

1966  
STATE LEGISLATIVE PROGRAM  
of the  
ADVISORY COMMISSION  
ON INTERGOVERNMENTAL  
RELATIONS



*Washington, D.C. 20575*  
*October 1965*  
*M-27*

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## FOREWORD

The Advisory Commission on Intergovernmental Relations is a permanent, bipartisan body established under Federal legislation enacted in 1959 to give continuing study to the relationships among local, state and National levels of government. The Commission's membership, representing the legislative and executive branches of the three levels of government and the public at large, is shown on the inside of the front cover.

The Commission 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 governments. It therefore devotes a considerable share of its resources to encouraging the adoption of its recommendations for legislative and administrative action by these governments.

The Commission seeks to implement its legislative recommendations to the states by translating them into legislative language for consideration by the 50 state legislatures. This volume contains 51 legislative proposals in the form of draft bills and policy statements to implement the recommendations for state legislation approved by the Commission through August 31, 1965. It is the fifth in a series of state legislative programs and incorporates all of the proposals from earlier programs. The titles of the 16 proposals appearing for the first time are preceded by an identifying symbol. The proposals are presented under three subject matter headings: I. Taxation and Finance; II. Urban Problems; III. Other Intergovernmental Problems. Each of these subject areas is introduced by a statement summarizing the broad objectives of the Commission's recommendations. Each legislative draft, in turn, is preceded by a brief explanatory statement.

Most of the Commission's proposals for state legislation have been submitted for consideration to the Committee of State Officials on Suggested State Legislation of the Council of State Governments. The Committee consists of legislative officials and staff, Commissioners on Uniform State Laws, Attorneys General and other administrative officials, and members of Commissions on

Interstate Cooperation. Those legislative proposals of the Advisory Commission that have been approved by the Committee of State Officials on Suggested State Legislation are published and distributed by the Council of State Governments to Governors, legislators, and other state officials. All but 12 of the Advisory Commission's proposals for state legislation are now included in the Council's Program of Suggested State Legislation.

Other National organizations of state and local public officials have also endorsed many of the Commission's legislative proposals or have adopted resolutions endorsing their objectives. These endorsements are summarized at the end of this volume.

The Commission's several reports containing the analysis and recommendations that underlie these legislative proposals are listed on the last page and on the inside of the back cover. Copies of these reports are available from the Commission on request.

The Commission presents its proposals for state legislation in this volume in the hope that it will serve as a useful reference aid for state legislators, state legislative service agencies, and others interested in strengthening the legislative framework of intergovernmental relations. Copies of reprints of the individual proposals are available from the Commission on request.

1966 STATE LEGISLATIVE PROGRAM OF THE  
ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

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# Policy statement only.

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## I. TAXATION AND FINANCE

### Introductory Statement

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 ability of local governments to raise revenue is 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. To that end, the Commission proposes four pieces of legislation.

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.

The financing of governmental services that are needed only in particular portions of county areas has often resulted in the creation of special districts to the detriment of orderly local government. The Commission suggests a way to minimize the need for special districts by authorizing counties to create subordinate taxing areas and to permit the county governing body to set tax rates within such areas at a different level than the overall county tax rate.

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 ability of local governments to tax and to borrow to raise revenue is subject to an extensive and complicated body of law. The Commission believes that this present maze of constitutional and statutory restrictions upon local governments handicaps self-reliance and constitutes a serious impairment to effective local self-government. There is presented a proposed constitutional amendment repealing constitutional restrictions on local debt and taxing powers and lodging this authority with the legislatures. Two other proposals authorize local property tax levies to produce revenues adequate to cover operating costs and debt obligations which are financed from the property tax and to borrow for certain public works without limitation, subject to permissive referendum.

## PROPERTY TAXATION

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. The obligation of the state in this regard is inescapable because if the locally raised revenue is inadequate to finance the duties prescribed for local governments, the state must provide it.

Inasmuch as local governments continue to rely for seven-eighths of all their locally raised tax revenue on the property tax, it is the most important single factor in their fiscal ability. It follows that the states' concern with the quality of property taxation is direct and urgent.

States are directly concerned with the quality of property taxation for other reasons as well. The \$22 billion that will be collected from this source in calendar year 1964 nearly equals the combined collections from the states' own taxes and accounts for 45 percent of aggregate state and local tax revenues. In short, the property tax 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 tax burden among the people.

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 can restrain tax reform and may encourage competitive under-assessment. Moreover, state law does much to prescribe the elements of property taxation and so is mandatory on the localities.

A survey of the recent successes and failures in property tax reform in different parts of the country, conducted by the Advisory Commission on Intergovernmental Relations, 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 by the state, and that tax officials, practitioners, and scholars are in general agreement about the lines of action states should take to give soundly based local property tax improvement efforts a reasonable chance to succeed.<sup>1</sup>

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



Although details of the prescription for strengthening the property tax will vary from state to state, and with the progress each state has made thus far, the following suggested legislation should be helpful to those persons seeking to make this tax a more equitable and effective revenue instrument for local governments. To facilitate the enactment of property tax reform recommendations, the suggested legislation is divided into four bills, each covering a major sector of the property tax front.

## A. PROPERTY TAX SURVEY COMMISSION\*

This bill authorizes the creation of a Property Tax Survey Commission to examine certain basic property tax policy issues which must be resolved by each state. These policy issues include: (a) the adequacy of the legal structure underpinning property tax administration, (b) exemptions from taxation, (c) changes in tax rate and debt limits which would be required if market value determinations based on assessment-sales ratio studies replace assessed valuations as the measurement base, and (d) the extent to which the state should become involved in the actual administration of the property tax.

Each state should take a hard, critical look at its property tax laws and rid it of all features that are impossible to administer as written, which force administrators to condone evasion, and which encourage taxpayer dishonesty. Ad valorem taxes on most classes of property, real and personal, can be administered with reasonable competence if a state is willing to provide suitable means; but the extent to which some personal property tax laws have become legal fictions is notorious. Evasion and condoning of evasion are so widespread as to make such laws a tax on integrity.

The use of exemptions from property taxes without regard for their secondary effects has drastically changed the distribution of the property tax burden and a re-examination of exemptions is urgently needed. States have long had a propensity, which is continuing, to fritter away the local property tax base by concealed subsidies in the form of special tax exemptions to promote private causes of questionable public importance, provide welfare aid, advance undertakings for social and economic reform, and reward public service. Typically these special tax exemptions are mandatory upon local taxing jurisdictions; they have to be honored by them, regardless of their revenue cost or the preference of the local community.

### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act creating a property tax survey commission, and for related purposes."]

(Be it enacted, etc.)

1           Section 1. Property Tax Survey Commission. There is  
2 hereby created a Property Tax Survey Commission of [    ]

\*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

3 members for the purpose of making a thorough examination of the  
4 property tax and its administration. The Commission shall make  
5 a report of its study and examination together with such specific  
6 recommendations as it may adopt to the Governor and to the legis-  
7 lature not later than [ ] of each [ ] numbered year.

1 Section 2. Commission Duties. The Commission shall:

2 (1) Ascertain whether the [state tax agency] is making  
3 adequate provision for continuing study and analysis of the  
4 property tax so as to insure that this revenue source is given  
5 attention commensurate with its major importance in the overall  
6 state and local revenue structure;

7 (2) Determine (a) whether provision of the constitution  
8 or any statute, ordinance or charter unduly restricts legisla-  
9 tive or administrative flexibility and responsibility for pro-  
10 ducing and maintaining a productive and administrable property  
11 tax system and, (b) whether the property tax laws need revision  
12 or recodification;

13 (3) Examine the state's property tax exemption policies  
14 and make recommendations implementing the principle that exemp-  
15 tions be provided only on clear demonstration of public interest  
16 and be limited to those cases in which the tax exemption method  
17 is preferable to outright grants supported by appropriations;

18 (4) Examine the question of reimbursing local communi-  
19 ties for the amounts of tax loss sustained in the instance of  
20 mandatory tax exemptions;

21           (5) Make a thorough review of all classes of partial  
22 and total exemptions from tax liability based on assessed  
23 valuations made by assessment officials, study the desirabil-  
24 ity of their continuance from the point of view of sound  
25 policy, and with respect to those exemptions that may be  
26 continued, recommend such adjustments as would be called for  
27 by the adoption of the market value determinations made or to  
28 be made by the [state tax agency] as the uniform measure for  
29 all such exemptions from property tax liability;<sup>1</sup>

30           (6) Study all limits on the taxing and borrowing powers  
31 of local governments imposed by state law or municipal charter  
32 that are related to assessed valuation set by local assessment  
33 officials; consider the desirability of their continuance or  
34 modification, and for any that may be continued recommend such  
35 adjustments as would be made necessary by the adoption of the  
36 market value determinations made or to be made by the [state  
37 tax agency] as the uniform base for restricting the taxing and  
38 borrowing powers of local governments;

39           (7) Study all state financial grants to school districts  
40 and local governments that are measured by assessed valuations  
41 set by local assessment officials and recommend such adjustments  
42 as may be necessitated by the adoption of the market value

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<sup>1</sup>To the extent that exemptions can be justified, the tax credit method employed by some states has considerable merit because it completely removes the assessor from dollar determinations of the privilege.

43 determinations of the state tax agency as an equalized  
44 measure of local fiscal capacity and tax effort;

45 (8) Evaluate the structure, powers, facilities, and  
46 competence of the state tax agency and local property tax  
47 offices and on the basis of such evaluation recommend an  
48 organizational policy from among the following alternatives:

49 (a) Centralized property tax administration, with  
50 each local government determining the amount of its own tax  
51 levies, within any applicable limitations, and with the state  
52 providing all professional services for the assessment, collec-  
53 tion and enforcement of the property tax liability;

54 (b) Centralized property assessment administration,  
55 with the valuations certified to local officials as the basis  
56 for their billing and collection of taxes;

57 (c) Coordinated joint state-local administration  
58 with the state tax agency granted all appropriate supervisory  
59 powers and facilities but whose assessment responsibilities  
60 would be confined to property of types (i) that customarily lie  
61 in more than one district and do not lend themselves to piece-  
62 meal local assessment; (ii) that require appraisal specialists  
63 beyond the specialized skills of most local district staffs;  
64 and, (iii) that can be more readily discovered and valued by  
65 a central agency than by a local assessment office; or

66 (d) Some other uniform method of property assess-  
67 ment administration.

68           (9) Evaluate the present administrative-judicial  
69 appeal procedure for assessment review in order to determine  
70 whether taxpayers have ready and inexpensive access to effec-  
71 tive legal remedies, and make recommendations with respect  
72 thereto.

1       Section 3. Commission Membership. The Governor shall  
2 appoint the members of the Commission and shall designate the  
3 chairman thereof. The term of each commissioner authorized  
4 shall be [4 years]. Any vacancy on the Commission shall be  
5 filled in the same manner as original appointments thereto  
6 and shall be for the unexpired term.

1       Section 4. Staff. The Commission may employ such research  
2 or administrative staff as it deems necessary within or without  
3 the [state merit system].

1       Section 5. Hearings. The Commission may hold public hear-  
2 ings in various parts of the state and prescribe any necessary  
3 rules for the conduct thereof.

1       Section 6. Per Diem and Expenses. Members of the Commission  
2 shall receive per diem of [\$ ] for each full day of atten-  
3 dance at a meeting of the Commission plus their actual and  
4 necessary expenses incurred in the discharge of their official  
5 duties. Members of the Commission who are salaried members of  
6 the legislature or full-time public officers or employees shall  
7 not receive per diem but shall be entitled to reimbursement for

8 their actual and necessary expenses.

1     Section 7. Duration. Sections 1-6 of this act shall cease  
2 to be of any force or effect on and after 4 years after effec-  
3 tive date of this act<sup>7</sup> and the Commission established hereby  
4 shall terminate as of same date<sup>7</sup>.

1     Section 8. Appropriation. Use this section to make  
2 initial appropriation to the Commission.<sup>7</sup>

1     Section 9. Effective Date. Insert effective date.<sup>7</sup>

## B. PROPERTY TAX ORGANIZATION AND ADMINISTRATION \*

In 49 of the 50 states (all except Hawaii), property assessment administration is a joint state and local responsibility. Most recent efforts to improve the quality of property assessment have concentrated on making the joint system work better. To knit this two-level system into a well-coordinated, smoothly-functioning organization is difficult but possible of accomplishment.

The prevailing pattern for state-local property tax administration, subject to innumerable variations, is: (1) local assessment districts responsible for the bulk of the primary assessing; (2) local or county boards of review; (3) county boards of equalization; and (4) a state agency or agencies responsible variously for supervision of local assessing, provision of technical aid to local assessors, hearing taxpayer appeals, interarea equalization of assessment, central assessment of some classes of property, and valuation research.

The proposal would provide for well-coordinated state-local administrative organization with a central directing authority. At the state level, administrative responsibilities would be vested in a single agency professionally organized and equipped for the job, with adequate powers of supervision and regulation clearly defined by law. At the local level, county assessment units would be organized and staffed so as to make competent assessing feasible. The overall goal is to produce a workable apportionment of two-level responsibilities, with careful coordination of assessment standards and procedures.

The suggested legislation vests in the single state agency responsibility for assessment supervision and equalization, assessment of all state assessed property, and valuation research, with adequate powers clearly defined by law. It provides that no assessment district shall be less than county-wide, and when, as in many instances, counties are too small to comprise efficient assessment districts, the bill authorizes the creation of multi-county assessment districts. In order to eliminate wasteful duplication of assessment effort, all overlapping assessment districts (township and municipal) are eliminated. It also provides that county assessors be appointed on the basis of demonstrated merit and be subject to removal for good cause by the appointing official.

It should be noted that the suggested act in setting forth the qualifications for assessors and appraisers makes no mention of residence requirement. Since it is desirable to encourage the

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.



employment of assessors and appraisers on a professional basis, the Advisory Commission on Intergovernmental Relations recommends that states omit a residence requirement. If this is to be done, it may be necessary to make an appropriate exception by amending the relevant general personnel statutes or by writing an affirmative exemption into this statute.

This draft legislation draws on Oregon, Maryland, and Kentucky experience, particularly as it relates to the provision of state technical assistance to local assessment jurisdictions.

#### Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act establishing a Division of Property Taxation within the state tax agency; providing for the qualifications, duties and responsibilities of county assessors and related personnel; providing for state-county relations in respect of assessment and appraisal of property, and for related purposes."1

(Be it enacted, etc.)

1     Section 1. Division of Property Taxation.<sup>1</sup> (a) There  
2 shall be in the state tax agency a Division of Property  
3 Taxation, hereinafter called the "Division." The head of  
4 the Division shall be the Director, appointed by the Com-  
5 missioner in accordance with the provisions of the state  
6 merit system law. The Director shall serve in accordance  
7 with the provisions of such law. He shall have experience  
8 and training in the fields of taxation and property appraisal.  
9     (b) The employees of the Division shall be in the state  
10 merit service. The Director may contract for the services  
11 of expert consultants to the Division.

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<sup>1</sup> As an alternative for states in which organization for tax administration is diffused, the agency should be given prominence as a separate department or bureau. It may be desirable to have the career administrator serve under a multi-member commission appointed for overlapping terms.

12 (c) In addition to any duties, powers or responsibili-  
13 ties otherwise conferred upon the Division, it shall admin-  
14 ister and enforce all laws related to the state supervision  
15 of local property tax administration and the central assess-  
16 ment of property subject to ad valorem taxation. Whenever  
17 the Division assesses or appraises property, or provides  
18 services therefor, it shall prescribe the methods and speci-  
19 fications for such assessment or appraisal.

1 Section 2. Assessors and Appraisers, Qualifications  
2 and Certification. (a) Except as expressly permitted by  
3 statute, no person shall perform the duties or exercise the  
4 authority of an assessor or appraiser of property in or on  
5 behalf of any county unless he is the holder of an assessor's  
6 or appraiser's certificate, as the case may be, issued by the  
7 Division.

8 (b) The Division shall provide for the examination of  
9 applicants for such certificates. No certificate shall be  
10 issued to any person who has not demonstrated to the satis-  
11 faction of the Division that he is competent to perform the  
12 work of an assessor or appraiser, as the case may be: pro-  
13 vided that any applicant for a certificate who is denied the  
14 same shall have a right to review of such denial in accord-  
15 ance with the state administrative procedure act by a pro-  
16 ceeding in the \_\_\_\_\_ court.

1           Section 3. Collection and Publication of Property Tax  
2 Data.<sup>2</sup> (a) The Division annually shall make and issue com-  
3 prehensive assessment ratio studies of the average level of  
4 assessment, the degree of assessment uniformity, and overall  
5 compliance with assessment requirements for each major class  
6 of property in each county in the state. In order to deter-  
7 mine the degree of assessment uniformity and compliance in  
8 the assessment of major classes of property within each  
9 county, the Division shall compute the average dispersion.  
10 As used in this section, "average dispersion" means the per-  
11 centage which the average of the deviations of the assessment  
12 ratio of individual sold or appraised properties bears to  
13 their median ratio.  
14           (b) The Division may require assessors and other local  
15 officers to report to it data on assessed valuations and other  
16 features of the property tax for such periods and in such  
17 form and content as the Division shall require. The Division  
18 shall so construct and maintain its system for the collection  
19 and analysis of property tax facts as to enable it to make  
20 intrastate comparisons as well as interstate comparisons

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<sup>2</sup> Paragraph (a) of this section is similar to Section 3, and paragraph (c) of this section is similar to Section 5 of the act entitled "An act establishing assessment standards and performance measurements; establishing interdistrict and intradistrict tax equalization procedures, and for related purposes.", which appears below. This duplication is necessary because the provisions are desirable in each act standing alone.

21 based on property tax and assessment ratio data compiled for  
22 other states by the United States Bureau of the Census, or  
23 any agency successor thereto.

24 (c) The [state tax agency] shall publish annually the  
25 findings of the Division's assessment ratio studies together  
26 with digests of property tax data.

1 Section 4. Tax Exemption Information. The county  
2 assessor regularly shall assess all tax exempt property  
3 within the county, calculate the total assessed valuation  
4 for each type of exemption, and compute the percentages of  
5 total assessed valuations thus exempt. The totals and com-  
6 putations thus made and obtained, together with summary in-  
7 formation on the function, scope and nature of exempted  
8 activities, shall be published annually by the county.

1 Section 5. Forms. The Division shall devise, prescribe,  
2 [supply,] and require the use of all forms deemed necessary  
3 for effective administration of the property tax laws.  
4 So far as practicable such forms shall be uniform, but noth-  
5 ing herein shall be deemed to prevent the prescribing of  
6 substitute or additional forms where special circumstances  
7 require.

1 Section 6. Tax Maps. The Division shall require each  
2 county assessor to maintain tax maps in accordance with  
3 standards specified by the Division. Whenever necessary to  
4 correct mapping deficiencies, the Division shall install

5 standard maps or approve mapping plans and supervise map  
6 production. The state tax agency shall may require  
7 the county to reimburse the state for tax maps installed by  
8 the Division. The amount or amounts of such reimbursement  
9 shall be deposited in the state treasury to the account of  
10 the state tax agency.<sup>3</sup>

1 Section 7. Provision of Tax Manuals and Guides. The  
2 Division shall prepare, issue, and periodically revise guides  
3 for local assessors in the form of handbooks of rules and  
4 regulations, appraisal manuals, special manuals and studies,  
5 cost and price schedules, news and reference bulletins and  
6 digests of property tax laws suitably annotated.

