinghouse, for the benefit of
22 local governments, of information concerning their common
23 problems and concerning state and federal services avail-
24 able to assist in the solution of those problems.

25 (e) When requested, to supply information, advice, and
26 assistance to governmental or civic groups which are studying
27 problems of local government structure or financing for
28 particular areas.

29 (f) To consult and cooperate with other state agencies,
30 with local governments and officials, and with federal

31 agencies and officials, in carrying out the functions and
32 duties of the office.

1 Section 5. Other Agencies. Nothing in this Act shall
2 be deemed to detract from the functions, powers, and duties
3 legally assigned to any other agency of the state, nor to
4 interrupt or preclude direct relationships by any such
5 agency with local governments in carrying out its operations.

1 Section 6. Severability. Insert severability clause.

1 Section 7. Effective Date. Insert effective date.

OPTIONAL FORMS OF COUNTY GOVERNMENT

The variation in social and economic conditions and the history of local government across the nation militate, quite properly, against any suggestion of a single ideal structural form of local government. Regardless of the form of local government, however, one thing appears certain; namely, that maximum local responsibility and maximum citizen participation in the governmental process can best be assured if the people themselves have a broad range of discretion in determining what form of local government is in their best interest.

During the current century most states have granted residents of municipalities the power to adopt various forms of local government. The most common forms so permitted are the strong mayor-council, the weak mayor-council, council-manager, and commission. Such authorization generally takes one or two forms: either a state statute which spells out in some detail the various alternatives, or a general statute authorizing the municipality to adopt a local charter under which any of the above alternatives are permissible. The granting of such discretion to municipalities was based on the assumption that the individual municipality should have the discretion to determine, within whatever limits the state legislature thought appropriate, the structure of the municipal government best suited to carry out public functions that the local government was to perform.

It is now evident that similar authority should be granted to counties in those states where counties constitute an important unit in the individual state's governmental structure. In such states counties with rapidly expanding populations are forced to provide more and more general functions of local government, such as fire and police protection, and water and sewer facilities, that have traditionally been performed by municipalities. These additional functions are being imposed upon counties in both rural and urban areas. In addition, many rural counties are being presented with a different type of problem, i.e., providing government services to an area with a declining population. In such communities it may be extremely difficult for the county to support a large staff of government personnel which is required by a state statute or constitution. In both these instances it would be appropriate, within the limitations established by the legislature, to permit the residents of the county to determine that structure of county government which they feel most suited to the needs of the individual county.

The states which have considered the structure and organization of county governments in recent years have adopted various constitutional approaches to this particular problem. Each of these approaches, in one way or another, grants to the county the authority to determine **its own** form of county government.

The new Michigan constitution (Art. 7, Sec. 2) specifically authorizes counties to adopt home rule charters pursuant to state law. The constitutions of Alaska (Art. 10, Sec. 3), Hawaii (Art. 7, Sec. 1), Kansas (Art. 9, Secs. 1 and 2), and Virginia (Art. 7, Sec. 110) authorize the establishment of counties pursuant to general act of the legislature. The constitutions of California (Art. 11, Sec. 7½) and New York (Art. 9, Sec. 2) contain detailed provisions as to permissible alternative forms of county government that may be adopted by an individual county within the state. In other states, such as Maryland, counties may operate under a county charter that has been approved by a special act of the legislature. The State of Connecticut abolished counties after determining that they served no useful purpose in that state.

The above-listed states have all attempted to resolve the constitutional problem of optional forms of county government in a manner consistent with the needs of the individual state. The significance of their action rests upon the fact that these states felt that the prior law hampered the county in meeting its responsibilities as a viable unit of local government. The variation in approach taken by the states is in itself indicative of the fact that the functions and responsibilities of counties vary greatly from state to state and that the procedure to be taken in an individual state must therefore depend upon its individual situation.

In view of the changing nature and responsibilities of counties in the governmental structure, it is essential that all states review existing constitutional provisions relating to the organization and structure of county government to determine what, if any, changes should be made therein in order to insure more effective and responsible local government within the state.

INTERGOVERNMENTAL COOPERATION

In recent years, new or revised state constitutions (notably those of Missouri, Alaska and Hawaii) have contained specific provisions authorizing intergovernmental relations. Apparently, constitution makers have thought that interstate, federal-state and interlocal cooperation have reached a point where they would benefit from specific recognition in constitutional texts. Since the purpose of such provisions is to enable more flexibility in such cooperative endeavors than might otherwise be encouraged, they should be drawn in the broadest possible terms. In addition, a somewhat narrower, but perhaps more pressing, problem has come to light. It is the constitutional status of persons holding state office who may be called upon to serve on commissions or other agencies which are administratively attached to other governmental units, but which have as their purpose the promotion or performance of a project for intergovernmental cooperation.

A suggested constitutional amendment formulated by the New York State Joint Legislative Committee on Interstate Cooperation, covers both of these subjects. The portion of it dealing with intergovernmental cooperation per se is offered for the consideration of those who are contemplating specific provisions on intergovernmental relations. Its advantage in comparison with existing provisions on this subject is that it authorizes all of the varieties of such cooperation: interstate, federal-state, interlocal, and any combination of them. Inclusion of the phrase "any one or more foreign powers, including any governmental unit thereof" is merely to make sure that the cooperation authorized is no less broad than that contemplated by Article I, Section 10, Clause 3 (the compact clause) of the Constitution of the United States. The second paragraph of the amendment deals with service of state and local officials on bodies concerned with intergovernmental affairs. It is designed to remove possible constitutional obstacles to such service.

An incomplete survey of state constitutions has revealed that at least thirty states have provisions in their constitutions which could be construed to bar such service for state and local officials. While it seems almost certain that the drafters of such provisions did not intend them to have any such effects, and while virtually all of them are far from compelling any such construction, two episodes during the past two years suggest that thought should be given to the problem.

The Attorney General of Texas declined appointment as a member of the Commission on International Rules of Judicial Procedure because of a provision in the Texas constitution. The statute establishing the Commission provided for two members of the nine-man body to be state officials whose positions gave them

experience and knowledge of the effect of the Commission's work on state courts and administrative agencies. A New York State Senator resigned from the Federal Advisory Commission on Intergovernmental Relations after being advised that the availability of compensation for service on the Commission (whether he accepted such payment or not) would raise a question under the state constitution as to his continuance in his Senate seat.

As the activities and interests of the federal and state governments become ever more closely intertwined, it is important that state officials be able to serve on such intergovernmental bodies so that they may provide responsible and direct representation for the states in matters of concern to them. Furthermore, such officials, while they are in office, have current and valuable experience coupled with a direct concern for the problems that are likely to call for service on intergovernmental bodies. Private citizens who accept appointment to intergovernmental bodies (however useful and appropriate their service may be on many occasions) cannot serve quite the same function.

The constitutional provisions which have begun to cause difficulty were originally designed to guard against "conflict of interest." They were adopted on the generally sound premise that a man who serves two masters may be in a difficult position dangerous to the public interest. But this premise would seem to be inapplicable and unreasonably confining in those instances where service in one capacity is actually in furtherance of the state's interest and compatible with it.

It is possible that similar problems may arise for local officials whose services are desirable on intergovernmental bodies, although such instances of actual hardship in the recent past are not readily at hand. Indeed, the entire problem is a relatively new one because the use of such intergovernmental bodies as an instrument of federal-state relations is a recent development. Because the technique is so promising and valuable as a means of achieving coordination within the federal system, it is desirable for the states to examine their constitutions to make sure that no obstacles exist.

It should be noted that no constitutional difficulties appear to have been encountered by state officials serving on purely interstate bodies such as those created by interstate compact. However, in order to encourage the maximum degree of flexibility possible and to guard against any limiting implications from adoption of language specifically authorizing one type of intergovernmental service, but silent as to others, the suggested constitutional amendment is written in comprehensive terms. Further, the amendment recognizes that the "conflict of interest" question could be real in some situations. Consequently, it authorizes the state legislature by statute to impose such restrictions as it may find appropriate. Since the bulk of our

"conflict of interest" laws are statutory in any case, such an arrangement would accord with well-known patterns in this field.

Since some of the more recent state constitutions contain general provisions dealing explicitly with intergovernmental relations, it may be that in the future, other states will follow this practice. Accordingly, the suggested amendment proposed here may be considered for adoption either in its entirety or in either of its paragraphs, separately. It is also recognized that because of the stylistic variations in state constitutions, the adoption of such a change may necessitate conforming alterations in other parts of the constitutional document. The draft language suggested below is designed to reduce or avoid such additional changes to the greatest degree possible. However, each state should examine the situation to see how the wording of the amendment would fit into its own constitutional pattern and to determine what adaptations, if any, are desirable.

The theory on which this suggested constitutional amendment has been drafted is that the language should be broadly enabling in character. It is recognized that limitations of some sort may be desirable but these are believed to be more appropriate for statute than for constitutional provision. With reference to those portions of the suggested amendment dealing with interlocal matters, attention is called to an Interlocal Cooperation Act that follows on page 145. Limitations of the type contained therein may be illustrative of the situations in which statutory implementation or restriction of the constitutional authority here granted would be appropriate.

Suggested Constitutional Amendment

Title, format and procedural practice for constitutional amendment should conform to state practice and requirements.

1 Subject to any provision which the legislature may make
2 by statute, the state, or any one or more of its municipal
3 corporations and other subdivisions, may exercise any of
4 their respective powers, or perform any of their respective
5 functions and may participate in the financing thereof
6 jointly or in cooperation with any one or more other states,
7 or municipal corporations, or other subdivisions of such
8 states, or the United States, including any territory,

9 possession or other governmental unit thereof, or any one
10 or more foreign powers, including any governmental unit
11 thereof.

12 Any other provision of this constitution to the contrary
13 notwithstanding, an officer or employee of the state or any
14 municipal corporation or other subdivision or agency thereof
15 may serve on or with any governmental body as a representa-
16 tive of the state or any municipal corporation or other
17 subdivision or agency thereof, or for the purpose of
18 participating or assisting in the consideration or perfor-
19 mance of joint or cooperative undertakings or for the study
20 of governmental problems, and shall not be required to
21 relinquish his office or employment by reason of such
22 service. The legislature by statute may impose such
23 restrictions, limitations or conditions on such service
24 as it may deem appropriate.

INTERLOCAL COOPERATION

The relationship of local governmental units to the functions which they are expected to perform raises difficult questions. The burgeoning of governmental services and the changing demands of modern life have sometimes required functions to be administered within geographic units larger than, or at least not coincident with the boundaries of existing political subdivisions. To a limited extent, municipal consolidations and annexations have taken place in an attempt to meet altered demographic situations. But the problem of devising appropriate local government areas remains. Often it is only a single function, or a limited number of functions that should be performed on a different or consolidated basis. In these instances the abolition of existing units is too extreme a remedy. On the other hand, special districts can and have been formed for school, fire protection, public sanitation, etc. Such districts are of great utility and doubtless will continue to be important. However, the creation of such districts usually requires special action from state authorities and may result in the withdrawal of control over the function from the political subdivisions formerly responsible for it. In these circumstances, there may be a large number of situations in which joint or cooperative rendering of one or more services by existing political subdivisions is called for.

In recent years states have been authorizing their political subdivisions to enter into interlocal agreements or contracts. Arrangements under which smaller communities send their high school pupils to the schools in adjacent larger cities, purchase water from a metropolitan supply system, receive police and fire protection from neighboring communities, or establish joint drainage facilities are becoming relatively frequent. However, legislation authorizing such arrangements has, almost without exception, been particularistic; related, only to the peculiar requirements of a designated local activity. The suggested Interlocal Cooperation Act which follows authorizes joint or cooperative activities on a general basis. It leaves it up to the local governmental units to decide what function or functions might better be performed by them in concert. The act does not grant any new powers to localities; it merely permits the exercise of power already possessed by the subdivision in conjunction with one or more other local communities for a common end. By leaving this degree of initiative with the localities themselves, the act seeks to make it easier for them to enter upon cooperative undertakings.

Because local governments and subdivisions have responsibility for the administration of certain state functions, and because the state in turn bears certain responsibilities for its subdivisions, some degree of control over interlocal agreements is both necessary and desirable. The suggested act provides this control by specifying the basic contents of such agreements

and by requiring review by the attorney general and, in some cases, by other state officers before an agreement goes into effect.

It is believed that legislation of this type will be most useful if drawn so as to permit of use for any local function. However, it is recognized that some activities may present special problems and that states may wish to continue the practice of making special statutory provision for such types of interlocal cooperation. It would be quite possible for a state to enact this statute for use with reference to most types of interlocal cooperation and to make provision elsewhere in state law for types of interlocal functions requiring special handling.