1 Section 8. Data Processing. To expedite the prepara-  
2 tion of assessment rolls, tax rolls, and tax bills, the Divi-  
3 sion is authorized to take such action as may be appropriate  
4 to enable counties to receive the benefits of modern data  
5 processing methods.

1 Section 9. Provision of Engineering, Professional and  
2 Technical Services. Whenever a county by or pursuant to  
3 action of its governing board requests the state tax  
4 agency to provide engineering, professional or technical  
5 services for the appraisal or reappraisal of properties, the

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3 In place of the last two sentences of Section 6, a state may prefer the following: Costs of map production and installation incurred pursuant to this section shall be county charges.

6 state tax agency may, within its available resources, and  
7 in accord with its determination of the need therefor, pro-  
8 vide such services. The county shall pay to the state tax  
9 agency the actual cost of such services in accordance with  
10 a schedule of standard fees and charges furnished, and from  
11 time to time, revised by the state tax agency. All pay-  
12 ments received by the state tax agency pursuant to this  
13 section shall be deposited in the state treasury to the  
14 account of the state tax agency.

1       Section 10. Appraisal of Major Industrial and Commer-  
2 cial Properties. The Division shall provide to each county  
3 or multi-county assessment district the services of certified  
4 appraisers for the appraisal of major industrial and commer-  
5 cial properties. The properties to be appraised shall be  
6 determined by the Division after consultation with county  
7 assessors. In making such determinations, the Division shall  
8 take into account the ability of the county assessor to per-  
9 form such appraisals with the resources at his disposal.  
10 Provide for such reimbursement or county charge as may be  
11 appropriate.

1       Section 11. Inspections, Investigations and Studies.  
2 The Division may make such inspections, investigations and  
3 studies as may be necessary for the adequate administration  
4 of its responsibilities pursuant to this act. Such inspec-  
5 tions, investigations and studies may be made in cooperation

6 with other state agencies, and, in connection therewith, the  
7 Division may utilize reports and data of other state agencies.

1       Section 12. Training Programs. The Division shall con-  
2 duct or sponsor in-service, pre-entry and intern training  
3 programs on the technical, legal and administrative aspects  
4 of the assessment process. For this purpose it may cooper-  
5 ate with educational institutions, local, regional, state or  
6 national assessors' organizations, and with any other appro-  
7 priate professional organizations. The Division may reim-  
8 burse the participation expenses incurred by assessors and  
9 other employees of the state and its subdivisions whose  
10 attendance at in-service training programs is approved by the  
11 Division.

1       Section 13. Enforcement of Assessment and Appraisal  
2 Standards. (a) In order to promote compliance with the  
3 requirements of law, the Division shall issue and, from time  
4 to time, may amend or revise rules and regulations contain-  
5 ing minimum standards of assessment and appraisal performance.  
6 Such standards shall relate to: adequacy of tax maps and  
7 records; types and qualifications of personnel; methods and  
8 specifications for the appraisal or reappraisal of property;  
9 and administration. For failure to meet the standards con-  
10 tained in such rules and regulations the Division may suspend,  
11 in whole or in part, performance of the assessment or ap-  
12 praisal function by a county.

13           (b) If the Division finds that a county has failed or  
14 is failing to meet the standards contained in the rules or  
15 regulations in force pursuant to paragraph (a) of this sec-  
16 tion, it shall notify the county assessor of the fact and  
17 nature of the failure. The notice shall be in writing and  
18 shall be served upon the county assessor and the county  
19 governing board.

20           (c) If within one year from the service of the notice  
21 the failure has not been remedied, the Division may, at any  
22 time during the continuance of such failure, issue an order  
23 requiring the county assessor and county governing board  
24 to show cause why the authority of the county with respect  
25 to assessments or any matter related thereto should not be  
26 suspended; shall set a time and place at which the Director  
27 of the Division shall hear the county assessor and county  
28 governing board on the order; and after such hearing shall  
29 determine whether and to what extent the assessment function  
30 of the county shall be so suspended.

31           (d) During the continuance of a suspension pursuant to  
32 paragraph (c) of this section, the Division shall succeed to  
33 the authority and duties from which the county has been sus-  
34 pended and shall exercise and perform the same. Such exer-  
35 cise and performance shall be a charge on the suspended  
36 county. The suspension shall continue until the Division  
37 finds that the conditions responsible for the failure to meet



38 the minimum standards contained in the rules and regulations  
39 of the Division have been corrected.

40 (e) Any county aggrieved by a determination of the  
41 Division made pursuant to this section or alleging that its  
42 suspension is no longer justified may have review of such  
43 determination or continued suspension as provided in the  
44 state administrative procedure act by a proceeding in the  
45 \_\_\_\_\_ court.

1 Section 14. County Assessor. (a) On and after  
2 January 1, 19\_\_ the county assessor shall be appointed by  
3 the chief executive officer of the county and shall hold  
4 office for an indefinite term for a term of five years.  
5 No person shall be eligible for appointment as county asses-  
6 sor who does not hold an assessor's certificate issued by the  
7 Division pursuant to section 2 of this act.

8 (b) A county assessor may be removed from office by  
9 the chief executive officer of the county or by the Com-  
10 missioner of the state tax agency. Such chief executive  
11 officer may not remove such assessor, except for cause and  
12 the Commissioner may remove such assessor only for failure  
13 to comply with the orders of the Division. Add provision  
14 making appropriate statute relating to hearings and appeals  
15 applicable, or supply procedural detail.

16 (c) Notwithstanding any provision of this section, any  
17 county assessor holding office on the effective date of this

18 act by virtue of election by the people shall be entitled to  
19 complete the term for which he was elected.

20   (d) If other statutes or provisions of local law do  
21 not affirmatively empower county assessors to assess,  
22 appraise and classify property, use this subsection to con-  
23 fer such power.  

1 Section 15. Governing Valuations.   Each local taxing  
2 unit   shall be bound by the assessed valuations established  
3 by the county assessor for all property subject to its tax-  
4 ing power.

1 Section 16. Multi-county Assessment Districts.<sup>4</sup> (a) Any  
2 two or more contiguous counties may enter into an agreement  
3 for joint or cooperative performance of the assessment  
4 function.

5 (b) Such agreement shall provide for;

6 (1) The division, merger or consolidation of  
7 administrative functions between or among the parties, or  
8 the performance thereof by one county on behalf of all the  
9 parties.

10 (2) The financing of the joint or cooperative  
11 undertaking.

12 (3) The rights and responsibilities of the par-  
13 ties with respect to the direction and supervision of work  
14 to be performed under the agreement.

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<sup>4</sup> The possibility of including this paragraph may depend in a particular state on constitutional or statutory considerations.

15                   (4) The duration of the agreement and procedures  
16 for amendment or termination thereof.

17                   (5) Any other necessary or appropriate matters.

18                   (c) The agreement may provide for the suspension of  
19 the powers and duties of the office of county assessor in  
20 any one or more of the parties.

21                   (d) Unless the agreement provides for the performance  
22 of the assessment function by the assessor of one county for  
23 and on behalf of all other counties party thereto, the agree-  
24 ment shall prescribe the manner of appointing the assessor,  
25 and the employees of his office, who shall serve pursuant to  
26 the agreement. Each county party to the agreement shall be  
27 represented in the procedure for choosing such assessor. No  
28 person shall be appointed assessor pursuant to an agreement  
29 who could not be so appointed for a single county. Except to  
30 the extent made necessary by the multi-county character of the  
31 assessment agency, qualifications for employment as assessor  
32 or in the assessment agency, and terms and conditions of  
33 work shall be similar to those for the personnel of a single  
34 county assessment agency. Any county may include in any one  
35 or more of its employee benefit programs an assessor serving  
36 pursuant to an agreement made under this section and the em-  
37 ployees of his assessment agency. As nearly as practicable,  
38 such inclusion shall be on the same basis as for similar em-  
39 ployees of a single county only. An agreement providing for

40 the joint or cooperative performance of the assessment func-  
41 tion may provide for such assessor and employee coverage in  
42 county employee benefit programs.

43 (e) No agreement made pursuant to this section shall  
44 take effect until it has been approved in writing by the  
45 Commission of the state tax agency and the attorney gen-  
46 eral.

47 (f) Copies of any agreement made pursuant to this sec-  
48 tion, and of any amendment thereto, shall be filed in the  
49 office of the Secretary of State and the state office of  
50 local government.

1 Section 17. State Performance of County Assessment  
2 Function. The governing board of a county may, by reso-  
3 lution, request the state tax agency to assume the county  
4 assessment function and to perform the same in and for the  
5 county. If the Commissioner of the state tax agency finds  
6 that direct state performance of the function is necessary or  
7 desirable to the economic and efficient performance thereof,  
8 he may direct the Division to undertake such performance pur-  
9 suant to the request. Unless otherwise authorized by law,  
10 the Division shall undertake and perform the function only  
11 after the execution of a suitable agreement between the  
12 county and the state tax agency providing for responsibil-  
13 ity for costs. During the continuance of performance of the  
14 county assessment function by the Division, the office and

15 functions of the county assessor shall be suspended, and the  
16 performance thereof by the Division shall be deemed per-  
17 formance by the county assessor.

1       Section 18. Discontinuance of Certain Assessors'  
2 Offices. On and after /date/ assessment of property for pur-  
3 poses of taxation, unless pursuant to agreement as author-  
4 ized in Section 16 of this act, shall be only by the county  
5 and state in accordance with law. However, any assessor in  
6 office on /date/ who is serving a fixed term as provided by  
7 statute or local law may continue in office until the expira-  
8 tion of such term, and the jurisdiction of which he is the  
9 assessor shall continue to have the assessment function pre-  
10 viously conferred upon it until the expiration of such term.  
11 Any vacancy in an elective or appointive office permitted to  
12 continue by reason of this section shall be filled only for  
13 the unexpired portion of the term.

1       Section 19. Effective Date. /Insert effective date./

### C. PROPERTY TAX ASSESSMENT STANDARDS AND EQUALIZATION\*

The laws of most states provide for the assessment of property at market value. Nevertheless, fractional assessment is a pervasive practice. Recent assessment ratio findings indicate that on a nationwide basis, residential real estate is being assessed at less than 30 percent of market value. Moreover, most states have not equalized local assessment levels at any uniform percentage of market value.

One possible course of action is for state tax authorities to order local tax officials to raise depressed assessment levels to the legal valuation standard.

For states not wanting to take this approach, the conflict between law and practice can be resolved by amending state assessment laws to bring them into harmony with fractional valuation practice. Either of two courses of action appears to be possible. One, a state can repeal the full value assessment laws, select a percentage figure which conforms most nearly to prevailing local assessment practices, and direct that assessment levels be brought into line with this fractional valuation standard. Two, a state can give assessors discretion to assess property within their respective jurisdictions at any uniform percentage of current market value (subject to the enforcement of a specific minimum level of assessment). In this case the state supervisory agency should determine annually by assessment ratio studies the average level of assessment in each county and make this information available to taxpayers.

The draft legislation incorporates the second approach -- the flexible local assessment standard -- reinforced by state assessment ratio findings. The requirement of a minimum level guards against the danger that the quality of assessing will deteriorate if the assessment level is too low.

To secure intracounty tax equalization, the draft legislation requires all classes of property within a county to be assessed at a uniform percentage of current market value. The legislation directs the state tax agency to make county assessment ratio studies and, following the example set by Oregon, to give their findings the widest possible circulation. The features of this legislation which provide for maximum publicity to be given assessment ratio and related information are of special importance because they would furnish knowledge on the basis of which administration and compliance could be improved.

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\*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

To secure intercounty equalization, the draft legislation directs a taxing unit such as a sewer district lying in more than one county to apportion its levy among the counties in which it is situated in accordance with the market value determinations derived from assessment ratio studies made by the state tax agency. This approach, pioneered by Wisconsin, permits an equitable distribution of the tax load without state-ordered adjustments in local assessment levels.

#### Suggested Legislation

¶ Title should conform to state requirements. The following is a suggestion: "An act establishing assessment standards and performance measurements; establishing interdistrict and intradistrict tax equalization procedures, and for related purposes."¶

(Be it enacted, etc.)

1        Section 1. Definitions. (a) "Current market value" means  
2 the estimated price a property would bring in an open market  
3 and under the then prevailing market conditions in a sale  
4 between a willing seller and a willing buyer, both conversant  
5 with the property and with prevailing general price levels.  
6            (b) "Assessment level" means the percentage relation-  
7 ship which the assessed value of taxable property bears to its  
8 current market value.  
9            (c) "Assessment ratio study" means the comparison,  
10 on a sampling basis, of the current market value determined  
11 from the best information available which may include, but is  
12 not limited to appraisals, deed recordings, documentary or tax  
13 stamps and statements of parties to the transaction with their  
14 assessed valuations, and the application of statistical pro-  
15 cedures to determine assessment levels and to measure nonuni-  
16 formity of assessments.

17 (d) "Average dispersion" means the percentage which  
18 the average of the deviations of the assessment ratios of  
19 individual sold [or appraised] properties bears to their  
20 median ratio.

1 Section 2. Tax Base Determination. All classes of taxable  
2 property shall be assessed at the same percentage of current  
3 market value within each county. No assessment level shall  
4 be lower than [ ] percent of current market value as  
5 found by the assessment ratio studies made by the [Division  
6 of Property Taxation of the state tax agency]. Whenever the  
7 prevailing general assessment level within a county, as shown  
8 in an assessment ratio study, is below the minimum assessment  
9 level in force pursuant to this section and the [Division of  
10 Property Taxation of the state tax agency] deems it necessary  
11 to the proper administration of the tax laws to order such  
12 uniform percentage adjustments in the assessment base, it may  
13 issue such order. Whenever such prevailing general assessment  
14 level is 10 percent or more below the minimum assessment level  
15 in force pursuant to this section, the county assessor shall  
16 make such uniform percentage adjustment in the assessment base  
17 as is necessary to secure compliance with law. The failure  
18 of the [Division of Property Taxation of the state tax agency]  
19 to issue an order pursuant to this paragraph shall be of no  
20 evidentiary significance in any proceeding for the abatement  
21 or modification of an assessment.



1        Section 3. Preparation of Assessment Ratio Studies.<sup>1</sup> The  
2        Division of Property Taxation of the state tax agency annu-  
3        ally shall make and issue comprehensive assessment ratio  
4        studies of the average level of assessment, the degree of  
5        assessment uniformity and overall compliance with assessment  
6        requirements for each major class of property in each county  
7        in the state. In order to determine the degree of assessment  
8        uniformity and compliance in the assessment of major classes  
9        of property within each county, the Division of Property  
10       Taxation of the state tax agency shall compute the average  
11       dispersion.

1        Section 4. Notice to Assessor and chief county fiscal  
2        officer; Hearing. (a) At least sixty days prior to the  
3        issuance of an assessment ratio study, the Division of Property  
4        Taxation of the state tax agency shall furnish each county  
5        assessor and each chief county fiscal officer a copy of the  
6        tentative assessment ratio study for his county. The copy  
7        shall be accompanied by a notice stating that, unless the  
8        assessor or chief county fiscal officer files a written  
9        demand for a hearing thereon, the tentative assessment ratio  
10       study, together with all findings contained therein, shall be  
11       final.

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<sup>1</sup>See note 2, page 15.

12           (b) Upon demand for hearing filed pursuant to paragraph  
13 (a) of this section, the Division of Property Taxation of the  
14 state tax agency shall fix a hearing thereon. Such hearing  
15 shall be not less than ten days nor more than twenty days  
16 from the date when the demand therefor is received, but in  
17 no event shall such hearing be less than five days from the  
18 date notice is served upon the county assessor and chief  
19 county fiscal officer of the county from which a demand has  
20 been filed.

21           (c) As promptly as may be after such hearing, the  
22 Division of Property Taxation of the state tax agency shall  
23 inform the county assessor and chief county fiscal officer  
24 whether it has determined to make any changes in the tentative  
25 assessment ratio study, and if so, of their precise content.  
26 If the county assessor or chief county fiscal officer is not  
27 satisfied with such study as then proposed to be issued, he may  
28 have review of any finding or findings contained therein which  
29 formed the basis of the demand for hearing, as provided in the  
30 state administrative procedure act by a proceeding in the  
31 \_\_\_\_\_ court.

32           (d) For the purposes of this section, the assessor for  
33 a multi-county assessment district shall be deemed the assessor  
34 in and for every county for which he is in fact the assessor by  
35 virtue of the agreement made pursuant to cite appropriate  
36 section of statute authorizing multi-county assessment districts.

1        Section 5. Publication of Assessment Ratio Information.  
2        Immediately on the issuance thereof, the [Division of Property  
3        Taxation of the state tax agency] shall publish each of its  
4        assessment ratio studies and shall publish a summary of each  
5        such study in convenient form. The [Division of Property  
6        Taxation of the state tax agency] shall take such additional  
7        steps as may be appropriate to disseminate to the general  
8        public the information contained in its studies.

1        Section 6. Property Tax Equalization. (a) Whenever, in  
2        the view of the [Division of Property Taxation of the state  
3        tax agency], an assessment ratio for a particular class of  
4        property within a county deviates to the degree that a uniform  
5        adjustment in the assessment base is necessary for the proper  
6        administration of the tax laws, the [Division of Property Tax-  
7        ation of the state tax agency] shall order the county assessor  
8        to make such uniform adjustments in the assessment base as are  
9        necessary to remove such deviation. A deviation of 10 percent  
10       or more shall require the [Division of Property Taxation of the  
11       state tax agency] to issue such order. The failure of the  
12       [Division of Property Taxation of the state tax agency] to issue  
13       an order pursuant to this paragraph shall be of no evidentiary  
14       significance in any proceeding for the abatement or modification  
15       of an assessment.

16                (b) In any case where a [tax levying unit of government]  
17       is situated in more than one county, the state and the [tax

18 levying unit of government] shall apportion their tax levies  
19 among the various counties in the same proportion that the  
20 current market value of the property subject to the tax of  
21 the [tax levying unit of government] in each county bears to  
22 the current market value of all property subject to the tax  
23 of the [tax levying unit of government]. Such apportionment  
24 shall be based upon the current market value determinations  
25 derived from the annual assessment ratio studies made by the  
26 [Division of Property Taxation of the state tax agency]. There-  
27 after the tax rates of the [tax levying unit of government]  
28 shall be fixed in the respective counties in such manner as is  
29 calculated to raise the amounts so apportioned when applied to  
30 the assessed values therein.

1        Section 7. Effective Date. [Insert effective date.]

#### D. PROPERTY TAX REVIEW AND APPEAL PROCEDURE\*

In many states the hierarchy of administrative and judicial review and appeal agencies for the protection of the property taxpayers is elaborate; but actual protection under the various systems is illusory because, first, the tribunals to which the taxpayer must appeal are not well constituted and staffed for the purpose and second, the burden of proving his case is too onerous and costly. The small taxpayer, in particular, is helpless if he has no simple, inexpensive, and dependable recourse. While numerous states have been undertaking to improve assessment administration by such means as better state supervision, better training for assessors, statewide revaluations, experimentation with fractional assessment, and the use of assessment ratio studies for equalization purposes, they have tended to ignore the need to improve the procedure for assessment review and appeal.

This legislation provides procedures for the hearing and determination of taxpayer protests of assessments. Such protests would be heard by county assessors or local boards of property tax review or, in the case of state assessed property, by the commissioner of the state tax agency. Appeals could be taken from these initial review agencies to a state tax court, established by the suggested act. At each level of review, emphasis is placed on informality of procedure. At the state tax court level a small claims procedure is established.

The legislation specifically provides that the parties to an assessment protest proceeding may make use of data contained in assessment ratio studies. In any proceeding relating to a protested assessment the court or other review agency is directed to accept as conclusive evidence of inequitable assessment a proven deviation of 10 percent or more from the relevant county assessment ratio and grant appropriate relief.

Since other provisions of the suggested legislation here presented make such assessment ratio studies freely available, the result should be a simplification of evidence gathering and presentation in litigation relating to assessments. The appeals procedure above is patterned along the general lines of the Maryland and Massachusetts review systems.

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\*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act establishing a state tax court; providing for protests of assessments, and for related purposes."]

(Be it enacted, etc.)

1       Section 1. Jurisdiction to Hear Protest. A taxpayer who  
2       desires to protest an assessment of his property may make such  
3       protest as provided in this act. Jurisdiction to hear and  
4       determine protest of assessments shall be only in the courts  
5       and agencies upon whom such jurisdiction is conferred by this  
6       act.

1       Section 2. Assessors and Boards of Review. (a) In all  
2       counties of less than \_\_\_\_\_ population there shall be a  
3       [local board of property tax review] to consist of [specify  
4       membership, method of appointment and term]. Such board shall  
5       hear and determine assessment protests, and shall have power  
6       to alter or modify any protested assessment in order that it  
7       may conform with law. In connection therewith, it may make  
8       such review of assessments and order such equalization thereof  
9       as may be necessary. At any time when the county assessor has  
10      in his regular employ [three] or more appraisers holding  
11      appraiser's certificates issued by the [Division of Property  
12      Taxation of the state tax agency] one of such appraisers shall  
13      sit with and advise the board: provided that no appraiser

14 shall sit with the board on its hearing of, or advise the board  
15 concerning any protest of an assessment of property previously  
16 appraised by him.

17 (b) In any county of \_\_\_\_\_ or more population, the  
18 county assessor shall have in his regular employ at least  
19 three appraisers holding appraiser's certificates issued by  
20 the Division of Property Taxation of the state tax agency.  
21 In any such county, the county assessor shall have the functions  
22 and jurisdiction of a local board of property tax review and  
23 there shall be no such board. In hearing and determining a  
24 protest of an assessment the assessor shall be assisted by an  
25 appraiser regularly employed in his office who has not previously  
26 appraised the property in question.

27 (c) If the assessment function is performed by an assessor  
28 acting for and on behalf of more than one county as provided in  
29 an agreement made pursuant to cite appropriate section of  
30 state statute authorizing multi-county assessment districts,  
31 a protest of assessment shall be heard and determined by the  
32 assessor's office functioning under such agreement, if the  
33 office has in its regular employ at least three appraisers  
34 holding appraiser's certificates from the Division of Property  
35 Taxation of the state tax agency or a local board of property  
36 tax review established by the agreement.

37 (d) In the case of property assessed by the state,  
38 neither a local board of property tax review nor a county

39 assessor shall have jurisdiction to hear or determine a pro-  
40 test. Any such protest shall be heard and determined by the  
41 Commissioner of the state tax agency.

42 (e) Review of determinations of a local board of  
43 property tax review, a county assessor when acting on a  
44 protest of assessment, and of determinations of the Commis-  
45 sioner of the state tax agency when acting on a protest of  
46 assessment, may be had only in the State Tax Court.

1 Section 3. Initiation of Protest. (a) Within thirty  
2 days of his receipt of a notice of assessment or reassessment  
3 of property, the owner thereof may protest such assessment or  
4 reassessment. Such protest shall be in writing on a form  
5 provided by the county assessor Division of Property Tax-  
6 ation of the state tax agency. Such protest may include or  
7 be accompanied by a written statement of the grounds for the  
8 protest, and may include a request for a hearing. The protest,  
9 together with the accompanying statement, if any, shall be  
10 filed with the county assessor having jurisdiction to hear the  
11 protest or the local board of property tax review, as the  
12 case may be. Thereupon, such county assessor or local board  
13 of property tax review, if a hearing has been requested,  
14 shall fix the time and place where the protest shall be heard  
15 and shall serve a notice thereof on the protesting taxpayer.

16 (b) If the taxpayer has requested a hearing, but does  
17 not appear in person, he may appear by an agent. Such agent



18 shall have power to appear for and act on behalf of the  
19 protesting taxpayer only if the protest states the taxpayer's  
20 intention so to appear and clearly identifies the agent.

21 (c) Any agent who appears for or with a taxpayer at  
22 a hearing held pursuant to this section shall not be deemed  
23 to be engaged in the practice of any licensed trade or profes-  
24 sion by reason of such appearance.

25 (d) At, or in connection with any hearing held pursuant  
26 to this section, the protesting taxpayer shall be entitled to  
27 the assistance of an agent and such other persons as he may  
28 wish.

1 Section 4. Tax Court. (a) There is hereby established the  
2 State Tax Court which, for administrative purposes only, shall  
3 be in the state tax agency, but which shall be an independent  
4 administrative tribunal. The Court shall consist of a chief  
5 judge and four associate judges, appointed by the Governor  
6 with the consent of the state senate with the consent of the  
7 state legislature. The term of each judge of the Court shall  
8 be six years. The initial appointments shall be as follows:  
9 the chief judge for a term of six years; one associate judge  
10 for a term of two years; one associate judge for a term of  
11 three years; one associate judge for a term of four years;  
12 and one associate judge for a term of five years. Vacancies  
13 on the Court shall be filled for the unexpired term in the

14 same manner as appointments to full terms. During his con-  
15 tinuance in office neither the chief judge nor an associate  
16 judge shall have any other employment, but shall devote full  
17 time to his duties as such judge.

18 (b) Subject only to review by the state supreme court,  
19 the State Tax Court shall have jurisdiction to determine all  
20 appeals from determinations of the local board of property  
21 tax review, the county assessor, and the Commissioner of the  
22 state tax agency relative to protested assessments. The  
23 State Tax Court may affirm, reverse, or modify any determination  
24 of the local board of property tax review, county assessor  
25 when acting on a protested assessment, or the Commissioner of  
26 the state tax agency when acting on a protested assessment.

27 (c) Any taxpayer dissatisfied with the disposition of  
28 his protested assessment by the local board of property tax  
29 review, county assessor, or Commissioner of the state tax  
30 agency may appeal therefrom to the State Tax Court by filing  
31 with such Court a written notice of appeal and serving on the  
32 appropriate county assessor or the Commissioner of the state  
33 tax agency, as the case may be, a certified copy of such notice.  
34 In order to be valid and effective, any such notice shall be  
35 filed and served within thirty days of the disposition from  
36 which the appeal is to be taken.

37 (d) Consistent with this act and state statutes appli-  
38 cable to proceedings of administrative tribunals, the State  
39 Tax Court shall provide by rule for practice before it and the

40 conduct of its proceedings.

41 (e) The State Tax Court may hear and determine all  
42 issues of fact and of law de novo, but a determination of a  
43 local board of property tax review, county assessor, or the  
44 Commissioner of the state tax agency shall be affirmed  
45 unless contrary to a preponderance of the evidence.

46 (f) If a protested assessment cannot otherwise be  
47 brought into conformity with law, the State Tax Court may  
48 order such adjustments with respect to other assessments of  
49 property as are necessary to produce full conformity with law.

50 (g) Appeals from determinations of the State Tax Court  
51 may be taken to the state supreme court only on questions of  
52 law. Provide procedures for appeals to the state supreme  
53 court.

1 Section 5. Taking of Testimony. (a) Any judge of the  
2 State Tax Court, or any employee of such court, designated in  
3 writing for the purpose by the chief judge, may administer  
4 oaths, and the Court may summon and examine witnesses and  
5 require by subpoena the production of any returns, books,  
6 papers, documents, correspondence, and other evidence perti-  
7 nent to the matter under inquiry, at any designated place of  
8 hearing, and may authorize the taking of a deposition before  
9 any person competent to administer oaths. In the case of a  
10 deposition, the testimony shall be reduced to writing by the  
11 person taking the deposition or under his direction and the

12 deposition shall then be subscribed by the deponent.

13           (b) The protesting taxpayer whose assessment is in  
14 question and the county assessor or Commissioner of the  
15 state tax agency<sup>7</sup> may obtain an order of the State Tax Court  
16 summoning witnesses or requiring the production of any returns,  
17 books, papers, documents, correspondence and other evidence  
18 pertinent to the matter under inquiry in the same manner in  
19 which witnesses may be summoned and evidence may be required  
20 to be produced for the purpose of trials in the                       
21 court<sup>7</sup>. Any witness summoned or whose deposition is taken  
22 shall receive the same fees and mileage as witnesses in the  
23                      court<sup>7</sup>.

1 Section 6. Small Claims. (a) The State Tax Court shall  
2 establish by rule a small claims procedure which, to the great-  
3 est extent practicable, shall be informal. The Court shall  
4 take special care to provide all protesting taxpayers, where-  
5 ever located within the state, reasonable and convenient access  
6 to the Court, and shall sit at such times and places as may be  
7 appropriate to promote such accessibility.

8           (b) Any protesting taxpayer who, pursuant to the dis-  
9 position of his protest by the county assessor, local board  
10 of property tax review<sup>7</sup>, or Commissioner of the state tax  
11 agency<sup>7</sup>, would incur a tax liability of less than \$1,000.00<sup>7</sup>  
12 by reason of the protested assessment in the first year to  
13 which such assessment applies may elect to employ such

14 procedure to appeal from such disposition, upon payment of  
15 a [\$2.00] filing fee.

16 (c) The appellant shall file with the State Tax Court  
17 a written statement of the facts in the case, together with a  
18 waiver of the right to appeal to the [state supreme court].  
19 The State Tax Court shall cause a notice of the appeal and a  
20 copy of such statement to be served on the county assessor or  
21 [Commissioner of the state tax agency] whose assessment is in  
22 question. If the sole defense offered is that the property  
23 was not overassessed, no further pleadings shall be required.

1 Section 7. Appeal to [state supreme court]. [Use this  
2 section to provide procedure for appeal of tax court determi-  
3 nations to state supreme court.]

1 Section 8. Effect of Assessment Ratio Evidence. (a) Reports  
2 of assessment ratios contained in assessment ratio studies of  
3 the [Division of Property Taxation of the state tax agency]  
4 shall be conclusive evidence of what the reported ratio is in  
5 fact, unless a party to such proceedings establishes that such  
6 ratio is not supported by substantial evidence or was derived  
7 or established in a manner contrary to law.

8 (b) In any proceeding relating to a protested assessment  
9 it shall be a sufficient defense of such assessment that it is  
10 accurate within reasonable limits of practicality: provided

11 that a proven deviation of ten percent or more from the rele-  
12 vant county assessment ratio shall establish conclusively the  
13 the invalidity of such defense.

1 Section 9. Effective Date. [Insert effective date.]

COLLECTION OF LOCAL NONPROPERTY 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

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.

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.



## 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.

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.

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.

## COUNTY SUBORDINATE SERVICE AREAS\*

It is a primary responsibility of government to provide and finance services needed by its citizens. Where units of general local government--counties, cities, and towns--fail to provide such services their citizens will demand the services from a higher level of government or utilize the special district device for obtaining them.

Numerous draft bills are directed toward giving greater authority and flexibility to units of general local government in order that they might better meet the needs of their citizens. The following proposal is directed to the same end. It is designed to minimize the need for special districts by authorizing counties to create subordinate service areas in order to provide and finance one or more governmental services within a portion of the county.

The Bureau of the Census indicates that, as of 1962, counties in 20 states have utilized the subordinate service area device to provide governmental services. Where counties do not possess authority to create such areas there are only three alternatives available. First, the service can be financed from general county revenues which are derived from all residents of the county; second, the area desiring the service can create a special district; and third, the residents can do without the service. The first alternative frequently may be politically unacceptable as well as highly inequitable in a given county and the third alternative may be incompatible with the public interest. Consequently, unless counties possess the authority to create subordinate service areas, demand is generated for the creation of numerous special districts.

The following suggested act is designed to authorize counties to establish subordinate service areas in order to provide any governmental service or additions to existing countywide services in such areas which the county is otherwise authorized by law to provide. Section 2 defines a county subordinate service area and

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\* Included in the Council of State Governments' SUGGESTED STATE LEGISLATION.

Section 3 permits the county governing body to set tax rates within such areas at a different level than the overall county tax rate, in order that only those receiving a particular service pay for it. It should be noted that a constitutional amendment may be necessary in some states to permit use of this device.

Sections 4, 5, 6, and 7 spell out the procedures for establishing a subordinate service area. Initiation of the proceedings may be undertaken by the county governing body either on its own motion or following receipt of a petition by the residents of the area. Under the latter procedure a public hearing would be required and final approval of creation of such an area by the county governing body in either case would be subject to referendum proceedings commenced by the qualified voters within the territory of the proposed area.

Section 8 provides authority for extension of the boundaries of an existing service area pursuant to the same procedures authorized for their creation.

Section 9 directs the county governing body to provide an annual budget for the service authorized within the subordinate service area and to supply the revenues, either property taxes or service charges, to finance the service.

#### Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act to authorize counties to establish subordinate service areas in order to provide and finance governmental services."]

(Be it enacted, etc.)

- 1     Section 1. Purpose. It is the purpose of this act to
- 2     provide a means by which counties as units of general local
- 3     government can effectively provide and finance various govern-
- 4     mental services for their residents.

1     Section 2. Definition. "Subordinate service area" means an  
2 area within a county in which one or more governmental services  
3 or additions to countywide services are provided by the county  
4 and financed from revenues secured from within that area.

1     Section 3. Establishment of Service Areas. Notwithstanding  
2 any provision of law requiring uniform property tax rates on  
3 real or personal property within a county, counties may establish  
4 subordinate service areas to provide and finance any governmental  
5 service or function which they are otherwise authorized to  
6 undertake.<sup>1</sup>

1     Section 4. Creation by [County Governing Body]. The  
2 [county governing body] may establish a subordinate service area  
3 in any portion of the county by adoption of an appropriate  
4 resolution. The resolution shall specify the service or services  
5 to be provided within the subordinate taxing area and shall  
6 specify the territorial boundaries of the area. Adoption of  
7 a resolution shall be subject to the publication, hearing, and  
8 referendum provisions of law relating to [county governing body].

1     Section 5. Creation by Petition.

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1. If the service is to be financed wholly or partly from property tax revenues, some states may have to amend constitutional provisions requiring uniform tax rates within a county.

2 (a) A petition signed by    percent of the qualified  
3 voters within any portion of a county may be submitted to the  
4    county governing body requesting the establishment of a sub-  
5 ordinate county service area to provide any service or services  
6 which the county is otherwise authorized by law to provide.  
7 The petition shall include the territorial boundaries of the  
8 proposed service area and shall specify the types of services  
9 to be provided therein.

10 (b) Upon receipt of the petition, and verification of the  
11 signatures thereon by the    county clerk, the    county governing  
12 body shall, within    days following verification, hold a  
13 public hearing on the question of whether or not the requested  
14 subordinate service area shall be established.

15 (c) Within    days following the holding of a public  
16 hearing, the    county governing body, by resolution, shall  
17 approve or disapprove the establishment of the requested sub-  
18 ordinate county service area. A resolution approving the  
19 creation of the subordinate service area may contain amendments  
20 or modifications of the area's boundaries or functions as set  
21 forth in the petition.

1 Section 6. Publication and Effective Date. Upon passage  
2 of a resolution authorizing the creation of a subordinate county

3 service area, the county governing body shall cause to be  
4 published once in   newspapers of general circulation a  
5 concise summary of the resolution. The summary shall include  
6 a general description of the territory to be included within  
7 the area, the type of service or services to be undertaken in  
8 the area, a statement of the means by which the service or  
9 services will be financed, and a designation of the county  
10 agency or officer who will be responsible for supervising the  
11 provision of the service or services. The service area shall  
12 be deemed established 30 days after publication or at such  
13 later date as may be specified in the resolution.

1 Section 7. Referendum.

2 (a) Upon receipt of a petition signed by   percent  
3 of the qualified voters within the territory of the proposed  
4 service area prior to the effective date of its creation as  
5 specified in Section 6, the creation shall be held in abeyance  
6 pending referendum vote of all qualified electors residing  
7 within the boundaries of the proposed service area.

8 (b) The county governing body shall make arrangements  
9 for the holding of a special election not less than 30 nor  
10 more than 60 days after receipt of such petition within the  
11 boundaries of the proposed taxing area. The question to be

12 submitted and voted upon by the qualified voters within the  
13 territory of the proposed service area shall be phrased sub-  
14 stantially as follows:

15            Shall a subordinate service area be established  
16            in order to provide -- service or services to  
17            be provided<sup>7</sup> financed by revenue sources<sup>7</sup>?  
18 If a majority of those voting on the question favor creation  
19 of the proposed subordinate service area, the area shall be  
20 deemed created upon certification of the vote by the county  
21 board of elections<sup>7</sup>. The county board of elections<sup>7</sup> shall  
22 administer the election.

1            Section 8. Expansion of the Boundaries of a Subordinate  
2 Service Area. The county governing body<sup>7</sup>, on its own motion  
3 or pursuant to petition, may enlarge any existing subordinate  
4 county service area pursuant to the procedures specified in  
5 Sections 4 through 7. Only qualified voters residing in the  
6 area to be added shall be eligible to participate in the  
7 election; Provided that, if percent<sup>7</sup> of qualified voters  
8 residing in the existing service area petition to participate

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2. This percentage should be the same as that specified  
in Section 7 (a).



9 therein, all qualified voters residing in the proposed service  
10 area shall be eligible.

1       Section 9. Financing. Upon adoption of the next annual  
2 budget following the creation of a subordinate county service  
3 area the [county governing body] shall include in such budget  
4 appropriate provisions for the operation of the subordinate  
5 service area including, as appropriate, a property tax levied  
6 only on property within the boundaries of the subordinate taxing  
7 area or by levy of a service charge against the users of such  
8 service within the area, or by any combination thereof.

1       Section 10. Effective Date. [Insert effective date.]

## 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

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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.

## 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

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.

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.

STATE ASSISTANCE TO LOCAL DEBT MANAGEMENT\*

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.

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 local government 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

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\*Included in Council of State Governments' SUGGESTED STATE LEGISLATION.

financial condition sometimes are obliged to sell their bonds on less favorable terms because germane information has not been provided.

The suggested Act provides for state technical assistance and sets standards for official statements on local debt offerings by authorizing a designated state agency:

(1) To encourage, conduct or participate in training and educational programs on debt management procedures and practices for the benefit of local officials, and in connection therewith, to cooperate with associations of public officials, professional organizations, university faculties and other specialists.

(2) To 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 could 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) To 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 own financial self-interest.

(4) 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.

(5) To regulate the content of official statements on local debt offerings through the provision of appropriate guidelines and specifications.

Suggested Legislation

1 Title should conform to state requirements. The  
2 following is a suggestion: An act to provide state  
3 assistance and regulation regarding local government  
4 debt offerings."/

(Be it enacted, etc.)

TITLE I

TECHNICAL AND ADVISORY ASSISTANCE

1 Section 1. Purpose. It is the intent of this Title to  
2 facilitate, through state technical and advisory assistance,  
3 the marketing of local government bonds and other long-term  
4 obligations at the lowest possible net interest cost.

1 Section 2. Definitions. (a) "Local government" means  
2 a county, city, village, town, township, school district,  
3 and other special-purpose district, authority, or public  
4 corporation within the state and authorized by the state to  
5 issue bonds and other long-term obligations.