Alternative language is offered in Section 4(a) which would provide a broad or narrow use of the joint agreement power. Without the language in parenthesis, the act permits two or more public agencies to exercise a power jointly or cooperatively as long as one of them possesses the power. For example, Community A which has the power to build and maintain a public water supply system and Community B which does not have such a power, could enter into an agreement for the joint or cooperative construction and maintenance of such a facility. Some states may wish to enact a statute of this breadth. However, others may wish to limit the statute to use in situations where all agreeing public agencies can exercise the power separately. Inclusion of the language provided in parenthesis would accomplish this limitation if desired.¹

It should be noted that the suggested act is drafted for use between or among communities whether or not they are located within a single state. Patterns of settlement often make it advantageous for communities at or near state lines to enter into cooperative relationships with neighboring subdivisions on the other side of the state boundary. It is clear that such relationships are possible when cast in the form of interstate compacts. Accordingly, the suggested act specifically gives interlocal agreements across state boundaries the status of compacts. However, the usual interstate compact is an instrument to which states are party. Since the contemplated interlocal agreements should be the primary creation and responsibility of the local communities, the act makes them the real parties in interest for legal purposes and places the state more in the position of guarantor. Since this means that the obligation is enforceable against the state if necessary, the interlocal agreement will have all the necessary attributes of a compact. However, the

¹ The version of this policy statement approved by the Committee of State Officials on Suggested State Legislation of the Council of State Governments refers to the possibility of this alternative language but does not provide it in the draft legislation.

state in turn is protected by the requirement of prior approval of the agreement by state authorities and by the provisions of Section 5 preserving the state's right of recourse against a non-performing locality.

There has been much confusion concerning the need for Congressional consent to interstate compacts. The wording of the Compact Clause of the Constitution has led some to believe that all compacts need Congressional consent. However, this is clearly not the case. The leading case of *Virginia v. Tennessee*, 148 U.S. 503 (1893) makes it clear that only those compacts which affect the balance of the federal system or affect a power delegated to the national government require Congressional consent. Such pronouncements as have come from state courts also take this position. *Bode v. Barrett*, 412 Ill. 204, 106 NE 2d 521 (1952); *Dixie Wholesale Grocery Inc. v. Morton*, 278 Ky. 705, 129 SW 2d 184 (1939), Cert. Den. 308 U.S. 609; *Roberts Tobacco Co. v. Michigan Dept. of Revenue*, 322 Mich. 519, 34 NW 2d 54 (1948); *Russell v. American Ass'n*, 139 Tenn. 124, 201 SW 151 (1918). Finally, it should be noted that the Southern Regional Education Compact to which a large number of states are party has been in full force and operation for over seven years even though it does not have the consent of Congress and when challenged, the compact was upheld. *McCready v. Byrd*, 195 Md. 131, 73 A 2d 8 (1950). Except where very unusual circumstances exist, it seems clear that powers exercised by local governments either individually or in concert, lie squarely within state jurisdiction and so raise no question of the balance of our federal system. Accordingly, in the absence of special circumstances, it is clear that interlocal agreements between or among subdivisions in different states would not need the consent of Congress.

Some of the states have boundaries with Canada or Mexico. Therefore, it may be that some border localities in these states might have occasion to enter into interlocal agreements with communities in these neighboring foreign countries. The suggested act makes no provision for such agreements since it is felt that agreements with foreign governmental units may raise special problems. States having such boundaries might want to consider whether to devise means for extending the benefits of this suggested act to agreements between their subdivisions and local governments across an international boundary. Any state wishing to follow this course, might add appropriate provisions to the suggested act at the time of passage or might amend its statute later after experience with the legislation within the United States has been gained.

Suggested Legislation

/Title should conform to state requirements./

(Be it enacted, etc.)

1 Section 1. Purpose. It is the purpose of this act to
2 permit local governmental units to make the most efficient
3 use of their powers by enabling them to cooperate with other
4 localities on a basis of mutual advantage and thereby to pro-
5 vide services and facilities in a manner and pursuant to
6 forms of governmental organization that will accord best
7 with geographic, economic, population and other factors in-
8 fluencing the needs and development of local communities.

1 Section 2. Short Title. This act may be cited as the In-
2 terlocal Cooperation Act.

1 Section 3. Public Agency Defined. (a) For the purposes
2 of this act, the term "public agency" shall mean any polit-
3 ical subdivision /insert enumeration, if desired/ of this
4 state; any agency of the state government or of the United
5 States; and any political subdivision of another state.

6 (b) The term "state" shall mean a state of the United
7 States and the District of Columbia.

1 Section 4. Interlocal Agreements. (a) Any power or pow-
2 ers, privileges or authority exercised or capable of exer-
3 cise by a public agency of this state may be exercised and
4 enjoyed jointly with any other public agency of this state

5 (having the power or powers, privilege or authority)¹, and
6 jointly with any public agency of any other state or of the
7 United States to the extent that laws of such other state or
8 of the United States permit such joint exercise or enjoyment.
9 Any agency of the state government when acting jointly with
10 any public agency may exercise and enjoy all of the powers,
11 privileges and authority conferred by this act upon a public
12 agency.

13 (b) Any two or more public agencies may enter into agree-
14 ments with one another for joint or cooperative action pur-
15 suant to the provisions of this act.
16 Appropriate action by ordinance, resolution or otherwise pur-
17 suant to law of the governing bodies of the participating
18 public agencies shall be necessary before any such agreement
19 may enter into force.

20 (c) Any such agreement shall specify the following:

- 21 1. Its duration.
- 22 2. The precise organization, composition and nature
23 of any separate legal or administrative entity created there-
24 by together with the powers delegated thereto, provided such
entity may be legally created.
- 25 3. Its purpose or purposes.
- 26 4. The manner of financing the joint or cooperative
27 undertaking and of establishing and maintaining a budget

1 This parenthetical phrase is not included in suggested legislation approved by the Committee of State Officials on Suggested State Legislation, as noted in the explanatory statement.

28 therefor.

29 5. The permissible method or methods to be employed
30 in accomplishing the partial or complete termination of the
31 agreement and for disposing of property upon such partial or
32 complete termination.

33 6. Any other necessary and proper matters.

34 (d) In the event that the agreement does not establish a
35 separate legal entity to conduct the joint or cooperative
36 undertaking, the agreement shall, in addition to items 1,3,
37 4,5 and 6 enumerated in subdivision (c) hereof, contain the
38 following:

39 1. Provision for an administrator or a joint board
40 responsible for administering the joint or cooperative under-
41 taking. In the case of a joint board public agencies party
42 to the agreement shall be represented.

43 2. The manner of acquiring, holding and disposing of
44 real and personal property used in the joint or cooperative
45 undertaking.

46 (e) No agreement made pursuant to this act shall relieve
47 any public agency of any obligation or responsibility im-
48 posed upon it by law except that to the extent of actual and
49 timely performance thereof by a joint board or other legal
50 or administrative entity created by an agreement made here-
51 under, said performance may be offered in satisfaction of
52 the obligation or responsibility.

53 (f) Every agreement made hereunder shall, prior to and as
54 a condition precedent to its entry into force, be submitted

55 to the attorney general who shall determine whether the
56 agreement is in proper form and compatible with the laws of
57 this state. The attorney general shall approve any agree-
58 ment submitted to him hereunder unless he shall find that it
59 does not meet the conditions set forth herein and shall de-
60 tail in writing addressed to the governing bodies of the
61 public agencies concerned the specific respects in which the
62 proposed agreement fails to meet the requirements of law.
63 Failure to disapprove an agreement submitted hereunder with-
64 in [...] days of its submission shall constitute approval
65 thereof.

66 [(g)] Financing of joint projects by agreement shall be as
67 provided by law.]

1 Section 5. Filing, Status, and Actions. Prior to its en-
2 try into force, an agreement made pursuant to this act shall
3 be filed with [the keeper of local public records] and with
4 the [secretary of state]. In the event that an agreement
5 entered into pursuant to this act is between or among one or
6 more public agencies of this state and one or more public
7 agencies of another state or of the United States said agree-
8 ment shall have the status of an interstate compact, but in
9 any case or controversy involving performance or interpreta-
10 tion thereof or liability thereunder, the public agencies
11 party thereto shall be real parties in interest and the state
12 may maintain an action to recoup or otherwise make itself
13 whole for any damages or liability which it may incur by

14 reason of being joined as a party therein. Such action
15 shall be maintainable against any public agency or agencies
16 whose default, failure of performance, or other conduct
17 caused or contributed to the incurring of damage or liabil-
18 ity by the state.

1 Section 6. Additional Approval in Certain Cases. In the
2 event that an agreement made pursuant to this act shall deal
3 in whole or in part with the provision of services or facil-
4 ities with regard to which an officer or agency of the state
5 government has constitutional or statutory powers of control,
6 the agreement shall, as a condition precedent to its entry
7 into force, be submitted to the state officer or agency hav-
8 ing such power of control and shall be approved or disap-
9 proved by him or it as to all matters within his or its jur-
10 isdiction in the same manner and subject to the same require-
11 ments governing the action of the attorney general pursuant
12 to Section 4(f) of this act. This requirement of submission
13 and approval shall be in addition to and not in substitution
14 for the requirement of submission to and approval by the
15 attorney general.

1 Section 7. Appropriations, Furnishing of Property, Person-
2 nel and Service. Any public agency entering into an agree-
3 ment pursuant to this act may appropriate funds and may sell,
4 lease, give, or otherwise supply the administrative joint
5 board or other legal or administrative entity created to
6 operate the joint or cooperative undertaking by providing

7 such personnel or services therefor as may be within its
8 legal power to furnish.

1 Section 8. Interlocal Contracts. Any one or more public
2 agencies may contract with any one or more other public agen-
3 cies to perform any governmental service, activity, or under-
4 taking which (each public agency) (any of the public agen-
5 cies) entering into the contract is authorized by law to
6 perform, provided that such contract shall be authorized by
7 the governing body of each party to the contract. Such con-
8 tract shall set forth fully the purposes, powers, rights,
9 objectives, and responsibilities of the contracting parties.

1 Section 9. [Insert severability clause, if desired.]

1 Section 10. [Insert effective date.]

VOLUNTARY TRANSFER OF FUNCTIONS BETWEEN
MUNICIPALITIES AND COUNTIES

It is suggested that states enact legislation authorizing the legislative bodies of municipalities and counties located within metropolitan areas to take mutual and coordinate action to transfer responsibility for specified governmental services from one unit of government to the other. Specifically, it is proposed that the states enact a statute authorizing voluntary transfer of functions between municipalities and counties within metropolitan areas to the extent agreed by the governing boards of these respective types of units.* If desired, the statute could spell out the functions authorized for such voluntary transfer in order to make sure that responsibilities carried on by counties as agents of the state were not transferred to municipal corporations. Within a particular metropolitan area, for example, such a statute would enable the board of county commissioners and the mayors and councils of municipalities to assess collectively the manner in which particular service-type functions were being carried out. By concurrent action, the governing boards might have the county assume functions such as water supply, sewage disposal, etc., throughout the area, relieving the municipalities of their respective fragmented responsibilities in those functional areas. Conversely, they might agree that the county government should cease to carry on certain functions within the boundaries of the municipalities, with the municipalities assuming such responsibility on an exclusive basis.

The suggested legislation which follows is limited in its applicability to metropolitan areas. This bill includes an illustrative enumeration of types of services eligible for transfer between county and city governments by concurrent action of their respective governing bodies, and prescribes the minimum subject matter to be covered in any official transferring action.

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act to provide for the transfer of functions between cities and counties."7

(Be it enacted, etc.)

- 1 Section 1. (a) "Metropolitan area" as used herein is an
- 2 area designated as a "standard metropolitan statistical

*Some states may wish to grant such authority statewide, rather than only for metropolitan areas.

3 area" by the U.S. Bureau of the Census in the most recent
4 nationwide census of the population.¹

5 (b) "Local service function" as used herein is a local
6 governmental service or group of closely allied local gov-
7 ernmental services performed by a county or a city for its
8 inhabitants and for which, under constitutional and statu-
9 tory provisions, and judicial interpretations, the county or
10 city, as distinguished from the state, has primary respons-
11 ibility for provision and financing. WWithout in any way
12 limiting the foregoing, the following are examples of such
13 local service functions: (1) street and sidewalk maintenance;
14 (2) trash and garbage collection and disposal; (3) sanitary
15 and health inspection; (4) water supply; (5) sewage disposal;
16 (6) police protection; (7) fire protection; (8) library serv-
17 ices; (9) planning and zoning; (10) . . . , etc.²

1 Section 2. (a) Responsibility for a local service function
2 or a distinct activity or portion thereof, previously exer-
3 cised by a city located within a metropolitan area, may be
4 transferred to the county in which such city is located by
5 concurrent affirmative action of the governing body of such
6 city and of the governing board of such county.