6 (b) "Governing body" means the body or board charged with  
7 exercising the legislative authority of a local government.

8 (c) "Agency" means insert name of the appropriate agency  
9 of state government<sup>1</sup>.

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<sup>1</sup> The agency charged with this function will vary from state to state. Normally it will be the agency, if any, that is charged generally with concern or oversight regarding local government debt or that provides general services or assistance to local governments or, in the absence of such agency, the agency that is responsible for the marketing of the state's obligations.



10 (d) "Chief financial officer" means the comptroller,  
11 treasurer, director or finance or other local government  
12 official charged with managing the fiscal affairs of a  
13 local government.

14 (e) "Bonds" means debt payable more than one year after  
15 date of issue or incurrence, issued pursuant to the laws  
16 authorizing local government borrowing.

1 Section 3. Authorization of State Technical and Advisory  
2 Assistance. The Agency is authorized and directed to pro-  
3 vide technical and advisory assistance regarding the issuance  
4 of long-term debt to those local governments whose governing  
5 bodies request such assistance. Such assistance shall include,  
6 but need not be limited to, (a) advice on the marketing of  
7 bonds by local governments, (b) advisory review of proposed  
8 local government debt issues, including the rendering of  
9 opinions as to their legality, (c) conduct of training courses  
10 in debt management for local financial officers, and (d) pro-  
11 motion of the use by local governments of such tools for  
12 sound financial management as adequate systems of budgeting,  
13 accounting, auditing, and reporting.

1 Section 4. Advisory Review of Proposed Local Government  
2 Debt Issues. At the request of the governing body of any  
3 local government, the Agency is authorized to review a

4 proposed debt issue and to render an advisory opinion based  
5 upon the facts concerning the proposed issue. Any request  
6 for an advisory review shall be submitted to the Agency  
7 in such form and with such information as the Agency may  
8 require.

1 Section 5. State Sale of Local Government Security Offer-  
2 ings. At the request of the governing body of any local  
3 government, the Agency is authorized to market such local  
4 government's security offerings by preparing bond issues for  
5 sale, advertising for sealed bids, receiving bids at its  
6 offices, and making the award to the bidder that offers the  
7 most favorable terms. The Agency may, at its discretion,  
8 offer for concurrent sale the bonds of several local govern-  
9 ments. State sale of a local security offering under this  
10 section shall in no way imply state guarantee of such debt  
11 issue.

1 Section 6. Powers and Duties of the Agency. The Agency  
2 shall have the following powers and duties:

3 (a) To require such reports from local governments as will  
4 enable it adequately to provide the technical and advisory  
5 assistance authorized by this Act. The reports shall provide  
6 the necessary information for a complete file on local govern-  
7 ment debt, which shall be kept open for public inspection at  
8 Agency offices.

9 (b) To encourage, conduct or participate in training  
10 courses in debt and general fiscal management and procedures  
11 and practices for the benefit of local officials, and in  
12 connection therewith, to cooperate with associations of  
13 public officials, business and professional organizations,  
14 university faculties, or other specialists.

15 (c) To conduct studies in debt management, including  
16 ways and means of appraising the terms of alternative bids.  
17 The Agency may employ expert consultants to assist in such  
18 studies.

19 (d) To employ or contract for the services of personnel  
20 necessary to carry out the provisions of this Act, subject  
21 to the provisions of statutory citation.

22 (e) All departments, divisions, boards, bureaus, commis-  
23 sions, or other agencies of the state government shall provide  
24 such assistance and information as, not inconsistent with law,  
25 the Agency may require to enable it to carry out its duties  
26 under this Act.

27 (f) To compile and publish annually a report on its tech-  
28 nical assistance and advisory activities. Such report shall  
29 include detailed information on local government long-term  
30 debt issued and retired during the previous calendar or fiscal  
31 year and outstanding at the close of the previous calendar or  
32 fiscal year, and such additional statistical data on local  
33 government finances that are obtained by the Agency pursuant  
34 to par. (a) of this section.

## TITLE II

### STANDARDS FOR OFFICIAL STATEMENTS ON LOCAL DEBT OFFERINGS

1       Section 1. Purpose. It is the intent of this Title to  
2 facilitate the marketing of bonds by local governments by  
3 providing minimum standards as to the kinds of information  
4 to be included in advertising notices and sales prospectuses.

1       Section 2. Authorization. The [Agency] shall prepare  
2 regulations concerning the minimum content of the notice of  
3 sale advertisements and prospectuses required by [statutory  
4 citation]. Regulations as to the content of such notices and  
5 prospectuses may make an appropriate differentiation among  
6 types of bond issues and types of local government.

1       Section 3. Notice of Sale Advertisement. The notice of  
2 sale advertisement shall set forth the purpose of the bond  
3 issue, principal amount of the bond issue, designation of  
4 type of bond issue according to the authorizing statute,  
5 date of issue, the method of bond repayment, showing the  
6 denominations and maturities offered for sale, the basis of  
7 bidding and award of the bonds, the date, hour, and place that  
8 bids will be opened, the name of the chief financial officer  
9 who will furnish additional information about the issuing  
10 local government or the bond sale, and any other appropriate  
11 information, in accordance with the regulations prepared by  
12 the [Agency].

1       Section 4. Prospectus. The prospectus shall: (1) report  
2 the past, current, and estimates as to the future finances  
3 of the bond-issuing local government; (2) include selected  
4 information concerning the financial administration and  
5 organization of the bond-issuing local government; (3) con-  
6 tain selected information concerning the economic and social  
7 characteristics of the community in which the issuing local  
8 government is located, including such data as will permit  
9 investors and other interested parties to appraise the ability  
10 of the borrowing local government to assume the obligation;  
11 and (4) contain any other appropriate information, in accor-  
12 dance with the regulations prepared by the Agency.

1       Section 5. Inclusion of Additional Information. The chief  
2 financial officer may, at his discretion, include information  
3 in the notice of sale advertisement and in the prospectus in  
4 addition to that specified as the minimum content in regula-  
5 tions issued by the Agency.

1       Section 6. Bid Forms. The Agency shall prepare and  
2 supply standard bid forms to be used by local governments in  
3 securing bids from prospective purchasers.

### TITLE III

#### SEPARABILITY AND EFFECTIVE DATE

1       Section 1. Insert separability clause.

1       Section 2. Insert effective date.

## 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.

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.

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."<sup>7</sup>

(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 governments<sup>7</sup>.

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.<sup>1</sup> Such local units of general government are

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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 Commerce<sup>7</sup> or    percent of  
13 total state and local tax collections in the state during  
14 the preceding fiscal year<sup>7</sup>    dollars<sup>7</sup>. 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.<sup>2</sup> If, at any time during the life of such certificate,

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<sup>2</sup> 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]7  
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]7, 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]7 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]7 are hereby  
3 repealed.



1 Section 13. [Insert separability clause.]

1 Section 14. [Insert effective date.]

## INVESTMENT OF IDLE FUNDS (Amended) \*

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, has estimated 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. This amended version of the suggested act repeats draft language appearing in the volumes for 1962 and 1963<sup>1</sup> and adds a new section providing for state technical assistance to local governments in investing idle funds, a matter previously covered by statement only.

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.

1 The Council of State Governments, Program of Suggested Legislation, 1962 and 1963 (Chicago: November 1961 and October 1962).

Some local governments fail to avail themselves of the 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. 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 expertise 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. The suggested act provides for such state technical assistance to local governments.

Many of the states provide for regular investment of their own surplus funds, even allowing the transfer of funds from special accounts so that they can be pooled for short-term investment purposes. It is suggested that states consider the possibility of extending their investment facilities to those local governments that elect to participate to pool their funds for short-term investment. The additional funds thus made available to the state investment pool would make for greater flexibility in the state's use of the various short-term investment opportunities available to it. A Montana statute authorizes this type of activity on the part of the state government (Mont. R.C. 79-1202).

The question of how far to go in the type of investments authorized is a matter of judgment 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.

Section 3 of the suggested act authorizes the state official or agency responsible for investing state funds to provide technical assistance to local governments in investing their temporarily idle funds.

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 local 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 by  
10 an agency of the government of the United States up to the  
11 amount so insured;
- 12          (d) ] ]<sup>2</sup>  
13          (e) ] ]<sup>2</sup>
- 14 Provided however that the provisions of this act shall not

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<sup>2</sup> Individual states may wish to augment the list of authorized investments set forth in this Section.

15 impair the power of a municipality, county, school district  
16 or other local governmental unit or political subdivision to  
17 hold funds in deposit accounts with banking institutions as  
18 otherwise authorized by law.

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

1     Section 3. The state [insert title of the state official  
2 or agency responsible for investing state funds] is authorized  
3 and directed to assist local governments in investing funds  
4 that are temporarily in excess of operating needs by:

5       (a) explaining investment opportunities to such local  
6 governments through publication and other appropriate means;

7       (b) acquainting such local governments with the state's  
8 practice and experience in investing short-term funds; and

9       (c) providing technical assistance in investment of idle  
10 funds to local governments that request such assistance.

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

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.

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,<sup>1</sup> 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.

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<sup>1</sup> Council of State Governments, State Technical Assistance to Local Governments, RR-9 (Chicago, June, 1962).

STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS  
ON LOCAL PROPERTY TAXING AND BORROWING POWERS

States have a legitimate and strong concern with the property taxing and borrowing powers and practices of their local governments. The property tax provides seven out of eight local tax dollars, making it the most important source of local government revenue. The prudent use of debt in a responsible and locally responsive manner is indispensable to the financing of capital outlays on a scale adequate to meet pressing local government needs.

In many states, existing constitutional and statutory restrictions on the taxing and borrowing powers of local governments in terms of the assessed valuation of locally taxable property, coupled with requirements for specific referendum approval of proposed bond issues and property tax levies, actually handicap local governments in supplying their citizens and industries with public services and community facilities indispensable to growth and prosperity. They constitute a serious impediment to local self-government, handicap the self-reliance of local communities, and impel them toward increased financial dependence on the state and the Federal Government.

These restrictions are the hangover of the reaction to abuses of county and municipal taxing and borrowing power dating back as much as a century. They have been rendered obsolete by subsequent developments in the quality and scale of local governments and their financing, in the competence of public finance officials, in more widespread citizen oversight over the conduct of local government, and in the market mechanism for the sale of municipal securities.

While these restrictions may restrain the total volume of property taxes and borrowing to some extent, any benefits are vastly outweighed by their tendency to lead local governments into devious taxing, borrowing, and financial practices and by their undesirable effect on intergovernmental relationships, the structure of local government and on the property tax system itself. By resorting to revenue bond financing to evade debt limits, local governments pay higher interest rates, unnecessarily adding to the cost of government. Where local property taxes and debt are limited to a percentage of assessed valuation, the amount of the limitation tends to be determined by local assessment practices.



A. REPEAL OF CONSTITUTIONAL RESTRICTIONS  
ON LOCAL TAXING AND BORROWING POWERS

States' limitations on the taxing and borrowing powers of local governments should be confined to basic principles and relationships of enduring and basic importance. States are urged to repeal constitutional restrictions limiting local government property taxes and indebtedness by reference to the local base for property taxation. The following suggested constitutional amendment removes from the state constitution any details regarding local government taxing and borrowing powers and gives the legislatures authority to establish and revise local tax and debt policy through the normal legislative process.

Suggested Constitutional Amendment

1           Section 1. The Legislature may pass laws regulating the  
2 taxing and borrowing powers of the [local governments] [political  
3 subdivisions] of the state.

1           Section 2. [All parts of the Constitution in conflict with  
2 this amendment are hereby repealed.] [Sections (identify those  
3 sections of Constitution to be repealed) are hereby repealed.]

1           Section 3. [Insert appropriate language, consistent with  
2 the referendum requirements for amending the Constitution and with  
3 state election laws, for submission of the proposed amendment to  
4 the electorate.]

## B. AUTHORIZATION FOR LOCAL PROPERTY TAX LEVIES

Statutory provisions governing the imposition of property taxes by local governments should vest policy responsibility for fixing tax rates with the elected local governing boards. The strength of our federal form of government, as intended by the Constitution, depends in large measure on the vitality of local governments. These governments can remain responsive to the service needs of a dynamic population only if they possess the taxing powers essential for these tasks. Without the means to help themselves, they have no choice but to default on the needs of their citizens or seek financial aid from higher levels of government.

The following suggested legislation to vest responsibility for determining property tax rates with local governing boards is modeled after a portion of the California Government Code (Division 4, Art. 2., Secs. 43090 - 43096). It would require

- (a) the local legislative body to determine annually the amount of the property tax levy;
- (b) the property assessing authority to certify annually the assessed value of taxable property within the jurisdiction; and
- (c) the local legislative authority to fix the tax rate at a level sufficient to produce the amount of the tax levy necessary to cover operating costs and the debt obligations for the fiscal year.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize local property tax levies."]

(Be it enacted, etc.)

1           Section 1. Purpose. It is the purpose of this act to enable  
2 local governments to levy property taxes.

1           Section 2. Determination of Amount to be Raised from Property  
2 Taxes. The local legislative body shall meet annually on [insert  
3 date], and by ordinance fix the amount of money necessary to be  
4 raised by taxation upon the taxable property in its jurisdiction, as  
5 revenue to operate the various departments and agencies of the local  
6 government and to pay its indebtedness for the current fiscal year.

1           Section 3. Determination of Taxable Property Value. Annually  
2 on or before [insert date], the [insert title of assessor] shall  
3 transmit to the legislative body of each local government a written  
4 statement showing the taxable value of all property within the juris-  
5 diction of the local government. The value shall be ascertained from  
6 the [assessment records] for the year, as equalized and corrected by  
7 the [property tax review agency].

1           Section 4. Determination of Property Tax Rate. On [insert date],  
2 the local legislative body shall fix the tax rate, designating the number

of [mills] [cents upon each hundred dollars (\$100)], using as  
4 a basis the value of property as shown in the written statement  
5 furnished under section 3.

1 Section 5. Sufficiency of Property Tax Rate. The tax rate  
2 shall be sufficient to raise the amount fixed by the legislative  
3 body pursuant to section 2.

1 Section 6. Separability. [Insert separability clause.]

1 Section 7. Effective Date. [Insert effective date.]

#### C. AUTHORIZATION FOR LOCAL GOVERNMENT BORROWING

The intended application of state legislative provisions with regard to local borrowing should be made explicit and designed to facilitate rather than hamper intelligent choice among suitable alternative forms of borrowing by local governments. This objective is more likely to be realized if limitations imposed upon the borrowing power of an individual local government apply uniformly to all types of long-term debt (subject only to specifically defined exceptions).

Statutes regarding local borrowing powers, while providing the usual safeguards as to the purposes for which bonds may be issued, maturity schedules, interest rates, and the like should also:

1. Allow maximum flexibility for local government borrowing with any governing state provisions being as comprehensive and uniform in character as possible; and

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1 The National Municipal League has issued a Model Municipal Bond Law (New York: 1962) which covers the basic elements for state legislation on local borrowing powers. It includes the standard kind of debt limitation (as a percentage of assessed valuation), although in the introduction (p. viii) the League expresses reservations concerning this type of debt limitation.

2. Vest authority to incur debt with the governing bodies of local governments, subject only to a permissive referendum if petitioned by the voters and resolved generally by a simple majority vote.

The constitutions of at least fourteen states currently impose no significant limitations on the authority of local governments to incur debt. Tennessee, which is among those fourteen states, statutorily authorizes counties to issue bonds for the construction of certain public works without limitation, but subject to permissive referendum. The following suggested legislation is based on the Tennessee law (Code, Secs. 5-1103 - 5-1125).

#### Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act to authorize local governments to issue debt."

(Be it enacted, etc.)

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

2           (1) "Bond" means a bond, note, or other evidence of indebtedness.

3           (2) "Local government" means a county, city, school district,

4           township, special district, or borough.

1           Section 2. Debt-incurring Power. Every local government

2           political subdivision may contract debts for the construction and

3           acquisition of public buildings and facilities and for the acquisition

4 of land or for [ ], issue its bonds,  
5 notes, or other evidence of indebtedness to finance such activi-  
6 ties, and provide for the rights of the holders of these obli-  
7 gations and to secure these obligations.

1 Section 3. Initial Bond Resolution. Before any bonds are  
2 issued under this act, the local legislative body shall adopt a  
3 resolution which shall state in substance (1) the amount or maximum  
4 amount of bonds to be issued; (2) the purpose or purposes for which  
5 the bonds are to be issued; (3) the rate or maximum rate of interest  
6 which the bonds are to bear; (4) a brief statement of whether the  
7 bonds will be payable from ad valorem taxes levied upon all taxable  
8 property in the local jurisdiction, or if from some other source,  
9 the source from which the bonds will be payable. [Insert appropriate  
10 language concerning publication and/or posting of the resolution  
11 notice.]

1 Section 4. Petition Protesting Issuance of Bonds. No vote of  
2 the qualified electors upon a proposition for the issuance of bonds  
3 by any local government under this act shall be necessary if the  
4 initial resolution is adopted by a majority of the members of the  
5 governing body of the local government, unless within [thirty (30)]  
6 days from the date of publication or posting, as the case may be, of

7 the initial resolution so adopted, a petition protesting the issuance  
8 of the bonds signed by at least [ ] percent of the qualified  
9 electors of the jurisdiction shall have been filed with [Insert title of  
10 official with whom such petitions are filed]. If the petition shall have  
11 been filed with the [ ] within [thirty (30)] days from the  
12 publication or the posting, as the case may be, of the initial resolution,  
13 no bonds shall be issued under this act without the assent of a majority  
14 of qualified electors who vote upon a proposition for the issuance of  
15 the bonds in the manner provided by Sections 5 and 6 of this act. For  
16 the purpose of this act, a qualified elector shall be any resident or  
17 citizen of the local jurisdiction who was qualified to vote for members  
18 of the [state legislature] at the general election next preceding the  
19 filing of such petition, or who, on the date of the filing of such  
20 petition, is qualified to vote for members of the [state legislature].  
21 No qualified elector shall be permitted to withdraw his signature from  
22 such a petition after signing the petition.

1 Section 5. Election Resolution. If it is necessary to hold an  
2 election on the proposition to issue the bonds pursuant to Section 4  
3 of this act, such election shall be called by the [local legislative  
4 body] which shall adopt a resolution (herein called the "election  
5 resolution") which shall supersede by its adoption the initial  
6 resolution and shall state in substance (1) the amount or maximum

7 amount of bonds to be issued; (2) the purpose or purposes stated  
8 in general terms for which the bonds are to be issued; (3) the  
9 rate or maximum rate of interest which the bonds are to bear;  
10 (4) a brief statement of the fact whether the bonds will be  
11 payable (i) from all local revenue, from whatever source  
12 derived, (ii) from ad valorem taxes levied upon all the taxable  
13 property in the local jurisdiction, or (iii) exclusively from  
14 the revenues of the facility; and (5) the date on which the  
15 election will be held. The election resolution shall be  
16 published in full at least once, not less than thirty (30)  
17 days nor more than sixty (60) days prior to the date fixed  
18 for the election, in a newspaper published in the local juris-  
19 diction or, if there be no such newspaper, the election reso-  
20 lution shall be placed in five (5) conspicuous places within  
21 the jurisdiction of the local government, not less than thirty  
22 (30) days nor more than sixty (60) days prior to the date  
23 fixed for the election, and no other notice thereof need be  
24 published or given.

1 Section 6. Conduct of Election. Except as herein otherwise  
2 provided, and as far as may be reasonable, the manner of conducting  
3 the election, keeping the poll lists, counting and canvassing the



4 votes, certifying the returns, declaring the results, and doing  
5 all acts relating to the election shall conform to the mode or  
6 method of procedure provided by law for the qualification of  
7 voters and the holding of a general election.

1 Section 7. Limitation on Election Contests. No suit, action  
2 or other proceeding contesting the validity of the bond election  
3 shall be entertained in any of the courts of this state, unless the  
4 suit, action, or other proceedings is commenced within ten (10)  
5 days from the date of the canvassing of the returns and the  
6 determination and declaration of the results thereof.

1 Section 8. Waiting Period for New Election. If an election  
2 on the proposition to issue bonds is had pursuant to Section 4 of  
3 this act and a majority of the electors voting on such proposition  
4 do not vote in favor of the issuance of the bonds in question, the  
5 proposition shall not again be the subject of the initial resolution  
6 until three (3) months have expired from the date of such election.

1 Section 9. Separability. Insert separability clause.

1 Section 10. Effective Date. Insert effective date.

## REAL ESTATE TRANSFER TAX\*

With repeal of the Federal real estate transfer tax (to take effect January 1, 1968) some states may wish to consider imposing such a tax. About a dozen states, the District of Columbia, and a number of local governments already do so: some for revenue purposes only; others for its byproduct value as well--for the information on real estate prices such a tax provides, useful in assessment of real estate for property tax purposes.

The accompanying suggested legislation is based in part on the West Virginia "Realty Transfer Tax" statute (W. Va. Code 11, Art. 22). The suggested draft language includes, in addition to the usual provisions for imposition and collection of the tax, with definitions and exemptions, a provision (Section 4) requiring that a sworn statement of the actual selling price or current market value of the transferred property be attached to each deed presented for recordation. A provision of this kind would strengthen administration of the tax and facilitate the ready availability of sales price data for sales-assessment ratio studies in connection with property tax administration.

### Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act imposing a real estate transfer tax."

(Be it enacted, etc.)

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

2       (1) "Deed" means insert the definition applied in the  
3 state's law pertaining to real estate.

4       (2) "Registrar" means insert title of local official  
5 responsible for recording deeds.

6       (3) "Value" means: (i) in the case of any deed not a  
7 gift, the amount of the full actual consideration therefor,

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.

8 paid or to be paid, including the amount of any lien or liens  
9 thereon; and (ii) in the case of a gift, or any deed with  
10 nominal consideration or without state consideration, the  
11 estimated price the property would bring in an open market  
12 and under the then prevailing market conditions in a sale  
13 between a willing seller and a willing buyer, both conversant  
14 with the property and with prevailing general price levels.

1 Section 2. Imposition of Tax. A tax is imposed at the  
2 rate of  $\frac{1}{100}$  for each \$ of value or fraction thereof  
3  $\frac{1}{100}$  per centum of the value, which value is declared in  
4 the affidavit required by Section 4, upon the privilege of  
5 transferring title to real property.

1 Section 3. Collection of Tax.

2 (a) If any deed evidencing a transfer of title subject to  
3 the tax herein imposed is offered for recordation, the Registrar  
4 shall ascertain and compute the amount of the tax due  
5 thereon and shall collect such amount as prerequisite to  
6 acceptance of the deed for recordation.

7 (b) The amount of tax shall be computed on the basis of  
8 the value of the transferred property as set forth in the  
9 affidavit required by Section 4 of this act.

1 Section 4. Declaration of Value.

2 (a) Each deed evidencing a transfer of title subject to  
3 the tax as herein provided shall have appended thereto an

4 affidavit of the parties to the transaction or their legal  
5 representatives declaring the value of the property trans-  
6 ferred. If the transfer is not subject to the tax as herein  
7 provided, the affidavit shall specify the reasons for the  
8 exemption.

9 (b) The form of affidavit shall be prescribed by the  
10 state tax agency which shall provide an adequate supply of  
11 such forms to each Registrar in the state.

12 (c) The Registrar shall transmit two true copies of the  
13 affidavit to the Assessor who shall insert the most recent  
14 assessed value of each parcel of the transferred property on  
15 both copies and shall transmit one copy to the state tax  
16 agency.

1 Section 5. Disposition of Proceeds. Insert appropriate  
2 language as to disposition of proceeds.<sup>1</sup>

1 Section 6. Powers and Duties of state tax agency.

2 (a) The state tax agency may prescribe such rules and  
3 regulations as reasonably necessary to facilitate and expedite  
4 the imposition, collection, and administration of the tax  
5 imposed pursuant to this act.

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<sup>1</sup> Disposition of the proceeds is a matter for state policy deter-  
mination. Some states will wish to use the entire proceeds for  
state purposes. Others will wish to share the real estate trans-  
fer tax with their local governments; still others will make the  
entire proceeds available to their local governments.

6 (b)   If not already provided by applicable statutes  
7 insert additional subsections conferring such powers and  
8 imposing such duties as the   state tax agency   may need to  
9 compel the production of taxpayer records, to extend the time  
10 for the filing of the declaration of value, and to provide  
11 for refunding erroneous payments.  

1 Section 7. Penalty for Recording Without Tax. Any  
2   Registrar   who willfully shall record any deed upon which a  
3 tax is imposed by this act without collecting the proper  
4 amount of tax required by this act based on the declared  
5 value indicated in the affidavit appended to such deed shall,  
6 upon conviction, be fined   fifty dollars (\$50)   for each  
7 offense.

1 Section 8. Penalty for Falsifying Value. Any person who  
2 shall willfully falsify the value of transferred real estate  
3 on the affidavit required by Section 4 of this act shall, upon  
4 conviction, be subject to a fine of not more than   \$1,000 or  
5 to imprisonment of not more than one year, or to both such  
6 fine and imprisonment   for each offense.

1 Section 9. Exemptions. The tax imposed by this act shall  
2 not apply to a transfer of title:

- 3 (1) recorded prior to the effective date of this act;  
4 (2) to the United States of America, this state, or any  
5 instrumentality, agency, or subdivision thereof;

- 6 (3) solely in order to provide or release security for  
7 a debt or obligation;
- 8 (4) which confirms or corrects a deed previously recorded;
- 9 (5) between husband and wife, or parent and child with  
10 only nominal actual consideration therefor;
- 11 (6) on sale for delinquent taxes or assessments;
- 12 (7) on partition;
- 13 (8) pursuant to mergers of corporations;
- 14 (9) by a subsidiary corporation to its parent corporation  
15 for no consideration, nominal consideration, or in sole con-  
16 sideration of the cancellation or surrender of the subsidiary's  
17 stock.
- 1 Section 10. Effective Date. [Insert effective date.]

## II. URBAN PROBLEMS

### Introductory Statement

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 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 are determined by the residents of the areas and their political leaders to be preferable in the light of all attendant circumstances.

In brief, the Commission proposes enactment by state legislatures of a range 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 jurisdictional problems in their metropolitan areas. The Commission also proposes that Federal grants-in-aid to local governments for urban development be channeled through the states in cases where the state provides significant financial and technical assistance. Finally, given the many uncoordinated sources of development activities and the number of local units in metropolitan areas, the Commission urges the use of metropolitan planning and coordinating machinery effectively geared into the political decision-making processes within the entire metropolitan area.

The Commission suggests that, to the extent practicable, existing general units of government be empowered to exercise functions which will minimize the effect of the disparities in services and related costs that result from the multiplicity of separate jurisdictions with varying relationships between demands for services and available resources in metropolitan areas. The emphasis is upon areawide approaches to problems that are best met areawide.



## 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

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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 Chapter 516, Laws of 1963, State of Oregon.

#### 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.<sup>1</sup>

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

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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<sup>7</sup> 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, <sup>7</sup>insert names of other types of units of government  
11 exercising general government powers<sup>7</sup> 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 <sup>7</sup>insert name of governing  
15 body<sup>7</sup> of the central county; or

16 (2) A petition requesting such an election shall be signed  
17 by at least <sup>7</sup>\_\_\_\_\_ <sup>7</sup> 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. <sup>2</sup>

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 body<sup>7</sup> 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

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<sup>2</sup> 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 government] to be selected by the insert name  
16 of chief elected official, such as mayor or council  
17 president] of such cities and insert name of other units];  
18 provided that if the combined population of such cities  
19 and insert name of other units] exceeds \_\_\_\_\_ ],  
20 they shall be entitled to one more member for each  
21 \_\_\_\_\_ ] additional population or fraction thereof.  
22 The members from such cities and insert name of other  
23 units] shall be elected as follows: The insert name of  
24 chief elective official] 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 \_\_\_\_\_ ] o'clock at the  
28 office of the insert name of governing body] of the  
29 central county. The chairman of such county governing body]  
30 shall preside. After nominations are made, ballots shall be  
31 taken and the \_\_\_\_\_ ] candidate(s) receiving the  
32 highest number of votes cast shall be considered elected.<sup>3</sup>

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

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<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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

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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.

1 Section 23. 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 zoning<sup>1</sup> recommended by the Municipal Government Study Commission of the North Carolina Assembly<sup>2</sup> and an earlier North Carolina statute on extraterritorial subdivision regulation.<sup>3</sup>

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

<sup>1</sup> North Carolina, Session Laws (1959), c. 1204.

<sup>2</sup> Report (Raleigh, N. C., 1958), pp. 18-19.

<sup>3</sup> 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 153).

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 munic-  
27 ipality 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 [ ]  
49 board [ ] [ ] 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 [ ]  
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 or 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.<sup>1</sup>

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

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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 amends.



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. In 1962 there were 18,323 special district governments, half again as many as there were in 1952.<sup>1</sup> Much of the increase occurred in metropolitan areas; between 1957 and 1962, the number of special districts in the 212 areas officially recognized as SMSA's in 1962 rose from 3,736 to 5,411.<sup>1</sup> While most special districts are located outside city borders, a sizeable number (probably over 500) serve or are included in the metropolitan area central cities.

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

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

<sup>1</sup> Part of the increase, however, resulted from a reclassification by the Bureau of the Census of certain public authorities from dependent agencies to independent special districts.

chose, 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.<sup>2</sup>

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, Laws 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

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<sup>2</sup> 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.

to provide and coordinate certain specified public services and functions for particular areas." 7

(Be it enacted, etc.)

Title I

Purpose of Act, and Definitions

1       Section 1. It is hereby declared to be the public  
2       policy of the state of [                     ] to provide for  
3       the people of the populous metropolitan areas in the state  
4       the means of obtaining essential services not adequately  
5       provided by existing agencies of local government. The  
6       growth of urban population and the movement of people into  
7       suburban areas has created problems of sewage and garbage  
8       disposal, water supply, public transportation, planning,  
9       parks and parkways which extend beyond the boundaries of  
10      cities, counties and special districts. For reasons of  
11      topography, location and movement of population, and land  
12      conditions and development, one or more of these problems  
13      cannot be adequately met by the individual cities, counties  
14      and districts of metropolitan areas. It is the purpose of  
15      this act to enable cities and counties to act jointly to  
16      meet these common problems in order that the proper growth  
17      and development of the metropolitan areas of the state may  
18      be assured and the health and welfare of the people resid-  
19      ing therein may be secured.

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.<sup>1</sup>

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.

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

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

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

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

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

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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 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 [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. <sup>2</sup> 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

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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) 4 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. <sup>3</sup>

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<sup>3</sup> 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:<sup>4</sup>

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

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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 <sup>5</sup> /.

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 <sup>5</sup> /.

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.

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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 Corporation<sup>6</sup>

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

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<sup>6</sup> 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. <sup>7</sup>

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

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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.]

## 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 on municipalities or counties, 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.

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

## 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 agency. 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.

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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.<sup>1</sup>

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.<sup>2</sup> 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

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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.<sup>3</sup> The [/Court/] shall have original jurisdiction  
3 upon appeal to review the final orders of the Director. Any  
4 party may appeal to the [/Court/] 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 [/Court/] 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

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<sup>3</sup> 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.

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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

<sup>√</sup>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 municipalities<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup> 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

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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              <sup>73</sup>  
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.

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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.

## CONTROL OF URBAN WATER SUPPLY AND SEWERAGE SYSTEMS

With increasing concentrations of population in urban areas, there is a growing need for planning and provision of reliable domestic water supply and waste disposal systems. Water problems are especially critical on the fringes of urban areas where improper or indiscriminate reliance on individual wells or waste disposal systems can create future problems. Sound planning and development of water supply and sewerage facilities is essential to assure the availability of an adequate supply of safe water, prevent pollution, eliminate health nuisances and hazards, and conserve ground water. It is also important for encouragement of economical and orderly development of land for residential, industrial, and other purposes, since the type and location of water and sewerage facilities is a critical determinant of land use.

From the standpoint of adequate planning and provision of water supply and sanitation, the various parts of an urban or metropolitan area are likely to require different kinds of water supply and sewerage facilities. Variations depend on such conditions as population density, lot size, land contour, soil porosity, and ground water conditions. Thus in some portions of urban communities, community water supply and sewerage systems are essential. In others, individual water supply and sewerage systems (private wells and septic tanks) may be permissible temporarily if provision is made for connection to a community system. In such cases, it is important that these individual facilities be adequate and safe, and that they be discontinued once the community system becomes available. In still other parts of the urban area conditions are amenable to installation of individual water supply and sewerage systems for an indefinite period, provided there is proper assurance as to their safety and adequacy by the State health department. The proper selection of, or balance among, public systems and individual water wells and septic tanks can best be achieved if an appropriate State statutory framework for making the decisions exists.

In view of the need for adequate water supply and sewerage system planning and control and the varying requirements of different parts of urban areas, the Advisory Commission on Intergovernmental Relations in its report, Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas, has 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." Three model State statutes to meet these needs have been developed by the U. S. Public Health Service with the assistance of a special advisory committee that included representatives from the Public Health Service, the Commission, the Housing and Home Finance Agency, the National League of Cities, American Society of Planning Officials, National Association of Counties, National Association of Home Builders, Water Systems Council, Conference of State Sanitary Engineers, and the Septic Tanks Industry. The first statute, "The Urban Water Supply and Sewerage Systems Act," has been endorsed by a number of groups including the State and Territorial Health Officers, the Conference of State Sanitary Engineers, and the Interstate Conference on Water Problems.

"The Urban Water Supply and Sewerage Systems Act" provides for the development of an official community plan for water and sewerage systems consistent with the needs of the area. Such plans for each community would delineate the areas within which community systems must be provided, the areas where individual systems may be used on an interim basis, and the areas where individual systems would be generally permissible.

Under the statute, designated municipalities are required to submit to the State Department of Health, usually within one year, a "community plan" for water supply and sewerage systems. The plan must assign each portion of the area covered to one of three categories of water and sewerage service:

(1) Portions where community water supply and sewerage systems must be provided to protect public health. The systems must be designed to permit connection to a larger system when the latter becomes available.

(2) Portions where individual water supply and sewerage systems may be installed during an interim period pending availability of programmed community water supply and sewerage systems. The interim individual systems must be adequate and safe, and provision must be made for discontinuing them when the community systems become available.

(3) Portions where individual water supply and sewerage systems may be installed and used for an indefinite period, if the State Health Department judges their use to be adequate and safe.

Criteria for determining under which category each of the portions of the urban area shall be classified include: present and future density of population, lot size, land contour, porosity and absorbency of soil, ground water conditions, type of construction of water supply and sewerage systems, and size of the proposed development.

The community plan must also: (1) provide for orderly extension and expansion of community water supply and sewerage systems; (2) assure adequate sewage treatment facilities for safe and sanitary treatment of sewage and other liquid waste; (3) delineate portions of the urban areas which community systems may be expected to serve within five years, ten years, after ten years, and any portions in which provision of such services is not reasonably foreseeable; (4) establish procedures for delineating and acquiring necessary rights-of-way or easements for community systems; and (5) set forth a time schedule and propose methods of financing construction and operation of each programmed community system and the estimated cost.

The community plan must be submitted for review to official planning agencies having jurisdiction, including any areawide planning bodies, for consistency with programs of planning for the urban area, and the reviews must be transmitted to the State Health Department with the proposed plan.

The statute authorizes the State Health Department to adopt regulations to: (1) control, limit, or prohibit installation and use of individual and community water supply systems and sewerage systems; (2) establish procedures for preparation, submission, revision, review, and approval or disapproval of community plans; (3) prescribe the minimum contents of the plan; and (4) describe the criteria on which approval of the plans shall be based.

The State Health Department has authority to approve or disapprove community plans; and all its actions, including disapprovals, are subject to judicial review.

The Health Department is also empowered by the act to provide technical assistance to municipalities in preparing and coordinating community plans; to administer State grants to municipalities for preparing community plans; and to accept and administer Federal grants.

The act makes installation of water supply and sewerage systems dependent on existence of a community plan. It provides that within

a specified time after submission of the community plan, no individual or community water supply or sewerage system may be installed in the areas covered by the community plan unless a community plan has been approved for such areas, and the systems and installations are consistent with the plan. Further, no State or local agencies may grant building permits or approve subdivision plans, maps, or plats unless individual or community water supply and sewerage systems covered by such permits, plans, maps, or plats are found to conform with the community plan.

The second statute, "Water Well Construction and Pump Installation Act," regulates the development of ground water systems and the location, construction, repair, and abandonment of water wells, and the installation and repair of pumps and pumping equipment to assure protection against possible contamination and to maintain a safe and potable water supply.

The third statute, "Individual Sewage Disposal Systems Act," regulates the design, construction, installation, operation, and maintenance of individual disposal systems and the proper planning thereof.

Such State legislation would go a long way toward properly meeting the critical water needs of urban areas, assure sound and orderly urban development, protect public health, and provide a reasonably economic and long term solution to the problems of obtaining and disposing of water.

#### Suggested Legislation

##### A. URBAN WATER SUPPLY AND SEWERAGE SYSTEMS

Title should conform to State requirements.

(Be it enacted, etc.)

1           Section 1. Short Title. This Act shall be known and  
2    may be cited as the "(State) Urban Water Supply and Sewerage  
3    Systems Act."

1           Section 2. Findings and Policy. (a) The (State) legisla-  
2    ture finds that properly planned and installed individual and

3 community water supply systems and sewerage systems in and near  
4 urban areas--

5 (1) assure the availability of adequate and safe  
6 water for various purposes, including drinking and culinary  
7 use;

8 (2) promote the health and welfare of citizens of  
9 this State by preventing the pollution of ground and  
10 surface water;

11 (3) eliminate nuisances and hazards to the public  
12 health;

13 (4) contribute to proper conservation and use of  
14 ground water;

15 (5) encourage economical and orderly development of  
16 land for residential, industrial, and other purposes, and  
17 are essential to the orderly processes of urban growth.

18 (b) It is, therefore, declared to be the public policy of  
19 this State to eliminate and prevent health and safety hazards and  
20 to promote the economical and orderly development and utilization  
21 of water and land resources of this State by encouraging planning  
22 and provision for adequate individual and community water supply  
23 systems and sewerage systems and by providing for the standards  
24 and regulations necessary to accomplish these purposes.

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

2           (a) "Community plan" means a comprehensive plan and all  
3 amendments and revisions thereof for the provision to a municipi-  
4 pality or municipalities of both adequate water supply systems  
5 and sewerage systems, adopted by a municipality or municipalities  
6 having authority to provide or having jurisdiction over the  
7 provision of such systems.

8           (b) "Community sewerage system" means any system, whether  
9 publicly or privately owned, serving two or more individual  
10 lots, for the collection and disposal of sewage or industrial  
11 wastes of a liquid nature, including various devices for the  
12 treatment of such sewage or industrial wastes.