1 Particular states may find it appropriate and desirable to
apply a somewhat different definition from this, tailored to
their particular circumstances. For example, a 1961 enactment in
Colorado (H.B. 221) defines a metropolitan area as "a contiguous
area consisting of one or more counties in their entirety, each
of which has a population density of at least 15 persons per
square mile."

2 The list of illustrative functions may vary from state to
state. Furthermore, the legislature may prefer to enumerate spec-
ifically the functions eligible for transfer.

7 (b) The expression of official action³ transferring
8 such function shall make explicit: (1) the nature of the
9 local service function transferred; (2) the effective date
10 of such transfer; (3) the manner in which affected employees
11 engaged in the performance of the function will be trans-
12 ferred, reassigned or otherwise treated; (4) the manner in
13 which real property, facilities, equipment, or other per-
14 sonal property required in the exercise of the function are
15 to be transferred, sold, or otherwise disposed between the
16 city and the county; (5) the method of financing to be used
17 by the receiving jurisdiction in the exercise of the func-
18 tion received; and (6) other legal, financial, and adminis-
19 trative arrangements necessary to effect the transfer in an
20 orderly and equitable manner.⁴

1 Section 3. (a) Responsibility for a local service function,
2 or a distinct activity or portion thereof, previously exer-
3 cised by a county located within a metropolitan area may be
4 transferred as hereinafter described to a city or cities
5 located within such county.

6 (b) Responsibility for a county government's performance
7 of a local service function within the municipal boundaries

3 Insert appropriate language to describe the form that the official action required in Section 2, paragraph (a) would take.

4 States should insure that adequate provisions are made for residents of the area involved being informed at all times of which unit of government is responsible for a particular function. In addition, a state may desire to permit a proposal for the transfer of functions to be initiated through public petition.

8 of such city or cities may be transferred to such city or
9 cities by concurrent affirmative action of the governing
10 boards of such county and of such city or cities.

11 (c) The expression of official action transferring such
12 responsibility shall include all of those features specified
13 in Section 2(b) above.

1 Section 4. /Insert appropriate separability section./

1 Section 5. /Insert effective date./

STATE AND LOCAL GOVERNMENT RETIREMENT SYSTEMS

As a result of the increased responsibilities confronting state and local governments because of population growth and technological changes, the recruitment and development of capable and qualified public personnel has become extremely important. Adequate retirement coverage is a vital part of any sound personnel system devised to secure this needed talent. There are three problem areas concerning retirement coverage for which adequate solutions must be found if state and local governments are to secure the high-quality personnel needed to carry out their complex responsibilities. These three areas are: (1) Extension of staff retirement coverage to all public employees; (2) Consolidation of many existing public employee retirement systems; and (3) Transferability of retirement credits of state and local government employees.

1. Extending staff retirement coverage to all public employees.

Most states and local governments recognize the importance of establishing and maintaining an adequate personnel system. Likewise they recognize that a sound and attractive retirement system is a vital element in the personnel system. An adequate retirement system obviously includes a staff retirement system which provides benefits in excess of or in addition to Social Security benefits.

Forty-seven states provide staff retirement coverage for state employees. Forty-three states administer retirement systems in which employees of some local governments such as counties or municipalities are able to participate. Such local participation may be either in the state employee system or in a state administered system for local government employees. Thirty-five states have retirement systems in which all local units of government are able to participate if they desire to do so. There are numerous locally administered public employee retirement systems. Teachers in all 50 states have retirement coverage. Overall, of the more than 6.3 million state and local employees, more than 4 million have staff retirement coverage.

In view of the foregoing, it appears to be incumbent on those governmental jurisdictions that do not now provide staff retirement coverage for their employees to do so. Perhaps the most desirable type of retirement situation is that in Hawaii and Nevada. In these states there is only one public employee retirement system, one which covers all state and local employees, including teachers. Seven other states have single state administered retirement systems in which all state and local employees and teachers may participate. However, in these states there are other public employee retirement systems in operation in addition to the single state system.

Twenty-two states have state administered retirement systems in which state and local employees participate, and in addition a separate retirement system for teachers. In three states there are separate state administered retirement systems for state employees, local employees, and teachers. In North Carolina, state employees and teachers participate in one retirement system, and there is a state administered system for local employees.

Legislative action would be required in 15 states to make all public employees eligible for staff retirement coverage in a state administered system. Action should be taken to establish general public employee retirement systems for state and local employees in the three states having no system. Existing legislation should be amended in 12 states to enable employees of all local units of government to participate in state administered systems. The states should take the lead in assisting local governments in providing retirement coverage for their employees, because it is difficult even for the largest to maintain financially sound retirement systems.

Specific legislation in this regard is not presented because of the numerous actuarial complexities which are peculiar to each state. These include such considerations as whether the system is funded, partially funded, or non-funded; the relative contributions by the employer and the employee; and age and years of service required for benefits.

To summarize, states should strengthen their public employee retirement systems by providing for coverage in one of the three following manners: (1) By providing coverage in one state administered system for all state and local employees including teachers; (2) Providing coverage in two state administered systems, one to include all state and local employees, one for teachers only; or (3) By providing coverage in three state administered retirement systems, one to include state employees only, one to include local employees only, and one to include teachers only.

2. Consolidation of existing public employee retirement systems.

There are over 2,200 state and local public employee retirement systems in the nation. More than two-thirds of these systems have a membership of less than 100. It is difficult, if not impossible in the long-run, to operate these small systems on a sound financial basis. Most small systems are operated by municipalities. Some authorities in the public employee retirement field recommend that systems with less than 1,500 members should be merged.

States should provide the necessary leadership for retirement system consolidation by encouraging the merger of economically

precarious small systems, preferably by making it possible for all local units of government to participate in state administered retirement systems. The general guidelines in the preceding section are equally appropriate for legislation to deal with the consolidation problem. Action in this regard is essential or state and local governments risk failure to attract qualified personnel, and employees risk the loss of pension dollars.

3. Transferability of retirement credits of state and local government employees.

The principle purposes for which retirement systems were established have undergone considerable reconsideration in the last two decades. Retirement systems for public employees were originally intended, in addition to other things, to serve as an anchor on the employee to keep him employed by the same unit of government. This was accomplished by denying the employee much of his retirement credits if he changed employers. However, since retirement coverage for public employees is becoming so universal, and since the training and development of employees in the administrative, professional, and technical fields are becoming so important to strengthening public administration, it no longer is considered sound personnel policy to maintain such roadblocks to employee mobility as have been maintained in the past. This has come about for a number of reasons. Employees often will not accept public employment that appears to lead to a dead end; one governmental jurisdiction may have an over supply of employees in one technical specialty while another may have a critical shortage in the same category; and it is generally believed that over the long-run a given unit of government will not gain or lose either in talent or pension funds at the expense of other units merely because of liberalized provisions permitting greater mobility of employees.

The use of Social Security coverage for public employees offers a partial solution to the retirement credit transferability problem, since it provides a base retirement coverage through which benefits cannot be lost through job transfers among employers offering this coverage. Staff retirement systems provide the additional supplement needed by retired public employees to maintain a reasonable standard of living.

At the state and local government levels, over 4.1 million of the more than 6.3 million public employees are covered by Social Security. Over 2.9 million state and local employees are covered by both Social Security and a public employee retirement system. At least some public employees in each of the 50 states are covered by Social Security. Those state and local governments that do not now make maximum use of Social Security coverage should re-examine their retirement provisions to determine if further extension of Social Security coverage to their employees would be advantageous.

However, in order to develop more adequate solutions, the retirement credit transfer problem should be viewed in terms of both its interstate and intrastate aspects. While many of the difficulties involved in the interstate transfer of retirement credits are very similar to those involved in intrastate transfer, the remedies are somewhat different. There have been several proposed solutions to the interstate problem, most of which involve transfer of funds between systems and generally have not been found practical or acceptable.

The vesting-deferred benefit approach to the interstate retirement credit transfer problem appears to be the most practical and acceptable solution for public employees generally. Essentially, those retirement systems that have vesting provisions afford the employee who accepts employment elsewhere the opportunity to leave his contributions with the system, after fulfilling a specified number of years service requirement, and receive a deferred benefit at the normal retirement age. Most state administered retirement systems have vesting provisions. However, the service requirement ranges from immediate vesting in the Wisconsin State Teachers' system to a 27 year requirement in the Arkansas State Teachers' system. As the length of the service requirement for vesting is extended, then it becomes of decreasing value as a meaningful solution to the retirement credit transferability problem. The committee feels that a requirement in the range 10 to 15 years for vesting appears to be the most reasonable from the standpoint of both the employer and the employee.¹

1 The Advisory Commission on Intergovernmental Relations has strongly recommended 5-year vesting instead of 10 to 15 year vesting. In its recent study in which 60 state administered retirement systems were examined, the Commission found that the vesting requirements in these systems averaged slightly less than 15 years. Since the issuance of the Commission report in March 1963, North Carolina and Tennessee have each reduced vesting requirements in one of their state systems from 20 to 15 years, and Idaho and Oklahoma have established retirement systems for state and local employees with vesting requirements of 10 years. The trend in the number of years service required for vesting is definitely downward and by now has already reached a figure lower than the maximum recommended by the Council of State Governments.

The precedent for 5-year vesting is well established in public employee retirement systems. Eight major statewide systems have 5-year vesting (Arizona, California, Colorado, Hawaii, Nebraska, Ohio(2), Wyoming). Two state systems have immediate vesting (California, Wisconsin). The Federal Civil Service Retirement System has 5-year vesting. Five-year vesting is reasonable for both the employer and the employee. Assuming that the employee received training in the position, this training would be paid off long before the end of the 5-year period. A lengthy vesting requirement should not be used as an anchor on the employee. The Commission is aware that from an actuarial standpoint it would not be feasible for all public employee retirement systems to reduce the vesting requirement to 5 years immediately. However, the Commission believes that 5-year vesting is the desired goal rather than 10 to 15 year vesting.

No legislative amendment is presented to accomplish the suggested vesting proposal because for most retirement systems this may be achieved simply by inserting the desired number of years in lieu of the existing requirement (apart from any actuarial considerations). Retirement systems with vesting requirements that exceed those suggested above, or those with no vesting provision, may wish to reach the new requirement on a graduated basis. There is little information available to indicate how many years the service requirement for vesting may be reduced without increasing the cost to the government and/or to the employee. A recent actuarial study of the Oregon Public Employees Retirement System indicates that it does not appear that there would be any additional cost in reducing the vesting requirement from 10 to 5 years. However, each retirement system will have to be considered on an individual basis in determining how to reduce its vesting requirement.

As indicated above, the problems involved in the interstate and intrastate transfer of retirement credits are very similar. However, the obstacles to solutions are less within states than between them. In Hawaii and Nevada there is no problem because each state has only one retirement system. Twenty-two states have limited provisions for the reciprocal transfer of retirement credit, usually between only two or three systems. Only seven states have provision for general intrastate transfer of retirement credits among most systems. Nineteen states have no provision for such transfer of credit between their different systems.

Of the seven states that have general provisions for intrastate transfer of credits, the reciprocal retirement laws in Illinois, Maryland, Michigan, and New York are particularly good. Maryland and New York provide for the transfer of the contributions of both the employer and the employee when the employee changes positions among the participating reciprocal units or systems. This type of provision would be difficult to square with legal and actuarial provisions in many states. Consequently, legislation similar to that in Illinois and Michigan would appear to be more adaptable in most states because it does not call for lump sum transfers of contributions between systems upon the transfer of employees.

The suggested retirement act presented here is patterned largely after the Illinois Reciprocal Retirement Act. It provides essentially that after the employee has completed at least five²

2 The Advisory Commission on Intergovernmental Relations believes that an employee should not be required by an intrastate reciprocity law to spend longer than 2 years in the service of a participating unit of government to receive retirement credit for this service. The principle of intrastate reciprocity is well established. The Commission has found that 26 states have reciprocal arrangements between at least 2 of their major retirement systems. Most of these arrangements do not have such a lengthy requirement as 5 years service in a system. Since the report was issued, the states of Colorado, Idaho, and New Mexico have adopted some type of reciprocal arrangement bringing the total number of states which have some such provision to 29.

years in the employment of a participating reciprocal retirement unit, he may change his employment to another reciprocal unit without loss of credit. When the employee reaches retirement age in the reciprocal unit in which he is employed, he may receive proportional retirement benefits based on his service in each system from all the reciprocal retirement systems in which he has at least five years service, provided: he has not withdrawn any of his contributions; he has enough total years service in all systems to meet the minimum requirement in any system; and he has reached the minimum age required by each system. If he has not reached the minimum age in all systems, he may begin receiving benefits from those systems in which he has reached the required age, and then receive benefits from the other systems when he reaches the required age.