13           (c) "Community water supply system" means a source of  
14 water and a distribution system including treatment facilities,  
15 whether publicly or privately owned, serving two or more individ-  
16 ual lots.

17           (d) "Department" means the designated agency presently  
18 having authority to regulate sanitary practices within the State,  
19 usually the State Department of Health.

20           (e) "Individual sewage system" means a single system of  
21 sewers and piping, treatment tanks, or other facilities serving  
22 only a single lot and disposing of sewage or industrial wastes  
23 of a liquid nature, in whole or in part, on or in the soil of the  
24 property, into any waters of this State, or by other methods.

25 (f) "Individual water supply system" means a single system  
26 of piping, pumps, tanks, or other facilities utilizing a source  
27 of ground or surface water to supply only a single lot.

28 (g) "Lot" 1/ means a part of a subdivision or a parcel  
29 of land used as a building site or intended to be used for  
30 building purposes whether immediate or future, which would not be  
31 further subdivided.

32 (h) "Municipality" means a city, town, borough, county,  
33 parish, district, or other public body created by or pursuant to  
34 State law, or any combination thereof acting cooperatively or  
35 jointly.

36 (i) "Potable water" means water free from impurities in  
37 amounts sufficient to cause disease or harmful physiological  
38 effects with the bacteriological and chemical quality conforming  
39 to applicable standards of the Department. 2/

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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. There should be included necessary additional provisions to accommodate the definitions to condominium and cooperative developments where there are individual interests in land occupied by multiple dwellings and multiple occupancy developments on a single lot.

2/ In the absence of available State standards, PHS Drinking Water Standards (PHS Publication 956) are recommended.



40 (j) "Subdivision" 3/ means the division of a single  
41 tract or other parcel of land, or a part thereof, into two or  
42 more lots, for the purpose, whether immediate or future, of sale  
43 or of building development, and shall also include changes in  
44 street lines or lot lines, provided, however, that divisions of  
45 land for agriculture purposes into parcels of more than \_\_\_\_\_  
46 acres not involving any new street or easement of access, shall  
47 not be included within the meaning of "subdivision."

1 Section 4. Community Plans. (a) Each municipality  
2 designated under Section 5(e) of this Act shall, after reasonable  
3 opportunity for public hearing thereon, submit to the Department  
4 a community plan within the time prescribed by the Department  
5 pursuant to Section 6(a) of this Act, and shall from time to  
6 time submit amendments or revisions of such plan as it deems  
7 necessary or as may be required by the Department.

8 (b) Within an appropriate area for development of a  
9 single plan for water and sewerage systems, the required commu-  
10 nity plan, any amendment or revision thereof may be submitted  
11 jointly by the municipalities concerned.

12 (c) Every community plan shall delineate, in accordance  
13 with applicable regulations adopted by the Department pursuant  
14 to Section 5 of this Act, those areas where--

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3/ See footnote 1/.

15 (1) (A) community water supply systems must be  
16 provided;

17 (B) individual water supply systems may be  
18 installed and used during an interim period  
19 pending the availability of a programmed commu-  
20 nity water supply system;

21 (C) individual water supply systems may be  
22 installed and used for an indefinite period.

23 (2) (A) community sewerage systems must be  
24 provided;

25 (B) individual sewerage systems may be  
26 installed and used during an interim period  
27 pending availability of a programmed community  
28 sewerage system;

29 (C) individual sewerage systems may be  
30 installed and used for an indefinite period.

31 (d) In addition, every required community plan shall--

32 (1) provide for the orderly expansion and exten-  
33 sion of community water supply systems and community  
34 sewerage systems in a manner consistent with the needs  
35 and plans of the area;

36 (2) provide for adequate sewage treatment facili-  
37 ties which will prevent the discharge of untreated or

38 inadequately treated sewage or other waste of a liquid  
39 nature into any waters, or otherwise provide for the  
40 safe and sanitary treatment of sewage and other liquid  
41 waste;

42 (3) delineate with all practicable precision  
43 those portions of the municipality in which community  
44 systems may reasonably be expected to serve within five  
45 years, within ten years, and after ten years, and any  
46 portions in which the provision of such services is not  
47 reasonably foreseeable, taking into consideration all  
48 related aspects of planning, zoning, population  
49 estimates, engineering, and economics, and any existing  
50 State plan affecting the development, use, and protection  
51 of water resources;

52 (4) establish procedures for delineating and  
53 acquiring on a time schedule, pursuant to Subsection (d)(3)  
54 of this Section, necessary rights-of-way or easements for  
55 community systems;

56 (5) set forth a time schedule and proposed methods  
57 of financing the construction and operation of each  
58 programmed community system together with the estimated  
59 cost thereof;

60 (6) be submitted for review to official planning  
61 agencies having jurisdiction, including a comprehensive  
62 planning agency with areawide jurisdiction if one exists,  
63 for consistency with programs of planning for the area,  
64 and such reviews shall be transmitted to the Department  
65 with the proposed plans; and

66 (7) include provision for periodic amendment or  
67 revision of the plan.

1 Section 5. Administration--Department Powers and Func-

2 tions. (a) The Department shall adopt and from time to time  
3 amend rules and regulations which provide for--

4 (1) the control, limitation, or prohibition of  
5 installing, and use of individual and community water  
6 supply systems and sewerage systems in accordance with  
7 the provisions of this Act;

8 (2) the procedures in connection with the prepar-  
9 ation, submission, revision, review, and approval or  
10 disapproval of community plans;

11 (3) the minimum contents of such plans;

12 (4) the criteria upon which approval of such  
13 plans shall be based; and

14 (5) such other matters as may be necessary or  
15 appropriate to the administration of this Act.

16           (b) Such regulations in providing criteria for the  
17 delineation in community plans of areas pursuant to Section 4(c)  
18 of this Act, and for the approval of community plans, shall be  
19 formulated so as to implement the policies of this Act as  
20 stated in Section 2, and shall require consideration of the  
21 present and future density of population, size of the lots,  
22 contour of the land, porosity and absorbency of the soil, ground  
23 water conditions and variations therein from time to time and  
24 place to place, including availability of water from unpolluted  
25 aquifers or portions thereof, type of construction of water  
26 supply systems and sewerage systems, size of the proposed  
27 development, and other pertinent factors.

28           (c) Such regulations shall--

29                 (1) require the installation of community water  
30 supply systems and community sewerage systems and the  
31 connection of all premises thereto, if such systems are  
32 reasonably necessary to protect the public health, giving  
33 due consideration to such factors as are set out in  
34 Section 5(b) of this Act. Such systems shall be  
35 designed so as to permit connection to a larger system  
36 at such time as the larger system becomes available;

37                 (2) permit in areas where community water supply  
38 systems or community sewerage systems are not available

39 nor required to be installed under Section 5(c)(1) of  
40 this Act, but are programmed to become available within  
41 a reasonable period of time not to exceed \_\_\_\_\_ years, 4/  
42 individual water supply systems or individual sewerage  
43 systems, or both, provided that: (A) such individual  
44 water supply systems or individual sewerage systems are  
45 adjudged by the Department to be adequate and safe for  
46 use during the period before a community water supply  
47 system or a community sewerage system, as the case may  
48 be, are scheduled to become available, (B) adequate  
49 provisions are made prior to or at the time of the  
50 installation of such individual systems to permit the  
51 discontinuance of their use and the connection of the  
52 premises served thereby to the community water supply  
53 system and the community sewerage system, respectively,  
54 in as economical and convenient a way as can be foreseen.  
55 Such provision for any subdivision shall include either  
56 the posting of a bond, with satisfactory surety, to

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4/ Five years is suggested as a reasonable period of time. The time period should be determined on the basis of experience in the State where this legislation is enacted.

57           secure to the municipality the actual construction and  
58           installation of such systems at a time fixed by the  
59           municipality not in excess of \_\_\_\_ years 5/ and in  
60           accordance with the regulations issued hereunder and with  
61           all other State and municipal requirements, or such other  
62           arrangements as may be deemed necessary and adequate to  
63           accomplish the purposes of this Section; and

64                   (3) permit in areas where community water supply  
65           systems or community sewerage systems are not available  
66           nor required to be installed under Section 5(c)(1) of  
67           this Act, nor programmed to become available within a  
68           reasonable period of time not in excess of \_\_\_\_ years, 6/  
69           individual water supply systems or individual sewerage  
70           systems, or both as the case may be, provided that such  
71           individual systems are adjudged by the Department to be  
72           adequate and safe.

73                   (d) The Department is authorized to issue such additional  
74           regulations as may be necessary to carry out the provisions of  
75           this Act.

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5/ This period should be the same as that fixed in Section 5(c)(2).  
See footnote 4/.

6/ See footnote 5/.

76           (e) The Department shall designate municipalities which  
77 are required to submit community plans, amendments, and revi-  
78 sions thereof in which applicable regulations shall apply as may  
79 be necessary to accomplish the purposes of this Act. The  
80 designation shall take into consideration such factors as present  
81 and future population trends and densities, patterns of urban  
82 growth, geographic features and political boundaries, the loca-  
83 tion and plans for location of utility systems, the distribution  
84 of industrial, commercial, residential, governmental, institu-  
85 tional, and other activities, and the existence of any area for  
86 which comprehensive planning is being undertaken.

87           (f) After public hearing upon not less than sixty (60)  
88 days' prior notice published in one or more newspapers as may be  
89 necessary to assure general circulation throughout the State, 7/  
90 such regulations shall be adopted, amended, or revised.

91           (g) The Department is hereby authorized to approve or  
92 disapprove community plans submitted in accordance with Section 4.  
93 The Department may approve a community plan in part provided that  
94 the part approved includes all the required elements for such

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7/ This requirement should be consistent with the general practice for publication requirements in the State and with any State administrative procedure act which may apply.



95 plan and applies to at least ninety percent of that geographic  
96 area of the municipality for which a plan is required. When  
97 the plan is disapproved, in whole or in part, the Department  
98 shall notify the municipality in writing setting forth the  
99 reasons for such disapproval. Any such disapprovals and any  
100 other actions of the Department under this law are subject to  
101 judicial review as to whether they are arbitrary, capricious,  
102 or unreasonable, and otherwise as provided for under the laws  
103 of this State. 8/

104 (h) The Department, upon request, shall provide technical  
105 assistance and consultation to municipalities in preparing and  
106 coordinating community plans required in Section 4 of this Act,  
107 including revisions of such plans.

108 (i) The Department may conduct studies, surveys, investi-  
109 gations, research, and analyses to accomplish the purposes of  
110 this Act.

111 (j) Use this Subsection to establish a program of State  
112 aid to municipalities for preparing and keeping current commu-  
113 nity plans required by Section 4 of this Act. ]

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8/ If administrative hearings on appeals from actions of the Depart-  
ment are not provided for under other State laws, a section on  
appeals and judicial review should be added.

114 (k) For purposes of this Act, the Department is  
115 authorized to accept and administer Federal grants.

116 (l) For purposes of this Act, the Department shall  
117 cooperate with all appropriate Federal, State, and local units  
118 of government, and with appropriate private organizations.

1 Section 6. Conformance to Approved Community Plan.

2 (a) The Department shall prescribe the time within  
3 which each municipality within areas designated under Section 5  
4 of this Act shall submit a community plan, amendment, or  
5 revision thereof. Such time for the initial submission of a  
6 community plan shall not be greater than one year from the date  
7 of designation of such area, except that the Department may  
8 extend such time for good cause shown.

9 (b) Within six months after the submission of a commu-  
10 nity plan, amendment, or revision thereof, or six months after  
11 the time prescribed in Subsection (a) of this Section for the  
12 submission of a community plan, amendment, or revision thereof,  
13 whichever is earlier, the Department shall approve or disapprove  
14 the community plan, amendment, or revision thereof. Any  
15 community plan, amendment, or revision thereof which has been  
16 submitted in accordance with this Section and which has not been  
17 disapproved by the Department within the time required by this  
18 Section shall be deemed to be approved.

19           (c) After nine months following the submission of a  
20 community plan, amendment, or revision thereof, or nine months  
21 following the time within which a community plan, amendment, or  
22 revision thereof is required to be submitted under Subsection (a)  
23 of this Section, whichever is earlier, or after such later date  
24 as may be established by the Department for good cause shown, no  
25 community water supply system or community sewerage system, or  
26 individual water supply system or individual sewerage system may  
27 be installed in those geographic areas to which such community  
28 plan, amendment, or revision thereof relates unless a community  
29 plan and any required amendments or revisions have been approved  
30 for such areas, and such system and installation are consistent  
31 with such community plan including any required amendment and  
32 revision thereof and with applicable rules and regulations.

33           (d) No State or local authority empowered to grant  
34 building permits or to approve subdivision plans, maps, or plats  
35 shall grant any such permit or approve any such plan, map, or  
36 plat which provides for individual or community water supply  
37 systems or sewerage systems unless such systems are found to be  
38 in conformance with the community plan, amendments, and  
39 revisions thereof approved by the Department and applicable  
40 rules and regulations. 9/ As a condition of such approval, the

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9/ See footnote 8/.

41 transfer of community systems to a municipality may be required  
42 by appropriate State or municipal authority in accordance  
43 with applicable provisions of State law as to compensation.

44 (e) Applicants for building permits and subdivision  
45 approvals, and water supply systems and sewerage systems construc-  
46 tion approval, shall submit to the approving authority such  
47 information in such form as may be reasonably necessary and  
48 required to show compliance with Subsection (c) of this Section.

49 (f) Any violation of Subsection (c) of this Section  
50 shall be punishable by a fine not to exceed \$\_\_\_\_\_. <sup>10/</sup> The  
51 imposition of any such fine shall not bar any other relief or  
52 penalty otherwise applicable.

1 Section 7. Exclusion. Nothing in this Act shall be  
2 construed to prohibit the installation or operation of water  
3 supply systems used solely for purposes not requiring potable  
4 water.

1 Section 8. Appropriation. There is appropriated \$\_\_\_\_\_  
2 to cover necessary expenses of the Department in administering  
3 this Act.

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<sup>10/</sup> Penalty under this Act should be consistent with penalties 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.

1           Section 9. Conflict with Other Laws. The provisions of  
2 any zoning ordinance, subdivision regulation, building code, or  
3 other law or regulation of any municipality of the State  
4 establishing standards designed to afford greater protection to  
5 the public health, safety, and welfare of the community shall  
6 not be limited or superceded by regulations adopted pursuant to  
7 this Act within the area over which the municipality has juris-  
8 diction.

1           Section 10. Severability. [Insert severability clause.]

1           Section 11. Effective Date. [Insert effective date.]

B. WATER WELL CONSTRUCTION AND PUMP INSTALLATION

Title should conform to State requirements\_7

(Be it enacted, etc.)

1           Section 1. Short Title. This Act shall be known and may  
2 be cited as the "(State) Water Well Construction and Pump  
3 Installation Act."

1           Section 2. Findings and Policy. The (State) legislature  
2 finds that improperly constructed, operated, maintained, or  
3 abandoned water wells and improperly installed pumps and  
4 pumping equipment can adversely affect the public health.  
5 Consistent with the duty to safeguard the public health of this  
6 State, it is declared to be the policy of this State to require  
7 that the location, construction, repair, and abandonment of  
8 water wells, and the installation and repair of pumps and  
9 pumping equipment conform to such reasonable requirements as  
10 may be necessary to protect the public health.

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

2           (a) "Abandoned water well" means a well whose use has  
3 been permanently discontinued. Any well shall be deemed  
4 abandoned which is in such a state of disrepair that continued  
5 use for the purpose of obtaining ground water is impracticable.

6           (b) "Construction of water wells" means all acts  
7 necessary to obtain ground water by wells, including the

8 location and excavation of the well, but excluding the installa-  
9 tion of pumps and pumping equipment.

10 (c) "Department" means the designated agency presently  
11 having authority to regulate sanitary practices within the  
12 State, usually the State Department of Health7.

13 (d) "Installation of pumps and pumping equipment" means  
14 the procedure employed in the placement and preparation for  
15 operation of pumps and pumping equipment, including all construc-  
16 tion involved in making entrance to the well and establishing  
17 seals, but not including repairs, as defined in this Section, to  
18 existing installations.

19 (e) "Municipality" means a city, town, borough, county,  
20 parish, district, or other public body created by or pursuant to  
21 State law, or any combination thereof acting cooperatively or  
22 jointly.

23 (f) "Pumps" and "pumping equipment" means any equipment  
24 or materials utilized or intended for use in withdrawing or  
25 obtaining ground water, including, without limitation, seals and  
26 tanks, together with fittings and controls.

27 (g) "Pump installation contractor" means any person,  
28 firm, or corporation engaged in the business of installing or  
29 repairing pumps and pumping equipment.

30 (h) "Repair" means any action which results in a breaking  
31 or opening of the well seal or replacement of a pump.

32 (i) "Well" means any excavation that is drilled, cored,  
33 bored, washed, driven, dug, jetted, or otherwise constructed  
34 when the intended use of such excavation is for the location,  
35 acquisition, or artificial recharge of ground water, but such  
36 term does not include an excavation made for the purpose of  
37 obtaining or for prospecting for oil, natural gas, minerals, or  
38 products of mining or quarrying, or for inserting media or  
39 repressure oil or natural gas bearing formation or for storing  
40 petroleum, natural gas, or other products. 1/

41 (j) "Water well contractor" means any person, firm, or  
42 corporation engaged in the business of constructing water wells.

43 (k) "Well seal" means an approved arrangement or device  
44 used to cap a well or to establish and maintain a junction  
45 between the casing or curbing of a well and the piping or equip-  
46 ment installed therein, the purpose or function of which is to  
47 prevent pollutants from entering the well at the upper terminal.

1 Section 4. Scope. No person shall construct, repair, or  
2 abandon, or cause to be constructed, repaired, or abandoned, any

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1/ Some States may wish to include within the coverage of this defini-  
tion seismological, geophysical, prospecting, observation, or test  
wells.



3 water well, nor shall any person install, repair, or cause to be  
4 installed or repaired, any pump or pumping equipment contrary to  
5 the provisions of this Act and applicable rules and regulations,  
6 provided that this Act shall not apply to any distribution of  
7 water beyond the point of discharge from the storage or pressure  
8 tank, or beyond the point of discharge from the pump if no tank  
9 is employed, nor to wells used or intended to be used as a  
10 source of water supply for municipal water supply systems, nor  
11 to any well, pump, or other equipment used temporarily for  
12 dewatering purposes.

1 Section 5. Authority to Adopt Rules, Regulations, and  
2 Procedures. The Department shall adopt, and from time to time  
3 amend, rules and regulations governing the location, construc-  
4 tion, repair, and abandonment of water wells, and the  
5 installation, and repair of pumps and pumping equipment, and  
6 shall be responsible for the administration of this Act. With  
7 respect thereto it shall--

8 (a) hold public hearings, upon not less than sixty (60)  
9 days' prior notice published in one or more newspapers, as may  
10 be necessary to assure general circulation throughout the State,  
11 in connection with proposed rules and regulations and amendments  
12 thereto; 2/

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2/ This requirement should be consistent with the general practice  
for publication requirements in the State and with any State  
administrative procedure act which may apply.

13 (b) enforce the provisions of this Act and any rules and  
14 regulations adopted pursuant thereto;

15 (c) delegate, at its discretion, to any municipality any  
16 of its authority under this Act in the administration of the  
17 rules and regulations adopted hereunder;

18 (d) establish procedures and forms for the submission,  
19 review, approval, and rejection of applications, notifications,  
20 and reports required under this Act; and

21 (e) issue such additional regulations, and take such  
22 other actions as may be necessary to carry out the provisions of  
23 this Act.