Section 5.1 of the suggested act presents an alternative method for providing benefits which states may or may not wish to include in their legislation. This would give an employee the alternative of paying to the system from which he will retire, prior to his retirement, an amount equal to one percent of his salary for every year he has been employed under other retirement systems within the state, then he may receive benefits as if he had always been employed under the final system. The other reciprocal retirement systems would continue to pay at least their proportional share of the employee's benefits. The final system would incur the additional obligation, which might make section 5.1 problematical in some states.

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act to establish continuity and preservation of pension credit for employees in Governmental service in the state of _____."

(Be it enacted, etc.)

1 Section 1. There is hereby established a plan for the con-
2 tinuity and preservation of pension credit, in the case of
3 employees transferring employment from one governmental unit
4 to another governmental unit, if such employees shall have
5 acquired such credit in any established retirement system or
6 pension fund maintained by any such governmental unit. The

7 purpose of this plan is to assure full and continuous pension
8 credit for all service rendered by a person in public employ-
9 ment which service is covered by a retirement system or pension
9 fund authorized by state law.

1 Section 2. As used in this act:

2 (a) "Retirement System" means any retirement system or pension
3 fund, by whatever name called, which has been created or author-
4 ized by statute and which is financed in whole or in part by
5 contributions by the state or by any governmental unit of the
6 state;

7 (b) "Governmental Unit" means the state or any agency or instu-
8 mentality thereof, or any political subdivision or municipal
9 corporation, which maintains a retirement system for the benefit
10 of its employees;

11 (c) "Employer" means any governmental unit in the state;

12 (d) "Employee" means any person in the service of an employer
13 on or after the effective date, who has pension credit because
14 of service previous or subsequent to the effective date, who is
15 an active or inactive member or participant of a retirement system;

16 (e) "Effective date" means July 1, 196_, or in the case of any
17 retirement system becoming subject to the provisions of this Act
18 after such date, the date when such retirement system comes under
19 the provisions of this Act;

20 (f) "Pension credit" means credits or equities acquired by an
21 employee toward a retirement annuity from a public employees'

22 retirement system in the form of contributions or services
23 defined under the provisions of the act governing each retire-
24 ment system in which he has such credits of equities, except
25 credits and equities (1) of less than five years in any one
26 system,³ or (2) which were granted during the periods when the
27 employee was in receipt of a retirement annuity from any of
28 the retirement systems covered by this Act, or (3) which have
29 previously been applied towards a retirement annuity and have
30 not been re-established in accordance with the provisions of
31 the Act governing the retirement system from which the retire-
32 ment annuity has been received; and

33 (g) "Retirement annuity" includes any pension, retirement
34 allowance, retirement annuity, disability pension, disability
35 retirement allowance or disability retirement annuity, and
36 shall refer to an annuity payable on account of retirement for
37 age, years of service or total and permanent disability.

1 Section 3. Any employee who has withdrawn or withdraws from
2 the service of one employer and then or later enters the service
3 of another employer covered by the provisions of this Act, and who
4 has not forfeited his pension credit in the retirement system
5 maintained by the employer from whose service he has withdrawn,
6 shall be entitled to a proportional retirement annuity, computed
7 as stated herein, for the periods of credited service in each
8 retirement system, notwithstanding that the employee may not
9 have fulfilled the minimum service requirement prescribed by any

3 See footnote 2.

10 retirement system for the receipt of a retirement annuity. If
11 a retirement system provides no refund of contributions, the
12 pension credit in the case of any employee who shall have par-
13 ticipated in such system shall be considered effective for the
14 purposes of this Act.

15 Eligibility for a proportional retirement annuity in each
16 retirement system under the provisions of this Act shall be
17 determined by taking into account the entire length of service
18 of the employee for which he has been granted pension credit
19 under all retirement systems participating under this Act, pro-
20 vided that in order to qualify for either proportional annuity
21 from any of such retirement systems the employee must have a
22 combined pension credit at least equal to the longest minimum
23 qualifying period prescribed by any of the retirement systems
24 involved in the combined pension credits.

25 Interest on pension credit shall continue to accumulate in
26 accordance with the provisions of the Act governing the retire-
27 ment system in which the same has been established during the
28 time an employee is in the service of another employer, on the
29 assumption such employee, for interest purposes for pension
30 credit, is continuing in the service covered by such retirement
31 system.

1 Section 4. The provisions of this Act shall be applicable
2 and limited only to a retirement annuity and widow's annuity,
3 and to the pension credit established for such purposes.

1 Section 5. Upon retirement in the retirement system to
2 which the employee last made contributions, a proportional
3 retirement annuity shall be computed by each retirement system
4 in which pension credit has been established by the employee
5 on the basis of salary and service credits under each system.
6 Such computations shall be in accordance with the formula or
7 method prescribed by each such system and in effect at the date
8 of the employee's latest withdrawal from the service of the
9 employer maintaining such retirement system, except as modified
10 by this Act.

11 If, at the date of retirement, the employee shall have
12 attained the age prescribed for the receipt of a minimum re-
13 tirement annuity under any retirement system subject to the
14 provisions of this Act which prescribes a minimum retirement
15 annuity, in which he has a pension credit, and his combined
16 pension credit in all retirement systems participating under
17 this Act is sufficient to meet the service qualification pre-
18 scribed in the applicable retirement system for the receipt of
19 a minimum retirement annuity, the employee shall have the option
20 of receiving the proportional retirement annuity based upon the
21 minimum annuity formula applicable in each such system.

22 If any proportional retirement annuity is calculated upon
23 the basis of the average salary of an employee for a specified
24 number of years of service, and the employee has to his credit
25 in a system fewer years than the prescribed number, the actual
26 number of years of credited service in the retirement system

27 computing the proportional annuity shall be used as the basis
28 for such calculation.

29 If (1) a minimum annuity formula available for the com-
30 pletion of a specified minimum period of service under the
31 retirement system provides a definite sum or percentage of
32 average compensation for completion of such minimum service,
33 in addition to a certain percentage of average compensation
34 for each year of service, and (2) the employee has not received
35 credit in the retirement system for the minimum number of years
36 required to qualify for such minimum benefit formula, and (3)
37 the combined pension credits under all systems are equal to or
38 more than the period of service prescribed in the system for the
39 receipt of a minimum annuity, the employee shall be entitled to
40 that portion of the definite sum or percentage of average com-
41 pensation which his service in such retirement system bears to
42 the minimum service required by that system to qualify for such
43 minimum formula.

1 Section 5.1. Notwithstanding the provisions of the other
2 sections of this Act, or the acts governing those retirement
3 systems covered by this Act, the alternative formula prescribed
4 in this section for calculation and payment of the retirement
5 annuity, shall be applicable in lieu of the formula prescribed
6 in the other sections of this Act, if the employee pays to the
7 system under which retirement occurs prior to the date his re-
8 tirement annuity begins, an amount equal to 1 percent of the
9 actual annual full-time rate of salary on the date of separation

10 from service under each of the other systems, multiplied by
11 the number of years of pension credits in each of these
12 systems which are considered by the system under which re-
13 tirement occurs in determining the retirement annuity payable
14 under this section and for which contributions were made by
15 the employee.

16 The system under which retirement occurs shall calculate
17 and pay a retirement annuity based upon the combined pension
18 credits under all systems participating under this section,
19 using the final average salary and formula prescribed by the
20 system under which retirement occurs. Service rendered prior
21 to a break in employment of more than 12 months under govern-
22 mental units covered by the retirement systems which are subject
23 to this Act, shall not be considered, by the system under which
24 retirement occurs, in determining the retirement annuity payable
25 under this section. If an employee is concurrently employed by
26 governmental units covered by two or more systems participating
27 under this section during a period of service which is used in
28 determining the average salary on which his annuity is based,
29 his earning credits under all of these systems during the period
30 of concurrent employment shall be considered by the system under
31 which retirement occurs in computing his final average salary.

32 If an employee who becomes entitled to retirement benefits
33 under this section, has elected a deferred annuity under any of
34 the systems participating under this section and in which he has
35 pension credits, the system under which retirement occurs shall

36 reduce the retirement annuity otherwise payable under this
37 section, by the actuarial equivalent of the amount required
38 to provide the deferred annuity. This actuarial equivalent
39 shall be determined by and in accordance with the actuarial
40 tables of the system under which the election of the deferred
41 annuity is made.

42 Each of the other systems participating under this
43 section in which the employee has pension credits, shall
44 assume a portion of the annuity liability by paying at least
45 annually to the system under which retirement occurs, the
46 amount of the proportional retirement annuity which would
47 otherwise have been payable under the other sections of this
48 Act, and the employee concerned shall, by the acceptance of
49 the retirement annuity payable under this section, waive and
50 forfeit the right to receive such proportional retirement
51 annuity from such other systems. If the minimum age require-
52 ment of the system under which the retirement occurs is lower
53 than that of any of the other systems in which the employee
54 has pension credits, the payment by such other system to the
55 system under which retirement occurs shall be deferred until
56 the minimum age requirement of such other system has been met.

57 For the purpose of this section, the system under which
58 retirement occurs and to which the employee last contributes
59 for a period of ten⁴ or more years shall be the system to which

4 The Advisory Commission on Intergovernmental Relations does not believe that it is sound personnel policy to require an employee to spend 10 years in the service of the final unit of government by which he is employed in order to receive the benefits from all of the other reciprocal units. Most of the same arguments for the 5-year vesting as opposed to the 10 to 15 years vesting are applicable to this 10 year requirement. With the complex problems which confront all levels of government and with the difficulties involved in attracting capable personnel into the public service at the present time, the Commission does not see justification for attempting to anchor an employee into a position for more than 5 years.

60 this section applies. If the employee contributes concurrently
61 to two or more of such systems during this period, the system
62 under which retirement occurs shall be that system under which
63 he has the greatest earnings credits during the period of con-
64 current employment, or if he has equal earnings credits under
65 these systems during this period, the system under which he has
66 the longest period of pension credits.

67 The alternative formula prescribed in this section shall
68 be used only in determining the retirement annuity.]

1 Section 6. If the minimum qualifying age of retirement
2 in any of the retirement systems is lower than the minimum age
3 of retirement in any of the other retirement systems which are
4 to provide a proportional retirement annuity, payments by such
5 other system shall be deferred until the employee has attained
6 the minimum age of retirement prescribed for such system;
7 provided, however, that early retirement under any system
8 below the normal retirement age shall be subject to reduction
9 as may be prescribed by each retirement system.

1 Section 7. If the measure of pension credit in any re-
2 tirement annuity is apportioned upon the basis of length of
3 service rendered by an employee, the combined service under
4 all retirement systems in which the employee has established service
5 credit shall be effective in establishing such vesting of
6 pension credit in any retirement system.

1 Section 8. In the event the combined retirement annuities
2 exceeds the highest maximum annuity prescribed by any retirement
3 system in which an employee has established pension credit, the
4 respective retirement annuities payable by the several retire-
5 ment systems shall be reduced proportionately according to the
6 ratio which the amount of each proportional annuity bears to
7 the aggregate of all such annuities.

1 Section 9. Any employee who is concurrently employed by
2 employers under two or more of said systems shall be entitled
3 to establish a pension credit in accordance with the provisions
4 of each system, provided that if such concurrent employment
5 results in a duplication of credits, each of the systems in-
6 volved in such concurrent employment shall reduce the service
7 credit for the period of concurrent employment to its full-time
8 equivalent, using as a basis for such adjustment the earnings
9 credited for each employment.

1 Section 10. In no event shall pension credit for the same
2 period of service rendered by an employee be accredited more
3 than once in one or more retirement systems.

1 Section 11. Each retirement system shall submit to the
2 other retirement systems, upon request, a report, properly
3 certified, regarding the length of service rendered for the
4 purpose of establishing the employee's eligibility for retire-
5 ment and any other pertinent information as may be necessary
6 in the administration of this Act and to effectuate the pro-
7 visions thereof.

8 It shall be the duty and responsibility of an employee
9 having pension credit in any retirement system to make avail-
10 able such information or any other required data relating
11 thereto, to the retirement system in which he last finds
12 himself, in order that such pension credit may be applied
13 in the manner herein provided. A retirement system subject
14 to the provisions hereof shall be under no obligation or
15 responsibility to initiate any inquiry or investigation for
16 the purpose of establishing pension credit in the case of
17 any employee, in the absence of a request from the employee,
18 accompanied by sufficient facts bearing upon such credit which
19 the employee may have accumulated.

20 Two or more retirement systems subject to the provisions
21 hereof may agree, at the time of retirement of an employee,
22 to have the retirement system under which the employee retires
23 to pay currently the combined amounts of the proportional pay-
24 ments on account of the retirement annuity. Such agreement
25 shall be evidenced by a written document between two or more
26 retirement systems in the form agreed upon between them. At
27 the end of each fiscal year of the last retirement system, re-
28 imbursement thereto shall be made by the other retirement systems
29 providing proportional annuities of the amount paid on their
30 account by the last retirement system. Such arrangement shall
31 be optional with the several retirement systems. If no such
32 arrangement is made, each retirement system shall pay its own
33 proportional annuities to the beneficiaries entitled thereto.

1 Section 12. The provisions of this act shall apply only
2 to a retirement system whose governing board by a majority
3 vote has subscribed thereto with the affirmative approval of
4 such action by the legislative body of the governmental unit
5 whose employees are covered by the system. Within 10 days
6 after the date on which coverage under this Act has been
7 approved by the legislative body of such governmental unit,
8 the governing board of the retirement system shall file
9 written certification thereof with the Secretary of State.
10 The Secretary of State shall maintain a list of the retire-
11 ment systems that have adopted this Act which shall be available
12 to any retirement system requesting a copy.

STATE WATER RESOURCES PLANNING AND COORDINATION ACT

Traditionally, water pollution control, water allocation, water resource development, and other phases of the overall water resource problem have been administered independently by different agencies and independent boards within the state governments, thus providing inadequate attention to long range planning and policy coordination. In addition, the regulation and development of water resources have often been complicated by the fact that political boundaries often have not followed the natural boundaries of watersheds which are the logical water resource planning units. Now, with the rapidly expanding and often competing needs of agriculture, industry, recreation, and urban areas for more clean water, there is an urgent need to assure that these demands are met in a coordinated way. Recognizing these problems in 1957, the Council of State Governments' report on State Administration of Water Resources, 1957, called for the establishment of comprehensive water resources programs in each of the states.

Many of the difficulties and needs set forth in the Council's report have been further documented in a report of the Advisory Commission on Intergovernmental Relations, entitled Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas. In that report the Commission recommended establishment of a unit of state government for overall state water resources planning and policymaking. The following draft legislation would implement that recommendation and would be completely consistent with the earlier recommendation of the Council.

Under this draft legislation, authorization would be provided for the placing of overall water resource planning, policymaking and coordination responsibility in a single unit of state government. This unit of state government would be directed to give consideration to the water resource requirements and problems of all water interests in the state and means by which these interests can be assured of representation on inter-state water agencies to which the state may be a party.

As the level of government with basic responsibility for resource development, the states have an excellent opportunity to establish water resource policies, planning procedures and coordination that is comprehensive enough to balance multiple uses with one another and overcome jurisdictional problems.

Some states already have agencies combining water resources programs as well as coordinating functions in a single water resources agency. This agency may be a separate Department of Water Resources as in North Carolina, or a Division of Water Policy and Supply in the Department of Conservation and Economic

Development as in New Jersey. Other examples of state water resources organizations which combine operating programs as well as policy coordinating activities in a single agency may be found in the states of California and Connecticut.

Some states, however, prefer to establish a staff level agency, responsible to the Governor for studying and developing policies spanning the programs of the many state agencies concerned rather than to reorganize their water resources agencies by transferring individual bureaus and units to a new consolidated water resources organization.

If the staff agency approach is followed, leaving operating functions in their present locations, the following draft legislation, based largely on an Oregon law, may be used as a guide. Other states which have followed this general approach include Missouri, Kansas, Ohio and Rhode Island.

The draft legislation would effectively provide the Governor and the legislature with technical assistance in directing the coordinated use, development, and regulation of the water resources of the state and in establishing uniform policies to minimize conflicts between the various operating agencies and water interests of the state. It would (1) vest the planning and coordinating function in a single executive agency responsible to the Governor, (2) allow for participation in the development of recommended water policies by affected or interested state agencies and others, (3) give the Governor authority to adopt comprehensive and coordinated water resource plans and policies in accordance with the provisions of this act as a guide for executive agencies and to propose desirable legislative modifications, and (4) leave the operating programs, such as water pollution control, development of new water supplies, and allocation of water rights, to be administered by the agencies now charged with those responsibilities in accordance with existing legislation.

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act providing for the vesting of responsibility for overall state water resource planning, policy formulation and program coordination in a single agency."]

(Be it enacted, etc.)

- 1 Section 1. Short Title. This act may be cited as the
- 2 (name of state) Water Resource Planning and Coordination Act.

1 Section 2. Declaration of Policy. (a) The legislature
2 recognizes that: (1) the maintenance of the present level
3 of economic and general welfare of the people of this state
4 and the future growth and development of this state for the
5 increased economic and general welfare of the people thereof
6 are in large part dependent upon a proper utilization and
7 control of the water resources of this state, and such use
8 and control is therefore a matter of greatest concern and
9 highest priority; (2) the proper utilization and control of
10 the water resources of this state can be best achieved through
11 a coordinated, integrated state water resources policy,
12 through plans and programs for the development of such water
13 resources and through other activities designed to encourage,
14 promote and secure the maximum beneficial use and control of
15 such water resources, all coordinated by a single state agency;
16 and (3) the economic and general welfare of the people of this
17 state is impaired by the exercise of uncoordinated single-
18 purpose power or influence over the water resources of this
19 state or portions thereof by diverse public agencies and diverse
20 statutory declarations of water resource policies resulting in
21 friction and duplication of activity among public agencies and
22 confusion as to what is primary and what secondary beneficial
23 use or control of such water resources and in a consequent
24 failure to utilize and control such water resources for
25 multiple purposes for the maximum beneficial use and control
26 possible and necessary.

27 (b) The legislature, therefore, finds that it is in the
28 interest of the public welfare that a coordinated, integrated
29 state water resources policy be formulated and means provided
30 for its enforcement, that plans and programs for the develop-
31 ment and enlargement of the water resources of this state be
32 devised and promoted and that other activities designed to
33 encourage, promote and secure the maximum beneficial use and
34 control of such water resources be coordinated by a single
35 state agency which, in carrying out its functions, shall give
36 proper and adequate consideration to the multiple aspects of
37 the beneficial use and control of such water resources with
38 an impartiality of interest except that designed to best
39 protect and promote the public welfare generally.

1 Section 3. Planning and Coordination Staff. The Director
2 of the Office of State Water Resources or the head of such
3 other agency or unit of the state government as the Governor
4 may designate¹ (hereinafter referred to as the Director)
5 shall have the responsibility for leadership and direction of
6 a program to implement the legislative policy declared by this
7 act, and may employ such additional staff and other resources
8 as may be available to him and necessary to the exercise and
9 performance of duties and responsibilities conferred by this act.

1 The suggested office is a staff organization to aid the Governor rather than an operating agency. Alternatively the office could be placed in an existing department of administration or department of planning already exercising coordinative functions for the Governor, and in any case should have close contact with such departments.

1 Section 4. Duties and Responsibilities. (a) Assistance
2 to Governor. The Director shall advise and assist the Governor
3 in: (1) formulating and establishing a comprehensive water
4 resources policy for the state; including coordination of
5 policies and activities among the state departments and
6 agencies; (2) developing and establishing policies and proposals
7 designed to help meet and resolve special problems of water
8 resource use and control within or affecting the state, including
9 consideration of the water resource requirements and problems
10 of urban areas; (3) reviewing the actions and policies of state
11 agencies with water resource responsibilities to determine the
12 consistency of such actions and policies with the comprehensive
13 water policy of the state; (4) reviewing any project, plan or
14 program of Federal aid affecting the use or control of any
15 waters within the state; (5) developing policies and recom-
16 mendations to assure that the interests of its urban and other
17 areas are provided for in the State's representation on inter-
18 state water agencies; (6) recommending to the legislature any
19 changes of law required to implement the legislative policy
20 declared in this act; and (7) such other water resources
21 planning, policy formulation and coordinating functions as the
22 Governor may designate.

23 (b) Studies and Surveys. The Director is authorized to
24 carry out such studies, inquiries, surveys or analyses as
25 may be relevant to his duties in assisting the Governor and
26 in helping to implement the legislative policy declared in this

27 act, and in developing recommendations for the legislature.
28 For these purposes, the Director shall have full access to
29 the relevant records of other state departments and agencies
30 and political subdivisions of the state, and may hold public
31 hearings, and may cooperate with or contract with any public
32 or private agencies, including educational, civic and research
33 organizations. Such studies, inquiries, surveys or analyses
34 shall incorporate and integrate, to the maximum extent feasible,
35 plans, programs, reports, research and studies of federal,
36 state, interstate, regional, metropolitan and local units,
37 agencies and departments of government.

38 (c) Consultations. In developing recommendations for
39 the Governor relating to the use and control of the water
40 resources of the state, the Director shall: (1) consult with
41 representatives of any federal, state, interstate, or local
42 units of government which would be affected by such recom-
43 mendations; and (2) be authorized to appoint such inter-
44 departmental and public advisory boards as necessary to advise
45 him in developing policies for recommendation to the Governor.

46 (d) Local Assistance. The Director shall encourage,
47 assist and advise regional, metropolitan, and local govern-
48 mental agencies, officials or bodies responsible for planning
49 in relation to water aspects of their programs, and shall
50 assist in coordinating local water resources activities,
51 programs and plans.

52 (e) Reports. The Director may publish reports, including

53 the results of such studies, inquiries, surveys and analyses
54 as may be of general interest, and shall make an annual
55 report of his activities under this act to the Governor and
56 the legislature.

1 Section 5. Planning Objectives. In exercising his
2 responsibilities under this act, the Director shall take
3 into consideration the need for:

4 (a) Adequate supplies of surface and ground waters of
5 suitable quality for domestic, municipal, agricultural, and
6 industrial uses.

7 (b) Water quality facilities and controls to assure
8 water of suitable quality for all purposes.

9 (c) Water navigation facilities.

10 (d) Hydroelectric power.

11 (e) Flood damage control or prevention measures, including
12 flood plain zoning, to protect people, property, and productive
13 lands from flood losses.

14 (f) Land stabilization measures.

15 (g) Drainage measures, including salinity control.

16 (h) Watershed protection and management measures.

17 (i) Outdoor recreational and fish and wildlife
18 opportunities.

19 (j) Any other means by which development of water and
20 related land resources can contribute to economic growth and
21 development, the long-term preservation of water resources,

22 and the general well-being of all the people of the state.

1 Section 6. Separability. /Insert separability clause./

1 Section 7. Effective Date. /Insert effective date./

PART II

Additional State Legislative Proposals of the
Advisory Commission on Intergovernmental Relations



LOCAL GOVERNMENT RESIDUAL POWERS

Legislatures often have been reluctant to grant local government the powers necessary for the performance of essential functions of local government. Even when legislatures have acted with dispatch, state courts usually have narrowly construed grants of powers to local government. Such narrow construction, despite the best efforts of legislatures and local governments themselves, often have prevented local government from assuming its proper responsibilities.

Experience has shown that where local governments are not adequately empowered to meet their responsibilities, pressure is exerted upon both the state and federal governments to assume responsibility for solving local problems and for providing needed governmental services. Under such circumstances, the flow of responsibility to the state or the federal government often is detrimental not only to the best interests of our society, but is unnecessary. The effectiveness of local government in particular, and the federal system in general, requires that local governments have adequate authority to meet their responsibilities. Consistent with this general philosophy, the following draft of a constitutional amendment is presented for study and consideration by the states. In addition a similar proposal of the National Municipal League, not as comprehensive as the amendment, is also set forth.

The amendment would grant "all residual functional powers" to municipalities and counties, or other selected units, that are not otherwise specifically denied in the state constitution or by general law. In given functional areas, the legislature, rather than pre-empting a whole field of activity from local government could, at its discretion, prescribe limitations on local activity. The amendment is designed to permit the legislature to determine what functions or portions of functions should be undertaken by the state or undertaken by local government. While freeing the bonds of local government the state must, at the same time, exert greater leadership in resolving problems that are interlocal or that affect many localities in the state.

It is important to emphasize that the delegation of residual powers should be preceded by a careful review of affirmative limitations upon the powers of local government within a state. Such delegation should occur simultaneously with the enactment of a local code, by which the state legislature places necessary limitations upon local powers and reserves other powers for the state.

It should be noted that while the amendment would permit municipalities and counties and other selected units of local government to exercise the authority granted by the proposed

amendment, such authority should be granted only to units of general government whose governing bodies are held directly responsible for their actions by the people at election time. Therefore, states should consider carefully what units of general government should be granted the powers authorized by the amendment.