1 Section 6. Prior Permission and Notification. (a) Prior  
2 permission shall be obtained from the Department for each of the  
3 following:

4 (1) The construction of any water well;

5 (2) The abandonment of any water well; and

6 (3) The first installation of any pump or pumping  
7 equipment in any well,

8 in any geographical area where the Department determines such  
9 permission to be reasonably necessary to protect the public  
10 health, taking into consideration other applicable State laws,  
11 provided that in any area where undue hardship might arise by  
12 reason of such requirement, prior permission will not be required.

- 13                   (b) Notification--The Department shall be notified of  
14 any of the following whenever prior permission is not required:
- 15                   (1) The construction of any water well;
  - 16                   (2) The abandonment of any water well;
  - 17                   (3) The first installation of any pump or pumping  
18 equipment in any well; and
  - 19                   (4) Any repair, as defined in this Act, to any  
20 water well or pump.

1                   Section 7. Existing Installations. No well or pump  
2 installation in existence on the effective date of this Act shall  
3 be required to conform to the provisions of Subsection (a) of  
4 Section 6 of this Act, or any rules or regulations adopted  
5 pursuant thereto; provided, however, that any well now or here-  
6 after abandoned, including any well deemed to have been abandoned,  
7 as defined in this Act, shall be brought into compliance with the  
8 requirements of this Act and any applicable rules or regulations  
9 with respect to abandonment of wells; and further provided, that  
10 any well or pump installation supplying water which is determined  
11 by the Department to be a health hazard must comply with the  
12 provisions of this Act and applicable rules and regulations  
13 within a reasonable time after notification of such determination  
14 has been given.

1           Section 8. Inspections. (a) The Department is authorized  
2 to inspect any water well, abandoned water well, or pump installa-  
3 tion for any well. Duly authorized representatives of the  
4 Department may at reasonable times enter upon, and shall be  
5 given access to, any premises for the purpose of such inspection.

6           (b) Upon the basis of such inspections, if the Department  
7 finds applicable laws, rules, or regulations have not been  
8 complied with, or that a health hazard exists, the Department  
9 shall disapprove the well and/or pump installation. If  
10 disapproved, no well or pump installation shall thereafter be  
11 used until brought into compliance and any health hazard is  
12 eliminated.

13           (c) Any person aggrieved by the disapproval of a well or  
14 pump installation shall be afforded the opportunity of a hearing  
15 as provided in Section 13 of this Act.

1           Section 9. Licenses. Every person who wishes to engage  
2 in such business as a water well contractor or pump installation  
3 contractor, or both, shall obtain from the Department a license  
4 to conduct such business.

5           (a) The Department may adopt, and from time to time  
6 amend, rules and regulations governing applications for water  
7 well contractor licenses or pump installation contractor licenses,  
8 provided that the Department shall license, as a water well

9 contractor or pump installation contractor, any person properly  
10 making application therefor, who is not less than twenty-one (21)  
11 years of age, is of good moral character, has knowledge of rules  
12 and regulations adopted under this Act, and has had not less  
13 than two (2) years' experience in the work for which he is  
14 applying for a license; and provided further, that the Department  
15 shall prepare an examination which each such applicant must pass  
16 in order to qualify for such license.

17 (b) This Section shall not apply to any person who  
18 performs labor or services at the direction and under the  
19 personal supervision of a licensed water well contractor or pump  
20 installation contractor.

21 (c) A county, municipality, or other political subdivi-  
22 sion of the State engaged in well drilling or pump installing  
23 shall be licensed under this Act, but shall be exempt from  
24 paying the license fees for the drilling or installing done by  
25 regular employees of, and with equipment owned by, the govern-  
26 mental entity.

27 (d) Any person who was engaged in the business of a  
28 water well contractor or pump installation contractor, or both,  
29 for a period of two (2) years immediately prior to (date of  
30 enactment) shall, upon application made within twelve (12) months  
31 of (date of enactment), accompanied by satisfactory proof that

32 he was so engaged, and accompanied by payment of the required  
33 fees, be licensed as a water well contractor, pump installation  
34 contractor, or both, as provided in Subsection (a) of this  
35 Section, without fulfilling the requirement that he pass any  
36 examination prescribed pursuant thereto.

37 (e) Any person whose application for a license to engage  
38 in business as a water well contractor or pump installation  
39 contractor has been denied, may request, and shall be granted, a  
40 hearing in the county where such complainant has his place of  
41 business before an appropriate official of insert the name of  
42 the hearing body designated in Section 13 of this Act.

43 (f) Licenses issued pursuant to this Section are not  
44 transferable and shall expire on \_\_\_\_\_ of each year. A license  
45 may be renewed without examination for an ensuing year by  
46 making application not later than thirty (30) days after the  
47 the expiration date and paying the applicable fee. Such applica-  
48 tion shall have the effect of extending the validity of the  
49 current license until a new license is received or the applicant  
50 is notified by the Department that it has refused to renew his  
51 license. After \_\_\_\_\_ of each year, a license will be renewed  
52 only upon application and payment of the applicable fee plus a  
53 penalty of \$\_\_\_\_\_.

54           (g) Whenever the Department determines that the holder  
55 of any license issued pursuant to this Section has violated any  
56 provision of this Act, or any rule or regulation adopted pursuant  
57 thereto, the Department is authorized to suspend or revoke any  
58 such license. Any Order issued pursuant to this Subsection shall  
59 be served upon the license holder pursuant to the provisions of  
60 Subsection (a) of Section 12 of this Act. Any such Order shall  
61 become effective \_\_\_\_ days after service thereof, unless a  
62 written petition requesting hearing, under the procedure provided  
63 in Section 13, is filed sooner. Any person aggrieved by any  
64 Order issued after such hearing may appeal therefrom in any court  
65 of competent jurisdiction as provided by the laws of this State.

66           (h) No application for a license issued pursuant to this  
67 Section may be made within one (1) year after revocation thereof.

1           Section 10. Exemptions. (a) Where the Department finds  
2 that compliance with all requirements of this Act would result in  
3 undue hardship, an exemption from any one or more such require-  
4 ments may be granted by the Department to the extent necessary to  
5 ameliorate such undue hardship and to the extent such exemption  
6 can be granted without impairing the intent and purpose of this  
7 Act.

8           (b) Nothing in this Act shall prevent a person who has  
9 not obtained a license pursuant to Section 9 of this Act from

10 constructing a well or installing a pump on his own or leased  
11 property intended for use only in a single family house which is  
12 his permanent residence, or intended for use only for farming  
13 purposes on his farm, and where the waters to be produced are  
14 not intended for use by the public or in any residence other than  
15 his own. Such person shall comply with all rules and regulations  
16 as to construction of wells and installation of pumps and pumping  
17 equipment adopted under this Act.

1 Section 11. Fees. The following fees are required:

2 (a) A fee of \$\_\_\_\_\_ shall accompany each application  
3 for permission required under Section 6(a) of this Act.

4 (b) A fee of \$\_\_\_\_\_ shall accompany each application  
5 for a license required under Section 9 of this Act.

1 Section 12. Enforcement. (a) Whenever the Department  
2 has reasonable grounds for believing that there has been a  
3 violation of this Act, or any rule or regulation adopted pursuant  
4 thereto, the Department shall give written notice to the person  
5 or persons alleged to be in violation. Such Notice shall iden-  
6 tify the provision of this Act, or regulation issued hereunder,  
7 alleged to be violated and the facts alleged to constitute such  
8 violation.

9 (b) Such Notice shall be served in the manner required  
10 by law for the service of process upon person in a civil action,



11 and may be accompanied by an Order of the Department requiring  
12 described remedial action, which if taken within the time  
13 specified in such Order will effect compliance with the  
14 requirements of this Act and regulations issued hereunder. Such  
15 Order shall become final unless a request for hearing as provided  
16 in Section 13 of this Act is made within \_\_\_\_ days from the  
17 date of service of such Order. In lieu of such Order, the  
18 Department may require the person or persons named in such  
19 Notice to appear at a hearing, at a time and place specified in  
20 the Notice.

1           Section 13. Hearing. [Unless already prescribed in  
2 State law, this Section should be used to specify procedures  
3 for administrative hearing.]

1           Section 14. Judicial Review. [Unless already prescribed  
2 in State law, this Section should be used to specify procedures  
3 for judicial review.]

1           Section 15. Penalties. Any person who violates any  
2 provision of this Act, or regulations issued hereunder, or Order  
3 pursuant hereto, shall be subject to a penalty of \$\_\_\_\_\_.  
4 Every day, or any part thereof, in which such violation occurs  
5 shall constitute a separate violation.

1           Section 16. Conflict with Other Laws. The provisions of  
2 any law, or regulation of any municipality establishing standards

3     affording greater protection to the public health or safety,  
4     shall prevail within the jurisdiction of such municipality over  
5     the provisions of this Act and regulations adopted hereunder.

1             Section 17. Severability. [Insert severability clause.]

1             Section 18. Effective Date. [Insert effective date.]

C. INDIVIDUAL SEWAGE DISPOSAL SYSTEMS

[Title should conform to State requirements.]

(Be it enacted, etc.)

1           Section 1. Short Title. This Act shall be known and  
2 may be cited as the "(State) Individual Sewage Disposal Systems  
3 Act."

1           Section 2. Findings and Policy. (a) The (State)  
2 legislature finds that properly planned, constructed, and  
3 installed individual sewage disposal systems--

4                   (1) promote the health and welfare of citizens of  
5 this State by preventing the pollution of ground and  
6 surface water;

7                   (2) prevent nuisances;

8                   (3) eliminate hazards to the public health by  
9 minimizing pollution of water supplies and hazards to  
10 recreational areas; and

11                   (4) minimize disease transmission potential.

12                   (b) It is, therefore, declared to be the public policy  
13 of this State to eliminate and prevent health and safety hazards  
14 by regulating the design, construction, installation, operation,  
15 and maintenance of individual sewage disposal systems and the  
16 proper planning thereof; authorizing the issuance of permits for  
17 the construction, alteration, repair or extension of individual

18 sewage disposal systems; licensing of installers of individual  
19 sewage disposal systems; requiring registration of those who  
20 clean systems and dispose of wastes therefrom; and, providing  
21 penalties for violations.

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

2 (a) "Community sewerage system" means any system, whether  
3 publicly or privately owned, serving two or more individual lots,  
4 for the collection and disposal of sewage or industrial wastes of  
5 a liquid nature, including various devices for the treatment of  
6 such sewage or industrial wastes.

7 (b) "Department" means the designated agency presently  
8 having authority to regulate sanitary practices within the State,  
9 usually the State Department of Health.

10 (c) "Industrial wastes" means liquid wastes resulting  
11 from the processes employed in industrial and commercial estab-  
12 lishments.

13 (d) "Individual sewage disposal system" means a single  
14 system of sewage treatment tanks and disposal facilities serving  
15 only a single lot.

16 (e) "Municipality" means a city, town, borough, county,  
17 parish, district, or other public body created by or pursuant to  
18 State law, or any combination thereof, acting cooperatively or  
19 jointly.

20 (f) "Person" means any institution, public or private  
21 corporation, individual, partnership, or other entity.

22 (g) "Potable water" means water free from impurities in  
23 amounts sufficient to cause disease or harmful physiological  
24 effects with the bacteriological and chemical quality conform-  
25 ing to applicable standards of the Department. 1/

26 (h) "Seepage pit" means a covered pit with open-jointed  
27 lining through which septic tank effluent may seep or leach into  
28 surrounding ground.

29 (i) "Septic tank" means a watertight receptacle which  
30 receives the discharge of a building sanitary drainage system or  
31 part thereof, exclusive of industrial wastes, and is designed  
32 and constructed so as to separate solids from the liquid, digest  
33 organic matter through a period of detention, and allow the  
34 liquids to discharge into the soil outside of the tank through a  
35 system of open joint or perforated piping, or a seepage pit.

1 Section 4. Scope. No person shall construct, alter,  
2 repair, or extend, or cause to be constructed, altered, repaired,  
3 or extended any individual sewage disposal system contrary to  
4 the provisions of this Act and applicable rules and regulations.

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1/ In the absence of available State standards, Public Health Service  
Drinking Water Standards (PHS Pub. No. 956) should apply.

1           Section 5. Authority to Adopt Rules, Regulations, and  
2 Procedures. The Department shall have general supervision and  
3 authority over the design, construction, installation, and  
4 operation of individual sewage disposal systems, and shall be  
5 responsible for the administration of this act. With respect  
6 thereto, it shall--

7           (a) adopt, and from time to time amend, rules and  
8 regulations governing the design, construction, installation,  
9 and operation of individual sewage disposal systems in order that  
10 the wastes from such systems--

11           (1) will not pollute any potable water supply, or  
12 the waters of any bathing beach, shellfish growing  
13 area, 2/ or stream used for public or domestic water  
14 supply purposes, or for recreational purposes;

15           (2) will not give rise to a public health hazard by  
16 being accessible to insects, rodents, or other possible  
17 carriers which may come into contact with food or potable  
18 water, or by being accessible to human beings; and

19           (3) will not give rise to a nuisance due to odor or  
20 unsightly appearance.

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2/ Optional with locality.

21 (b) hold public hearings, upon not less than sixty (60)  
22 days' prior notice published in one or more newspapers, as may  
23 be necessary to assure general circulation throughout the State,  
24 in connection with proposed rules and regulations and amendments  
25 thereto; 3/

26 (c) enforce the provisions of this Act and any rules and  
27 regulations adopted pursuant thereto;

28 (d) delegate, at its discretion, to any municipality any  
29 of its authority under this Act in the administration of the  
30 rules and regulations adopted hereunder;

31 (e) issue permits, licenses, registration, and other  
32 documents, including the establishment of procedures and forms  
33 for the submission, review, approval, and rejection of applica-  
34 tions required under this Act; and

35 (f) issue such additional regulations, and take such  
36 other actions as may be necessary to carry out the provisions of  
37 this Act.

1 Section 6. Existing Installations. No individual sewage  
2 disposal system in existence on the effective date of this Act

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3/ This requirement should be consistent with the general practice for publication requirements in the State and with any State administrative procedure act which may apply.

3 shall be required to conform to the design, construction, and  
4 installation provisions of this Act, or any rules or regulations  
5 adopted pursuant thereto; provided, however, that any individual  
6 sewage disposal system being used which is determined by the  
7 Department to be a health hazard must conform with the provisions  
8 of this Act and applicable rules and regulations within a  
9 reasonable time after notification of such determination has been  
10 given.

1           Section 7. Inspections. (a) The municipality is hereby  
2 authorized and directed to make inspections of individual sewage  
3 disposal systems as may be necessary to determine substantial  
4 compliance with this Act and regulations adopted hereunder, and  
5 such systems shall not be used unless approved by the municipal-  
6 ity. Upon the basis of such inspections, the Department shall  
7 either approve or disapprove the individual sewage disposal  
8 system, and if disapproved the system shall not be used.

9           (b) It shall be the duty of the holder of a permit issued  
10 pursuant to Section 8 of this Act to notify the municipality  
11 when the installation is ready for inspection and it shall be  
12 the duty of the owner and occupant of the property to give the  
13 municipality free access to the property at reasonable times for  
14 the purpose of making such inspections as are necessary.



15           (c) In the event an inspection is not made upon notifi-  
16 cation of the municipality that the installation is completed  
17 and ready for inspection, the system shall be deemed approved  
18 after \_\_\_\_\_ days 4/ from date of official notification.

19           (d) Any person aggrieved by the disapproval of an  
20 individual sewage disposal system installation shall be afforded  
21 the opportunity of a hearing as provided in Section 13 of this  
22 Act.

1           Section 8. Permits. (a) It shall be unlawful for any  
2 person to construct, alter, repair, or extend individual sewage  
3 disposal systems unless he holds a valid permit 5/ issued by  
4 the municipality in the name of such person for the specific  
5 construction, alteration, repair, or extension proposed, except  
6 that emergency repairs may be undertaken without prior issuance  
7 of a permit, provided a permit is subsequently obtained within  
8 \_\_\_\_\_ days after the repairs are made.

9           (b) Permits shall be issued only to licensed installers  
10 as provided in Section 9 of this Act, or to an owner or lessee

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4/ Three (3) days are suggested to prevent damage to an open system.

5/ The permit issued by the municipality is in addition to the building permit usually required and would be obtained prior to construction, alteration, repair, and extension of the residence or facility to be served.

11 of a lot on the condition that the said owner or lessee performs  
12 all labor in connection with the installation of the individual  
13 sewage disposal system on such lot.

14 (c) All applications for permits shall be made on a form  
15 which includes such information as may be required by the  
16 municipality to establish conformance with the provisions of this  
17 Act and any regulations adopted hereunder.

18 (d) Following determination of conformance with the  
19 requirements of this Act and regulations issued pursuant thereto,  
20 the municipality to which application has been made shall issue  
21 a permit to the applicant.

22 (e) A permit for the construction, alteration, repair, or  
23 extension of an individual sewage disposal system shall be refused  
24 where community sewerage systems are reasonably available or in  
25 instances where the issuance of such permit is in conflict with  
26 other applicable laws and regulations.

27 (f) Any person whose application for a permit under this  
28 Act has been denied shall be notified in writing as to the reasons  
29 for denial, and such person may request and shall be granted a  
30 hearing on the matter in accordance with Section 13 of this Act.

1 Section 9. Licensing of Installers. 6/ (a) Every person  
2 engaged in the business of installing individual sewage disposal

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6/ Optional provision.

3 systems within the State shall obtain from the Department a  
4 license to conduct such business.

5 (b) The Department may adopt, and from time to time  
6 amend, rules and regulations establishing qualifications and  
7 minimum standards of experience and knowledge for installers.  
8 The Department shall license as an installer any person properly  
9 making application therefor, who is not less than twenty-one (21)  
10 years of age, has knowledge of rules and regulations adopted  
11 under this Act, and has had not less than two (2) years'  
12 experience in installing individual sewage disposal systems.

13 (c) An application for a license as an installer shall  
14 be made in writing in a form prescribed by the Department, and  
15 shall include such information as the Department deems necessary  
16 to determine the qualifications of the applicant.

17 (d) Any person whose application for a license under  
18 this Section has been denied shall be notified in writing as to  
19 the reasons for denial, and such person may request, and shall  
20 be granted, a hearing on the matter in accordance with Section 13  
21 of this Act.

22 (e) Whenever the Department determines that the holder of  
23 any license issued pursuant to this Section has violated any  
24 provision of this Act, or any rule or regulation adopted pursuant  
25 thereto, the Department is authorized to suspend or revoke any

26 such license. Any Order issued pursuant to this Subsection  
27 shall be served upon the license holder pursuant to the provi-  
28 sions of Section 12 of this Act. Any such Order shall become  
29 effective \_\_\_\_ days after service thereof, unless a written  
30 petition requesting hearing, under the procedure provided in  
31 Section 13, is filed sooner. Any person aggrieved by any Order  
32 issued after such hearing may appeal therefrom in any court of  
33 competent jurisdiction as provided by the laws of this State.

34 (f) No application for a license issued pursuant to  
35 this Section may be made within one (1) year after revocation  
36 thereof.

1 Section 10. Required Registration for Cleaning Systems  
2 and Disposal of Wastes. (a) The provisions of this Section

3 shall not apply to any municipality, sanitation district, or  
4 sewer maintenance district, or to any agency or institution of  
5 the State or Federal Government.