Residual Powers Constitutional Provision

1 "Municipalities and counties (or selected units identi-
2 fied to best suit the conditions in a given state) shall
3 have all residual functional powers of government not denied
4 by this constitution or by general law. Denials may be ex-
5 pressed or take the form of legislative pre-emption and may
6 be in whole or in part. Express denials may be limitations
7 of methods or procedure. Pre-empted powers may be exercised
8 directly by the state or delegated by general law to such
9 subdivisions of the state or other units of local government
10 as the legislature may by general law determine."¹

1 The constitutional language proposed by the National Municipal League in its "Model State Constitution" is: "Powers of Counties and Cities. A county or city may exercise any legislative power or perform any function which is not denied to it by its charter, is not denied to counties or cities generally, or to counties and cities of its class, and is within such limitations as the legislature may establish by general law. This grant of home rule powers shall not include the power to enact private or civil law governing civil relationships except as incident to an exercise of an independent county or city power, nor shall it include power to define and provide for the punishment of a felony."

LEGISLATIVE APPORTIONMENT PROCEDURE

The United States Supreme Court decision in Baker v. Carr established the principle that Federal courts have jurisdiction to hear suits involving the apportionment of state legislatures. While we recognize that the actual formulas for apportioning seats in the legislative bodies of the state is a matter of individual state concern, subject to whatever limits may be imposed by the United States Constitution, it is essential that state constitutions specifically provide procedures that will insure that the states themselves are in a position to comply with their constitutional requirements for periodic reapportionment of the legislature. The suggested constitutional amendment below is designed to insure compliance with apportionment provisions of the state constitution.

The language is modeled after the provisions of the Oregon constitution, although it should be noted that at least 14 states have constitutional provisions which are designed to insure periodic apportionment of the state legislature. Some of these states have removed responsibility for apportionment completely from the hands of the state legislature. Others have directed that an individual state official or a separate apportionment board undertake the apportionment only after the legislature itself has failed to enact an apportionment law or failed to apportion in accordance with the provisions of the state constitution. The proposal below should be included as the first series of sections under the legislative article of the constitution or in a separate article covering apportionment.

Section 1 would spell out the formula for apportioning seats in the state legislature and the appropriate provisions should be inserted by each state. The formula should be as clear and as specific as possible in order to permit the State Supreme Court to determine easily whether the apportionment statute complies with the constitutional formula.

Section 2 mandates the state legislature to reapportion itself in the first legislative session immediately following the decennial census of the United States. It should be noted that several states still require reapportionment, based on population, at intervals which do not coincide with the decennial census. This is a carry-over from the 18th century when states themselves conducted censuses. Since state censuses are no longer taken, it is suggested that this requirement be keyed to the Federal census.

Section 3 gives the State Supreme Court original jurisdiction to determine whether a reapportionment statute enacted by the legislature complies with the provisions of the state constitution. Any qualified voter of the state can bring this question before the court within 30 days after enactment of the reapportionment.

If the court finds that the reapportionment does not comply with the constitution, the court shall direct either the named state official or the apportionment board to reapportion the legislature in accordance with the constitution. The court is also granted authority to review a reapportionment plan so prepared and if it is found that such plan does not comply with the constitution, the court is authorized to direct the named state official or apportionment board to make appropriate changes.

Section 4 authorizes the named state official or apportionment board to prepare a reapportionment of the state legislature where the legislature, by July 1st of the year of the legislative session following a decennial census, has not enacted reapportionment legislation. Here again, such an apportionment is subject to court review only if challenged by a qualified voter of the state.

Section 5 is to be used only if the state determines that an apportionment board, rather than a single state official, shall apportion seats in the event that the legislature itself fails to do so. It would create the apportionment board and determine its membership. Two alternatives are presented. The first would consist of named state officials. Most states that have apportionment boards follow this approach. It is important to note that members of the judiciary should not be members of an apportionment board. This recommendation is made because the State Supreme Court is granted jurisdiction over cases involving apportionment. The second alternative for membership on the apportionment board is modeled after the provisions of the Missouri constitution.

Section 6 would authorize the use of the initiative process, in addition to any other procedure that may exist in the constitution, for amendment of the formula for apportioning seats in the state legislature. At the present time no constitution authorizes constitutional initiative in this limited sense. A number of state constitutions have general provisions relating to constitutional initiative, but the desirability of providing general constitutional initiative is a question which must be considered in a different context. Here, it is enough to point out that the formula for apportioning seats in a state legislature is of such vital concern and significance in the democratic form of government, that the people, on their own, should have an opportunity to initiate changes therein.

Legislative Article

- 1 Section 1. Apportionment of Senators and Representatives.
- 2 a. Senators (insert provisions for the ap-
- 3 portionment of State Senators).

4 b. Representatives or Assemblymen (insert
5 provisions for apportionment of House
6 of Representatives or Assembly).

1 Section 2. Reapportionment Duty. The number of Senators
2 and Representatives¹ shall, not later than July 1st at the
3 session of the legislature next following the decennial census
4 conducted by the United States Government, be reapportioned
5 according to the provisions of Section 1 of this Article by
6 the legislature.

1 Section 3. Jurisdiction of Supreme Court. Original
2 jurisdiction is hereby vested in the (State) Supreme Court
3 upon the petition of any qualified voter of the state filed
4 with the clerk of the Supreme Court within 30 days after en-
5 actment of a reapportionment measure to review any measure so
6 enacted. If the Supreme Court determines that the measure
7 complied with Section 1 of this Article it shall dismiss the
8 petition by written opinion within 30 days and the legislation
9 enacted shall become operative upon the date of opinion. If
10 the Supreme Court determines that the measure does not comply
11 with Section 1 of this Article said measure shall be null and
12 void and the Supreme Court shall direct the named State
13 official / the apportionment board to prepare a reapportion-
14 ment of the legislature in compliance with Section 1 of this

1 If Section 1 requires only one house of the legisla-
ture to be reapportioned at regular intervals an appropriate change
should be made.

15 Article and return same to the Supreme Court within 30 days.
16 The Supreme Court shall review the reapportionment thus
17 returned and, if it is in compliance with Section 1 of this
18 Article, shall file it with the Governor within 30 days and
19 it shall become law upon the date of filing. If the Supreme
20 Court shall determine that the draft returned to it by the
21 named state official apportionment board does not comply
22 with Section 1 of this Article the Supreme Court shall return
23 it forthwith accompanied by a written opinion specifying with
24 particulars wherein the draft fails to comply with the require-
25 ments of Section 1 of this Article. The opinion shall further
26 direct the named state official apportionment board to
27 correct the draft in these particulars and in no others and
28 file the corrected reapportionment with the Governor within
29 30 days and it shall become law upon the date of filing.

1 Section 4. Failure of Legislature to Reapportion Itself.

2 If the legislature fails to enact any reapportionment measure
3 by July 1st of the year of the session of the legislature next
4 following a decennial census by the United States, the named
5 state official apportionment board shall make a reapportion-
6 ment of the legislature in accordance to the provisions of
7 Section 1 of this Article. The reapportionment so made shall
8 be filed with the Governor within 30 days and shall become
9 law, subject to Supreme Court review, upon date of filing.

10 Original jurisdiction is hereby vested in the Supreme
11 Court upon petition of any qualified voter of the state filed

12 with the clerk of the Supreme Court within 30 days after any
13 reapportionment made by the named state official apportion-
14 ment board has been filed with the Governor. If the Supreme
15 Court determines that the reapportionment thus made complies
16 with the provisions of Section 1 of this Article it shall
17 dismiss the petition by written opinion within 30 days and
18 the reapportionment law shall become operative upon the date
19 of the opinion. If the Supreme Court determines that the
20 reapportionment law does not comply with Section 1 of this
21 Article, said reapportionment shall be null and void and the
22 Supreme Court shall return it forthwith to the named state
23 official apportionment board accompanied by a written
24 opinion specifying with particulars wherein the reapportion-
25 ment fails to comply with Section 1 of this Article. The
26 opinion shall further direct the named state official,
27 apportionment board to correct the reapportionment in
28 those particulars and in no others and file the corrected
29 reapportionment with the Governor within 30 days and it shall
30 become law upon the date of filing.

1 Section 5. Apportionment Board. There is hereby created
2 an Apportionment Board consisting of named state officials;
3 do not include members of the judiciary consisting of two
4 members appointed by the Chairman of the political party whose
5 candidate for Governor in the last preceding gubernatorial
6 election received the largest number of votes, two members
7 appointed by the Chairman of the political party whose

8 candidate for Governor received the second largest number of
9 votes at the last preceding gubernatorial election and one
10 member, who shall be Chairman of the Apportionment Board,
11 appointed by the aforementioned members⁷. The Apportionment
12 Board shall convene prior to July 10th of any year in which
13 the legislature has failed to comply with its responsibility
14 under Section 2 of this Article and reapportion the State
15 legislature in accordance with the provisions of Section 1
16 of this Article. In such event the Apportionment Board
17 shall within 30 days reapportion seats in the State legis-
18 lature in accordance with the provisions of Section 1 of
19 this Article and file a copy of such apportionment with the
20 Governor. Such reapportionment shall become law, subject
21 to Supreme Court review, upon date of filing. In the event
22 the Supreme Court shall declare that a reapportionment law
23 enacted by the legislature fails to comply with the pro-
24 visions of Section 1 of this Article the Apportionment
25 Board shall convene within 10 days after the decision of
26 the Supreme Court that the action of the legislation fails
27 to comply with the provisions of Section 1 of this Article
28 and the Board shall proceed to reapportion seats in the
29 legislature as if no reapportionment action was taken by the
30 legislature⁷.

1 Section 6. Right Reserved to the People. In addition
2 to any authority the legislature possesses for initiating
3 amendments to the constitution, the people reserve to
4 themselves the power to propose changes in Section 1 of this
5 Article. This power is reserved by the people and as set
6 forth herein. Qualified and registered voters of state equal
7 in number to at least (15 percentum) of the total vote cast
8 for all candidates for Governor at the last preceding general
9 election at which a Governor was elected shall be required to
10 propose any such amendment. The petition shall set forth
11 in full the proposed amendment and shall be filed with the
12 Secretary of State or such other person or persons as may
13 hereafter be authorized by law to receive same. Every
14 petition shall be certified to as having been signed by the
15 required number of qualified and registered voters of the
16 state. Upon receipt of any such petition the Secretary of
17 State or such other person or persons hereafter authorized by
18 law shall canvas the petition to ascertain if such petition
19 has been signed by the required number of qualified and
20 registered voters and may in determining the validity thereof
21 cause any doubtful signatures to be checked against the regis-
22 tration records by the clerk of any political subdivision in
23 which said petition was circulated for properly determining
24 the authenticity of such signatures. If a petition is filed
25 with the Secretary of State or such other person or persons
26 hereafter authorized by law to receive same and if the canvas

27 determines that the petition is legal and in proper form and
28 has been signed by a required number of qualified and regis-
29 tered voters such proposed amendment shall be submitted to
30 the people for approval or rejection at the next ensuing
31 general election.

CONTROL OF URBAN WATER SUPPLY
AND SEWERAGE SYSTEMS

Water problems are most critical on the fringes of urban areas where there is great reliance on individual water supply and waste disposal systems. The indiscriminate use of wells and septic tanks encourages urban sprawl, often endangers public health, and rarely provides a permanent solution to the problem of obtaining and disposing of water. As the Advisory Commission on Intergovernmental Relations pointed out in its report on Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas, "Individual systems have caused problems in almost every area where they have been employed." The Federal Housing Administration, as a result of its wide experience in home mortgage insurance, has recognized this same situation by requiring that "Whenever feasible, connection shall be made to a public water supply and sewerage system."

With few exceptions, connection to or initial provision for public water and sewerage systems, designed to high standards and with areawide considerations in mind, are preferable to dependence upon individual systems. Inherent limitations in the design, installation and operation of individual systems render them inadequate and undependable for generalized, permanent use in urban and suburban subdivisions. These systems, therefore, should be restricted to isolated properties or to small subdivisions where the population density is strictly limited.

Many home buyers are not aware of the limitations inherent in the use of individual systems in most urban and suburban areas. They assume that facilities built in accordance with government permits will be adequate substitutes for the public facilities common in cities. But too often this is not the case. Public regulation of individual wells and septic tanks has assured only a temporary solution to water problems, and after a few years these individual facilities have had to be replaced by public facilities, causing the homeowner inconvenience and considerable additional expense.

For these reasons, the Advisory Commission on Intergovernmental Relations has specifically recommended that "legislation be enacted endowing the appropriate state and local agencies with regulatory authority over individual wells and septic tank installations, with a view to minimizing and limiting their use to exceptional situations consistent with comprehensive land use goals." This is the purpose of the following model state legislation. Within a year the U. S. Public Health Service expects to have a draft of model regulations that may be used as a guide by the states in adopting suitable regulations in accordance with this proposed legislation.

The suggested legislation is consistent with the policy statement appearing in the Council of State Governments' Program of Suggested State Legislation for 1957 which recommended a broad program for water resources planning, water supply, and water pollution control. It would also fill a need for specific provisions in state legislation concerning the individual well and septic tank problem. A survey made by the U. S. Public Health Service in January 1963 showed that, although every state has broad authority to regulate sanitary practices, no state has legislation specifically establishing policies which would limit the use of individual water supply and sewage disposal facilities in urban areas on the basis of comprehensive plans for population distribution and for the provision of community sewer and water systems.

The suggested legislation would give the state department of health the authority to establish regulations to limit, control or prohibit the use of individual wells and septic tanks in urban areas and to require the provision of more healthful community water supply and sewerage systems in accordance with official plans designed to meet the needs of whole urban areas. This would assure that sudden menaces to health arising from the failure of individual systems and conflict between different portions of community systems will be rare, and the unnecessary expense of emergency actions to replace inadequate systems will be kept to a minimum. It would also help to assure the orderly development of urban areas and reduce wasteful urban sprawl.

General legislative criteria to guide the department in preparing its regulations are established in the bill. These legislative criteria would require that the regulations reflect the policy of requiring community water and sewerage systems wherever feasible. The regulations would be related to the density of population, size of lots, contour of the land, porosity and absorbency of the soil, ground water level, type of construction of water supply and sewerage systems, size of subdivision, official plans for water supply and sewerage systems, and such other factors which, in the judgment of the state department of health, may be concerned with protection of the public health including the prevention of pollution of the waters of the state, the provision of a safe water supply, and the proper and sanitary disposal of sewage.

The state regulations would be related to three types of development areas identified in the official plans for water supply and sewerage systems which must be prepared and submitted to the state department of health by all urban municipalities. Where comprehensive community systems are either already available or can be feasibly made available, connection to such systems would be required. All such community systems would be designed and constructed so that they are consistent with official plans for water supply and sewerage systems.

Where comprehensive community systems are not immediately available but are officially programmed to become available within a reasonable period of time, small community water and sewerage systems would be required wherever feasible, since these can be incorporated later into larger systems. This is highly preferable to allowing the installation of septic tanks and individual wells in urbanized areas. In cases where individual wells and septic tanks are the only feasible water and sewerage systems for interim use, they would be allowed only on condition that provisions are made in the original construction for connecting to community systems in as economical and convenient way as possible as soon as they become available. Interim sewage treatment facilities for small community systems would be required to be abandoned when the sewerage systems are combined. Interim water and sewerage systems must meet health standards for adequate and safe operation until the installation of comprehensive community water and sewerage systems.

Where the provision of community systems is not planned within the near future, development based on individual wells and septic tanks would be allowed to occur, but only in conformance with official water and sewerage plans and strict regulations designed to limit population densities to the extent necessary to allow the individual water and sewer systems to be maintained as permanent installations. Such regulations would assure, for instance, that the amount of water necessary to supply the allowed population would not deplete the ground water supply and leave the wells useless. In the case of septic tanks, the regulations would require that individual building lots be large enough so that if one seepage field failed after a few years there would be a suitable alternate location on the same lot for installing a new field without encroaching on the safety zone around the well.

The suggested legislation would require all urban municipalities to prepare, adopt and submit to the state department of health, for approval, official plans for water and sewerage facilities. It would also provide authority for municipalities in the same urban area to cooperate with each other and to receive technical assistance from the state in preparing official plans for water supply and sewerage systems. It would also be desirable for the states to make grants to municipalities for preparing official plans and related studies. An optional section is suggested for this purpose. The legislation would set forth the elements of consideration which are necessary in preparing an adequate plan. Plans for water supply and sewerage systems should be prepared as integral parts of comprehensive urban development plans, and should include specific time schedules and financial programs for providing the planned systems. There should also be provisions for keeping the water and sewer plans up to date.

Finally, the legislation should prohibit the recording of subdivision plats and issuance of building permits except in conformance with the regulations adopted by the state department of health.

State legislation meeting these specifications would go a long way toward properly meeting the critical water needs of urban areas.

Suggested Legislation

/Title should conform to state requirements./

(Be it enacted, etc.)

1 Section 1. Short Title. This act may be cited as the
2 /state/ Urban Water Supply and Sewerage Systems Control Act.

1 Section 2. Findings and Policy. The /state/ legis-
2 lature finds that the widespread use of inadequately regu-
3 lated individual water supply and sewerage systems and
4 inadequately planned community water supply and sewerage
5 systems in and near urban areas (1) endangers the health and
6 welfare of the citizens of this state by causing or contri-
7 buting to the pollution of ground and surface waters, (2)
8 results in nuisances and hazards to the public health, (3)
9 causes depletion of ground water without adequate provision
10 for a continuing water supply, (4) encourages development of
11 land for residential, industrial and other purposes without
12 adequate provision for community water supply and sewerage
13 systems and unnecessarily increases the cost of providing
14 such systems, and (5) impedes orderly processes of urban
15 development. It is therefore declared to be the public
16 policy of this state to eliminate and prevent the health and

17 safety hazards, the adverse effect on orderly development
18 and utilization of the water and land resources of this
19 state, and the undue financial burden placed on our growing
20 urban areas, by establishing standards for the proper use
21 of individual water supply and sewerage systems, and by
22 encouraging planning and provision of adequate community
23 water supply and sewerage systems.

1 Section 3. Definitions. As used in this act:

2 (a) "Individual water supply system" means a single
3 system of piping, tanks or other facilities utilizing a
4 source of ground or surface water to supply only a single
5 property.

6 (b) "Individual sewerage system" means a single
7 system of piping, tanks or other facilities serving only
8 a single property and disposing of sewage or industrial
9 wastes of a liquid nature, or both, in whole or in part on
10 or in the soil of the property or into any waters of this
11 state.

12 (c) "Community water supply system" means a source of
13 water and a distribution system, whether publicly or pri-
14 vately owned, serving two or more individual properties.

15 (d) "Community sewerage system" means any system,
16 whether publicly or privately owned, for the collection and
17 disposal of sewage or industrial wastes of a liquid nature,
18 or both, including various devices for the treatment of such
19 sewage or industrial wastes serving two or more individual
20 properties.

21 (e) "Municipality" means a city, town, borough,
22 county, parish, district or other public body created by or
23 pursuant to state law, or any combination thereof acting
24 cooperatively or jointly.

25 (f) "Urban area" means any area characteristic of,
26 constituting, or pertaining to a city, town, or other munici-
27 pality or densely populated area, together with outlying
28 parts of the area adjacent to, on the outskirts of, or
29 surrounding the city, town, or other municipality or densely
30 populated area, including the rural periphery or environs,
31 which form an economic and socially related region, taking
32 into consideration such factors as present and future popu-
33 lation trends and patterns of urban growth, location of
34 transportation facilities and systems, geographical factors
35 affecting the location of utility systems, and distribution
36 of industrial, commercial, residential, governmental, insti-
37 tutional, and other activities.

38 (g) "Subdivision" ¹ means the division of a single
39 tract or other parcel of land, or a part thereof, into two or
40 more lots, and shall also include changes in street lines or
41 lot lines, provided, however, that divisions of land for
42 agricultural purposes into parcels of more than ____ acres

1 The definitions should be consistent with any definitions of the same terms established in the state's planning, subdivision control, and zoning enabling acts.

43 not involving any new street or easement of access, shall
44 not be included within the meaning of "subdivision."

45 (h) "Lot" ² means a part of a subdivision or a
46 parcel of land used as a building site or intended to be
47 used for building purposes, whether immediate or future,
48 which would not be further subdivided.

49 (i) "Official plan for water supply and sewerage
50 systems" means a comprehensive plan for the provision to an
51 urban area or areas of community water supply or sewerage
52 systems, or both, adopted by a municipality with the authority
53 to provide or jurisdiction over the provision of such
54 community systems and submitted to and approved by the state
55 department of health ³ as provided herein.

1 Section 4. Functions and Powers. (a) The state
2 department of health ³ shall adopt and from time to time
3 amend and revise regulations and standards regulating,
4 limiting or prohibiting the use of individual and community
5 water supply and sewerage systems, and, in conformance with
6 section 3(f) of this act, shall designate those urban areas
7 in which such regulations shall apply.

8 (b) Such regulations shall be adopted, amended or
9 revised after public hearing upon not less than 60 days

2 See footnote 1.

3 The designated agency should be the one presently having authority to regulate sanitary practices within the state.

10 notice published in one or more newspapers as may be neces-
11 sary to assure general circulation throughout the state. ⁴

12 (c) Such standards and regulations shall clearly pro-
13 vide the basis for approving subdivision maps or plats, or
14 requests for permits for buildings on any lot, whether or
15 not part of a subdivision, involving individual or community
16 water supply or sewerage systems, and shall be related to the
17 density of population, size of the lots, contour of the land,
18 porosity and absorbency of the soil, ground water level, type
19 of construction of water supply and sewerage systems, size
20 of the subdivision, the official plan for water supply and
21 sewerage systems, and such other factors which in the judg-
22 ment of the state department of health may be concerned with
23 protection of the public health including the prevention of
24 pollution of the waters of the state, the provision of a safe
25 water supply, and the proper and sanitary disposal of sewage.

26 (d) The state department of health is hereby author-
27 ized to approve or disapprove comprehensive plans for water
28 supply and sewerage systems submitted in accordance with
29 section 6 of this act.

30 (e) The state department of health is authorized to
31 provide technical assistance and consultation to municipali-
32 ties in preparing and coordinating official plans for water

4 This requirement should be consistent with the general practice in other laws within the state and with any state Administrative Procedures Act which may apply within the state.

33 supply and sewerage systems required in section 6 of this
34 act, including revisions of such plans. Such assistance
35 may include studies, surveys, investigations, inquiries,
36 research, analyses, and loans of personnel. As a basis for
37 such assistance, the state department of health is author-
38 ized to conduct related studies, surveys, investigations,
39 inquiries, research and analyses on its own initiative.

40 (f) The state department of health is authorized to
41 administer grants to municipalities to assist them in pre-
42 paring official plans for water supply and sewerage systems
43 required by section 6 of this act, and for carrying out
44 related studies, surveys, investigations, inquiries, research
45 and analyses. Such grants shall be made from funds appro-
46 priated by the legislature for this purpose and shall not
47 exceed one-half the cost of preparing such plans. For pur-
48 poses of this section, costs shall be exclusive of those
49 reimbursed or paid by grants from the federal government.⁷ 5

50 (g) For purposes of this act, the state department of
51 health is authorized to accept and administer federal grants.

52 (h) For purposes of this act, the state department of
53 health is authorized to cooperate with all appropriate
54 federal, state, interstate, and local units of government,
55 and with appropriate private organizations.

5 Any state not wishing to establish such a grant program
may simply omit this paragraph.

1 Section 5. Relationship of Regulations to Official
2 Plans for Water Supply and Sewerage Systems. In order to
3 assure adequate, safe and healthful water supply and sewer-
4 age systems, official plans for such systems adopted by
5 municipalities shall be based on long-term projections of
6 needs and programs to meet those needs, and shall require
7 that:

8 (a) except as provided in paragraphs (c) and (d),
9 both community water supply and sewerage systems be provided
10 in all urban subdivisions, and all buildings requiring water
11 and sewer services be connected thereto, unless the state
12 department of health finds that one or both such systems are
13 not economically feasible at the time of subdivision or con-
14 struction. Community systems which are within the area even-
15 tually to be served by a larger system, but which are initi-
16 ally built to operate independently, must be connected to
17 the larger community system when it becomes available. Sew-
18 age treatment plants constructed as parts of an initially
19 independent system must be abandoned when such systems are
20 connected to larger community systems;

21 (b) any community water supply or sewerage system
22 required in accordance with paragraph (a) of this section
23 shall be designed and constructed in such a way that it is
24 consistent with the official plan for water supply and
25 sewerage systems;

26 (c) in areas where community water supply systems or

27 sewerage systems or both are not available nor economically
28 feasible at the time of subdivision or construction, but are
29 programmed to become available within a reasonable period of
30 time not in excess of [] years ⁶ in accordance with an
31 official plan for water supply and sewerage systems, subdivi-
32 sions and buildings to be served by individual water supply
33 systems or sewerage systems or both may be approved, provided
34 that: (1) in the judgment of the state department of health
35 such individual water supply systems or sewerage systems or
36 both are feasible and safe for use during the period before
37 community water supply systems or sewerage systems or both
38 are scheduled to become available, and (2) adequate provi-
39 sions are made prior to or at the time of the installation
40 of such individual systems to permit their abandonment and
41 the connection of the premises served thereby to the commu-
42 nity water supply systems or sewerage systems or both in as
43 economical and convenient way as possible as soon as such
44 community systems become available;

45 (d) in areas where a community water supply system,
46 or a community sewerage system or both are not available,
47 economically feasible, nor programmed to become available
48 within a reasonable period of time not in excess of []

6 Ten years is suggested as a reasonable period of time based upon the average useful life of individual systems in many parts of the country, but a five-year period may be more realistic in many areas. The time period should be determined on the basis of experience in the state where this legislation is enacted.

49 years in accordance with an official plan for water supply
50 and sewerage systems, individual water supply or sewerage
51 systems, which conform to the regulations and standards
52 adopted pursuant to this act and to the official plan, shall
53 be approved. ⁷

1 Section 6. Official Plans. (a) Each municipality in
2 any urban area designated under section 4 of this act shall
3 submit to the state department of health an officially
4 adopted comprehensive plan for water supply and sewerage
5 systems serving areas within its jurisdiction within such
6 reasonable period as the state department of health may pre-
7 scribe, and shall from time to time submit revisions of such
8 plan as may be necessary.

9 (b) When more than one municipality has authority over
10 water supply and sewerage systems within a single urban area,
11 the required plan or any revision thereof may be submitted
12 jointly by the municipalities concerned or jointly by one or
13 more of the municipalities with the concurrence of the others.

14 (c) Every required plan, and any revisions thereof
15 shall:

16 (1) delineate areas in which community water supply
17 and sewerage systems or both are to be provided, and those
18 areas in which individual water supply and sewerage systems
19 will be accepted;

7 If administrative hearings on appeals from actions of the department are not provided for under other state laws, a section on appeals and judicial review should be added.

20 (2) provide for the orderly extension of community
21 water distribution facilities and interceptor sewers in a
22 manner consistent with the needs and plans of the whole
23 urban area;

24 (3) provide for adequate sewage treatment facilities
25 which will prevent the discharge of untreated or inadequately
26 treated sewage or other waste into any waters or otherwise
27 provide for the safe and sanitary treatment of sewage or
28 other waste;

29 (4) take into consideration all aspects of planning,
30 zoning, population estimates, engineering and economics so as
31 to delineate with all practicable precision those portions
32 of the urban areas which community systems may reasonably be
33 expected to serve within five years, ten years, after ten
34 years, and any areas in which the provision of such services
35 is not reasonably foreseeable;

36 (5) take into consideration any existing state plan
37 affecting the development, use and protection of water
38 resources;

39 (6) establish procedures for delineating and acquiring
40 on a time schedule consistent with that established in sub-
41 section (3) of this paragraph necessary rights-of-way or
42 easements for community systems;

43 (7) set forth a time schedule and proposed methods of
44 financing the construction and operation of the planned
45 community systems, together with the estimated cost thereof;

46 (8) be reviewed by appropriate official planning
47 agencies in the urban area, including a planning agency with
48 areawide jurisdiction if one exists, in comparison with the
49 comprehensive urban development plans which such agencies
50 are authorized to prepare and adopt for physical development
51 in the urban area, and such reviews shall be transmitted to
52 the state department of health with the proposed plans; and

53 (9) include provision for periodic revision of the
54 plan.

1 Section 7. Grant of Building Permit and Approval of
2 Subdivision Plan. (a) No state or local authority empowered
3 to grant building permits or to approve subdivision plans,
4 maps or plats shall grant any such permit or approve any such
5 plans, maps or plats which provide for an individual or com-
6 munity water supply or sewerage system, or both, unless the
7 plans for such systems have been approved by the state depart-
8 ment of health or its authorized representative in accordance
9 with regulations promulgated under section 4 of this act, and
10 in accordance with official plans as required under section 6
11 of this act.

12 (b) The state department of health may delegate
13 authority for approval of plans for individual and community
14 water supply and sewerage systems to any appropriate state
15 or local governmental officials.

1 Section 8. Information Required by Department of
2 Health. The state department of health is authorized to
3 require applicants for building permits and subdivision

4 approvals to submit with their applications such informa-
5 tion, in such form, as may be deemed by the state department
6 of health to be necessary to show compliance with the regu-
7 lations adopted pursuant to section 4 of this act.

1 Section 9. Information to be Given Purchaser.

2 (a) The vendor shall include or cause to be included,
3 in every contract for the initial sale or transfer of
4 any house or building or lot in urban areas, a descrip-
5 tion of the type of water supply or sewerage system pro-
6 vided.

7 (b) Any violation of this section shall be punishable
8 by a fine not to exceed \$500.

1 Section 10. Conflict with Other Laws. The pro-
2 visions of any zoning ordinance, subdivision regulation,
3 building code or other law or regulation of any municipality
4 of the state establishing standards designed to afford
5 greater protection to the public health, safety and welfare
6 of the community shall prevail over regulations adopted
7 pursuant to this act within the area over which the munici-
8 pality has jurisdiction.

1 Section 11. Penalties. Any violation of this act,
2 for which a penalty is not otherwise provided, shall be
3 punishable by a fine not to exceed \$____. ⁸ This shall be

⁸ Penalties under this act should be consistent with penal-
ties under subdivision regulations and building codes within the
state. A commonly used penalty is \$100, with any persistent
condition constituting a new violation each day it continues.

4 in addition to all other remedies and sanctions provided by
5 law.

1 Section 12. Severability. /Insert severability
2 clause./

1 Section 13. Effective Date. /Insert effective date./

ENDORSEMENT OF STATE LEGISLATIVE RECOMMENDATIONS OF THE
ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

RECOMMENDATION	Organizations Taking Formal Action in Support of ACIR Recommendations				
	Governors' Conference	National Legislative Conference	Nat'l. Assoc. of Counties	American Municipal Assoc.	U.S. Conf. of Mayors

I. Legislative Proposals Approved by Committee of State Officials on Suggested State Legislation of the Council of State Governments

A. Taxation and Finance

1. Financial and Technical Assistance to Local Governments.....	X	---	X	X	X
2. Property Tax Administration	---	X	X	X	X
3. Interlocal Coordination of Nonproperty Taxes.....	---	---	X	X	X
4. Cooperative Tax Administration Agreements	---	---	X	X	X
5. Collection of Nonproperty Taxes by the State.....	---	---	X	X	X
6. Exchange of Tax Records and Information.....	---	X	X	---	---
7. Investment of Idle Funds...	X	X	X	X	X

ENDORSEMENT OF STATE LEGISLATIVE RECOMMENDATIONS OF THE ACIR, Continued

RECOMMENDATION	Organizations Taking Formal Action in Support of ACIR Recommendations				
	Governors' Conference	National Legislative Conference	Nat'l. Assoc. of Counties	American Municipal Assoc.	U.S. Conf. of Mayors
8. Technical Assistance to Small Local Governments on Investment of Idle Funds....	X	X	---	X	---
9. State Technical Assistance on Local Government Debt Issuances.....	X	---	X	X	---
10. Standards for Official Statements on Local Debt Offerings.....	---	---	---	X	---
11. Local Industrial Development Bond Financing.....	-----NOT SPECIFICALLY CONSIDERED-----				
B. Urban Problems					
1. Assertion of Legislative Authority.....	-----NOT SPECIFICALLY CONSIDERED-----				
2. Municipal Incorporations..	X	X	X	X	X
3. Securing and Preserving "Open Space".....	X	X	---	X	---
4. Mass Transportation in Metropolitan Areas.....	X	X	X	X	---
5. Metropolitan Study Commissions.....	X	X	X	X	---
6. Metropolitan Area Planning Commissions.....	X	X	X	X	X

ENDORSEMENT OF STATE LEGISLATIVE RECOMMENDATIONS OF THE ACIR, Continued

RECOMMENDATION	Organizations Taking Formal Action in Support of ACIR Recommendations				
	Governors' Conference	National Legislative Conference	Nat'l. Assoc. of Counties	American Municipal Assoc.	U.S. Conf. of Mayors
7. Extraterritorial Planning, Zoning, and Subdivision Regulation.....	---	---	---	X	---
8. Metropolitan Functional Authorities.....	X	X	X	X	---
C. <u>Other State-Local Relations</u>					
1. Office of Local Affairs....	X	X	---	X	X
2. Optional Forms of County Government.....	-----NOT SPECIFICALLY CONSIDERED-----				
3. Constitutional Barriers to Intergovernmental Cooperation.....	-----NOT SPECIFICALLY CONSIDERED-----				
4. Authorization of Interlocal Contracting and Joint Enterprises.....	X	X	X	X	X
5. Voluntary Transfer of Functions between Municipalities and Counties.....	X	X	X	X	X
6. State and Local Government Retirement Systems.....	---	X	X	---	X
7. State Water Resources Planning and Coordination	---	X	X	X	---

ENDORSEMENT OF STATE LEGISLATIVE RECOMMENDATIONS OF THE ACIR, Continued

RECOMMENDATION	Organizations Taking Formal Action in Support of ACIR Recommendations				
	Governors' Conference	National Legislative Conference	Nat'l. Assoc. of Counties	American Municipal Assoc.	U.S. Conf. of Mayors
II. Proposals Not Yet Considered by the Committee of State Officials on Suggested State Legislation of the Council of State Governments					
1. Local Government Residual Powers.....	X	---	X	---	X
2. Legislative Apportionment Procedure.....	---	---	X	X	---
3. Control of Urban Water Supply and Sewerage Systems.....	-----NOT SPECIFICALLY CONSIDERED-----				

October, 1963

PUBLISHED REPORTS OF THE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS 1/
Washington, D. C. 20575

- Coordination of State and Federal Inheritance, Estate and Gift Taxes. Report A-1. January 1961. 134 p., printed.
- Modification of Federal Grants-in-Aid for Public Health Services. Report A-2. January 1961. 46 p., offset.
- Investment of Idle Cash Balances by State and Local Governments. Report A-3. January 1961. 61 p., printed.
- Intergovernmental Responsibilities for Mass Transportation Facilities and Services. Report A-4. April 1961. 54 p., offset (Out of print)
- Governmental Structure, Organization, and Planning in Metropolitan Areas. Report A-5. July 1961. 83 p., U. S. House of Representatives, Committee on Government Operations, Committee Print, 87th Cong., 1st sess.
- State and Local Taxation of Privately Owned Property Located on Federal Areas: Proposed Amendment to the Buck Act. Report A-6. June 1961. 34 p., offset.
- Intergovernmental Cooperation in Tax Administration. Report A-7. June 1961. 20 p., offset.
- Periodic Congressional Reassessment of Federal Grants-in-Aid to State and Local Governments. Report A-8. June 1961. 67 p., offset.
- Local Nonproperty Taxes and the Coordinating Role of the State. Report A-9. September 1961. 68 p., offset.
- State Constitutional and Statutory Restrictions on Local Government Debt. Report A-10. September 1961. 97 p., printed.
- Alternative Approaches to Government Reorganization in Metropolitan Areas. Report A-11. June 1962. 88 p., offset.
- State Constitutional and Statutory Restrictions Upon the Structural, Functional, and Personnel Powers of Local Governments. Report A-12. October 1962. 79 p., printed.
- Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas. Report A-13. October 1962, 135 p., offset.
- State Constitutional and Statutory Restrictions on Local Taxing Powers. Report A-14. October 1962. 122 p., offset.
- Apportionment of State Legislatures. Report A-15. December 1962. 78 p., offset.
- Transferability of Public Employee Retirement Credits Among Units of Government. Report A-16. March 1963. 92 p., offset.
- * The Role of the States in Strengthening the Property Tax. Report A-17. June 1963. (2 volumes).
- Industrial Development Bond Financing. Report A-18. June 1963. 96 p., offset.
- *Tax Overlapping in the United States, 1961. Report M-11. September 1961. 136 p., printed. (\$1.00)
- Factors Affecting Voter Reactions to Governmental Reorganization in Metropolitan Areas. Report M-15. May 1962. 80 p., offset.
- Measures of State and Local Fiscal Capacity and Tax Effort. Report M-16. October 1962. 150 p., printed.
- *Directory of Federal Statistics for Metropolitan Areas. Report M-18. June 1962. 118 p., printed (\$1.00).

1/ Single copies of reports may be obtained from the Advisory Commission on Intergovernmental Relations, Washington, D. C. 20575, except those marked with an asterisk (*) which may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C. 20402.