6 (b) It shall be unlawful for any person to carry on, or  
7 engage in the business of cleaning individual sewage disposal  
8 systems, or to dispose of the wastes therefrom unless duly  
9 registered by the Department for the carrying on of said business.

10 (c) All applications for registration under this Section  
11 shall be made in writing in a form prescribed by the Department,  
12 and shall include such information as the Department deems

13 necessary to determine the qualification of the applicant,  
14 including a knowledge of the regulations.

15 (d) Any person whose application for registration under  
16 this Section has been denied shall be notified in writing as to  
17 the reasons for denial, and such person may request, and shall  
18 be granted, a hearing on the matter in accordance with Section 13  
19 of this Act.

20 (e) Whenever the Department determines that the holder of  
21 any registration issued pursuant to this Section has violated any  
22 provision of this Act, or any rule or regulation adopted pursuant  
23 thereto, the Department is authorized to suspend or revoke any  
24 such registration. Any Order issued pursuant to this Subsection  
25 shall be served upon the registration holder pursuant to the  
26 provisions of Section 12 of this Act. Any such Order shall  
27 become effective \_\_\_\_\_ days after service thereof, unless a  
28 written petition requesting hearing, under the procedure provided  
29 in Section 13, is filed sooner. Any person aggrieved by any  
30 Order issued after such hearing may appeal therefrom in any court  
31 of competent jurisdiction as provided by the laws of this State.

32 (f) No application for a registration issued pursuant to  
33 this Section may be made within one (1) year after revocation  
34 thereof.

1 Section 11. Schedule of Fees. The following fees for  
2 permits, licenses, and registration are required:

	<u>Fee</u>
3	
4	Individual Sewage Disposal System
5	Construction (permit)                    ---
6	Alteration (permit)                    ---
7	Repair (permit)                        ---
8	Extension (permit)                    ---
9	Installers (license)                   ---
10	Cleaners (registration)                ---

1            Section 12. Enforcement. (a) Whenever the Department  
2 has reasonable grounds for believing that there has been a  
3 violation of this Act, or any rule or regulation adopted pursuant  
4 thereto, the Department shall give written notice to the person  
5 or persons alleged to be in violation. Such Notice shall iden-  
6 tify the provision of this Act, or regulation issued hereunder,  
7 alleged to be violated and the facts alleged to constitute such  
8 violation.

9            (b) Such Notice shall be served in the manner required by  
10 law for the service of process upon person in a civil action, and  
11 may be accompanied by an Order of the Department requiring  
12 remedial action, which if taken within the time specified in such  
13 Order will effect compliance with the requirements of this Act  
14 and regulations issued hereunder. Such Order shall become final  
15 unless a request for hearing as provided in Section 13 of this

16 Act is made within \_\_\_\_\_ days from the date of service of such  
17 Order. In lieu of such Order, the Department may require the  
18 person or persons named in such Notice to appear at a hearing,  
19 at a time and place specified in this Notice.

1 Section 13. Hearing. [Unless already prescribed in  
2 State law, this Section should be used to specify procedures for  
3 administrative hearing.]

1 Section 14. Judicial Review. [Unless already prescribed  
2 in State law, this Section should be used to specify procedures  
3 for judicial review.]

1 Section 15. Penalties. (a) Any person who fails to  
2 comply with any provision of this Act, or regulations issued  
3 hereunder, or Order pursuant hereto, shall be subject to a  
4 penalty of \$\_\_\_\_\_. Every day, or any part thereof, in which  
5 such violation occurs shall constitute a separate violation.

6 (b) The Department is authorized to require the property  
7 owner to take necessary action to correct a malfunctioning  
8 individual sewage disposal system within \_\_\_\_\_ days of being  
9 notified 7/ after which each day's failure to take corrective  
10 action shall be punishable by a fine of not less than \$\_\_\_\_\_   
11 nor more than \$\_\_\_\_\_.

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7/ In accordance with applicable State procedural requirements.

1           Section 16. Conflict with Other Laws. The provisions of  
2 any law or regulation of any municipality establishing  
3 standards affording greater protection to the public health or  
4 safety shall prevail within the jurisdiction of such municipality  
5 over the provisions of this Act and regulations adopted hereunder.

1           Section 17. Severability. [Insert severability clause.]

1           Section 18. Effective Date. [Insert effective date.]



## 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.

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.

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<sup>]</sup>,

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./

STATE FINANCIAL ASSISTANCE AND  
CHANNELIZATION OF FEDERAL GRANT PROGRAMS  
FOR URBAN DEVELOPMENT\*

A generally accepted characteristic of our federal system of government in the United States is the sharing of responsibilities among the three levels of government -- federal, state, and local. This is especially true in meeting problems of urban growth and development. The states as well as the federal and local governments have a vital stake and responsibility in this area.

Since World War II, the growth of direct relationships between the federal government and cities, counties, and other units of local government has been of increasing concern to state governors and legislatures. The tendency of federal agencies and of local governments to "by-pass" the states has been deplored. On the other hand, the Congress and local governments, especially the larger cities, have contended that inaction on the part of state government should not be permitted to deprive a local government of federal aid if the grant application met all requirements set forth in the federal statute.

Gradually, at both state and federal levels considerable agreement has been developing to the effect that if a state government desires to assert fully its responsibilities in a federally aided field of local activity with funds and administrative machinery, then the relationship should be primarily federal-state in character. On the other hand, it is widely agreed that if the state chooses to remain aloof from the problem toward which the federal aid is directed, then local units of government should be free to participate in the federal program and to deal directly with the federal agencies concerned. This policy was first spelled out in the Federal Airport Act of 1946.

In the meantime, many problems of local government in urban areas become more acute and state leadership and concern are called for increasingly. As the Council of State Governments has pointed out in its publication, State Responsibility in Urban Regional Development.

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\*Included in the Council of State Governments' SUGGESTED STATE LEGISLATION.

State government possesses singular qualifications to make profound and constructive contributions to urban regional development practice. The state is in fact an established regional form of government. It has ample powers and financial resources to move broadly on several fronts. Far-ranging state highway, recreation, and water resources development programs, to name a few, have had and will continue to have great impact on the development of urban and regional areas. Moreover, the state occupies a unique vantage point, broad enough to allow it to view details of development within its boundaries as part of an interrelated system, yet close enough to enable it to treat urban regional problems individually and at first hand.\*

The states can, through enabling legislation and subsequent appropriations, involve themselves positively in assuming their increasing responsibilities for urban development. Indeed, the Committee of State Officials on Suggested State Legislation has already urged state financial and technical assistance to local governments in a statement appearing as part of its Program of Suggested State Legislation for 1963.

In 1955, the Commission on Intergovernmental Relations (Kestnbaum Commission) found very few states offering significant financial aid for public housing and slum clearance, but it urged more states to follow those examples. In 1962, 14 states were providing direct financial aid to their localities for housing to be rented or sold, and four authorized grants or loans to assist municipalities in paying the local share of federally aided renewal projects.<sup>#</sup> In the airport program, 33 states assist their localities to some degree, and 13 have regular cost-sharing keyed to the federal grant program. In addition, a few states contribute to the non-federal shares of programs for urban planning assistance, hospital and medical facilities construction, and waste treatment works.

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\*State Responsibility in Urban Regional Development: A Report to the Governors' Conference (Chicago: The Council of State Governments, 1962), pp. 17-18.

<sup>#</sup>Book of the States, 1962-63 (Chicago: The Council of State Governments, 1962), pp. 456-460.

The Advisory Commission on Intergovernmental Relations has recommended "that the states assume their proper responsibilities for assisting and facilitating urban development; to this end it is recommended that federal grants-in-aid to local governments for urban development be channeled through the states in cases where a state (a) provides appropriate administrative machinery to carry out relevant responsibilities, and (b) provides significant financial contributions, and when appropriate, technical assistance to the local governments concerned."\*

State legislation to carry out these responsibilities for urban development should establish appropriate administrative machinery and technical assistance programs, as well as financial assistance for local urban development activities. Financial contributions should be significant and not token; they might appropriately be between 20 to 50 percent of the non-federal share of urban development programs. These two contributions -- namely (a) the creation of suitable state administrative machinery and (b) state financial assistance -- would give the states a meaningful and effective role in urban affairs. State appropriations should be sufficient to match the availability of federal grants so as to assure that state involvement does not act to reduce the eligibility of localities for federal aid.

The following legislation would (1) authorize state financial and other assistance to localities for specified purposes, (2) designate appropriate state administrative machinery to carry out the states' urban development responsibilities, and (3) provide that where the foregoing conditions are met with respect to any federal aid program, all funds and relationships with respect to such program would flow through the state except as might be provided otherwise for purposes of administrative convenience by the state agency concerned.

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\*Advisory Commission on Intergovernmental Relations, Impact of Federal Urban Development Programs on Local Government Organization and Planning, (Washington: U.S. Government Printing Office, 1964), p. 30.



In other words, the proposed legislation provides a framework within which states can "buy into" present programs of federal aid to localities, assuming concurrently with such action, policy control, coordinative and other aspects of the usual state-local relationships. (This concept accords with customary state practice in that state prescriptions governing federally aided local programs generally stem from a legislative desire to safeguard the expenditure of state funds.) In this manner, the state becomes able to exercise its influence with regard to the scope and type of projects undertaken and to assure the coordination of such projects with other aspects of overall state policy.

Programs which might benefit from state financial and technical assistance and from state coordination include urban planning assistance, area redevelopment, urban renewal, open space, the planning and construction of hospitals, waste treatment works, public housing, and airports. Appropriate portions of the following suggested legislation could be enacted to supplement existing or new legislation in any of these program areas, or other areas deemed appropriate by the legislatures.

#### Suggested Legislation

/Title should conform to state requirements./

(Be it enacted, etc.)

1     Section 1. Programs Authorized. The legislature finds  
2 that the federal government has established and continues to  
3 establish grant programs of direct assistance to the local  
4 governments of the state, and that, due to the large number of  
5 local governments in the urban areas of the state and the lack  
6 of coincidence of service needs and tax jurisdictions, it  
7 frequently is difficult for local government to marshal the  
8 technical and financial resources needed to meet the needs of

9 its residents. For the state to assume its proper responsi-  
10 bility and leadership in meeting the needs of its urban  
11 residents, the declared policy of the state is to render  
12 technical assistance, to contribute to the non-federal share  
13 of the cost of the following federally aided programs, and to  
14 assume responsibility for coordinating relationships between  
15 local governments and federal agencies with regard to such  
16 programs:<sup>1</sup>

17 (a) Open Space. A combination of economic, social,  
18 demographic, governmental, and technological forces has  
19 caused a rapid expansion of the state's urban areas, which  
20 has created critical problems of service and finance for  
21 local governments and threatens severe problems of urban and  
22 suburban living, including the loss of valuable and vitally  
23 necessary open space land in such areas. Open space grants  
24 made in accordance with this act shall be for the purpose of  
25 helping to curb urban sprawl, preventing the spread of urban  
26 blight and deterioration, encouraging more economic and  
27 desirable urban development, and providing necessary

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1. The enumerated programs below are merely suggestions. They may be added to, subtracted from, or modified to suit the needs of individual states.

28 recreational, conservation, and scenic areas. The  
29 [appropriate state agency] shall administer such grants.<sup>2</sup>  
30 State grants shall be [ 50 ] percent of the non-federal  
31 share of the individual project costs.

32 (b) Urban Planning. Haphazard and unplanned urban de-  
33 velopment increases the cost of local government, makes  
34 adequate public services difficult to provide, and results  
35 in the creation of undesirable living environments. Urban  
36 planning grants made pursuant to this act shall be for the  
37 purpose of helping local governments to solve planning  
38 problems resulting from the increasing concentration of  
39 population in urban areas, including small communities as  
40 well as large, on a continuing and coordinated basis, and  
41 to encourage the establishment and improvement of local  
42 planning staffs. The [appropriate state agency] shall  
43 administer such grants. State grants shall be [ 50 ]  
44 percent of the non-federal share of the individual project  
45 costs.

46 (c) Urban Renewal. Many areas of urban development have  
47 become or are becoming obsolete, substandard, or unfit for

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2. If no appropriate state agency exists for purposes of certain grants listed in this Section of the Act, an additional section should be added to establish the necessary agency or agencies.

48 human habitation. Land ownership patterns and financial  
49 problems frequently impede the renewal of such areas  
50 through unassisted private efforts. In order to protect  
51 the health, safety, and general welfare of the citizens of  
52 the state, urban renewal grants given in accordance with  
53 this act shall be for the purpose of helping to eliminate  
54 urban blight and to renew obsolete patterns of urban develop-  
55 ment. The [appropriate state agency] shall administer such  
56 grants. State grants shall be [ 50 ] percent of the  
57 non-federal share of the individual project costs.

58 (d) Public Housing. Many families inhabiting substandard  
59 housing which should be condemned for public health and  
60 other public reasons cannot afford adequate housing at prices  
61 or rents which the private housing industry can provide.  
62 Public housing grants given in accordance with this act  
63 shall have the purpose of helping families having financial  
64 need to be accommodated in safe and sanitary housing in a  
65 suitable living environment. The [appropriate state agency]  
66 shall administer such grants. State grants shall be  
67 [ 50 ] percent of the non-federal share of the individual  
68 project costs.

69 (e) Airport Development. Civilian air transportation of  
70 both freight and passengers is an essential element of the

71 economy and welfare of the state. The airport is the  
72 nucleus of an adequate air transportation system. The  
73 safe and efficient movement of air traffic depends upon the  
74 adequacy of each airport and of the airport system. Airport  
75 development grants made in accordance with this act shall be  
76 for the purposes of planning, constructing, and developing  
77 airports important to the continued growth and safety of air  
78 commerce within the state. The [appropriate state agency]  
79 shall administer such grants. State grants shall be  
80 [ 50 ] percent of the non-federal share of the individual  
81 project costs.

82 (f) Hospital and Medical Facility Construction. The  
83 health and well-being of the state's citizens depend in large  
84 measure upon an adequate supply of hospital and other medical  
85 facilities. Hospital and medical facility construction  
86 grants made in accordance with this act shall be for the  
87 purposes of helping local governments plan for and assist in  
88 assuring adequate hospital and other medical facilities.  
89 The [appropriate state agency] shall administer such grants.  
90 State grants shall be [ 50 ] percent of the non-federal  
91 share of the individual project costs.

92 (g) Waste Treatment Works. Water pollution is becoming  
93 an increasing hazard to the public health and welfare of the  
94 citizens of this state, and is causing increased burdens on  
95 local governments in assuring an adequate supply of water for  
96 domestic use, and recreational areas for the use of their  
97 citizens. Grants for waste treatment works made in accordance  
98 with this act shall be for the purpose of preventing and con-  
99 trolling water pollution by means of planning and providing  
100 works for the collection and treatment of sewage. The  
101 [appropriate state agency] shall administer such grants.  
102 State grants shall be [ 50 ] percent of the non-federal  
103 share of the individual project costs.

1 Section 2. Relationships with Federal Agencies.

2 (a) Any application for federal grants for a purpose or  
3 program designated in Section 1 shall be submitted to the  
4 state agency designated in Section 1 as responsible for the  
5 state program in the field concerned. The head of such  
6 state agency shall approve or disapprove state grants to be  
7 applied to the non-federal share of project costs consistent  
8 with the purposes of Section 1. An approval may be con-  
9 ditioned upon subsequent approval of the project by an  
10 appropriate federal agency for federal grant funds. Upon

11 approval of an application, the director of the appropriate  
12 state agency shall transmit it to the appropriate federal  
13 agency. Any application disapproved by the director of the  
14 appropriate state agency shall be returned to the applicant  
15 with written notice of the modifications necessary to make  
16 the project eligible, in terms of state or federal policy  
17 and law.

18 (b) The heads of state agencies may provide by  
19 administrative regulation the procedures by which negotiations  
20 and other relationships between local units of government and  
21 federal agencies are conducted with respect to programs  
22 designated in Section 1.

1 Section 3. Technical Assistance and Administration.

2 Heads of the state agencies designated in Section 1 shall  
3 establish appropriate technical, administrative, coordinative,  
4 and other measures relating to project sponsors within the  
5 state eligible for federal grants in order to facilitate their  
6 participation in the program established by this act. They  
7 shall establish, with the approval of the governor, necessary  
8 rules and regulations to carry out their responsibilities  
9 under this act.

1 Section 4. Separability. /Insert separability clause./

1 Section 5. Effective Date. /Insert effective date./



## 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.

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.

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.

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 Council of State Governments' 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 126.

#### Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act providing for the establishment of metropolitan area planning bodies."7

(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, <sup>1</sup> 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

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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.<sup>7</sup>

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.<sup>2</sup> 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.

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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.<sup>3</sup>

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,

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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./

COUNTY<sup>#</sup> POWERS IN RELATION TO LOCAL  
PLANNING AND ZONING ACTIONS<sup>\*</sup>

The benefits of sound city planning and zoning have been widely recognized by public officials throughout the country. Much of the development taking place in urban areas today is influenced by local plans and their related zoning ordinances, subdivision regulations, and capital improvement programs. In metropolitan areas, however, much of this is planning for individual cities rather than effective planning for the entire urban area. What is missing is coordination of those municipal planning and zoning actions that have an effect beyond local boundaries.

The Advisory Commission on Intergovernmental Relations pointed out one of the consequences of municipal planning and zoning action without reference to neighboring communities and to the urban area as a whole in its 1963 report, Performance of Urban Functions: Local and Areawide.

...the economic foundation of an entire metropolitan area depends upon the way in which land is zoned and used in each of its component communities. For example, insufficient land for industry and commerce will discourage development of these enterprises, while overzoning for commercial or industrial land may cause an unhealthy rivalry among individual communities which results in poor allocation of economic resources among them. Because local government relies so heavily upon the property tax, the chief obstacle to sound areawide planning is the competition among municipalities for land use developments which are productive of large tax revenues. The rationale of many zoning ordinances lies in fiscal

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# Some states may prefer to use regional agencies for this purpose.

\* Included in the Council of State Governments' SUGGESTED STATE LEGISLATION.

competition rather than desirable spatial arrangement of uses. This kind of policy is self-defeating, and may result in a reduction of total (metropolitan) economic resources.

Another problem is stated in a more recent report, Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs. In many instances, municipal development policies and regulations in metropolitan areas tend to discriminate against groups of persons and certain types of land uses to the disadvantage of residents of the whole region. The responsibility for areawide coordination of planning and zoning matters, therefore, should rest with larger units of government encompassing most, if not all, of the metropolitan area, with sufficient legal power to participate in development decisions and at the same time represent a diversity of viewpoints found in the community. In many places, this function could appropriately be lodged within the county government.

The suggested legislation contains a threefold approach to county-municipal planning and zoning relationships in metropolitan areas. Under the act, the county (a) reviews and approves certain planning and zoning actions of existing municipalities between 5,000 and 30,000 population; (b) exercises its planning and zoning authority in all existing municipalities of less than 5,000 population; and (c) exercises its planning and zoning authority in all municipalities incorporated within the county after the passage of the act until the population of the municipality exceeds 30,000 persons within its territory.

In the draft bill, a procedure is established for metropolitan areas of the state for county review and approval of certain local planning and zoning actions that have an effect beyond local boundaries or that affect development essential to countywide needs. The principle of county review and approval of local development actions has been adapted in part from referral procedures granted counties in New York under Chapter 1041, Laws of 1960, State of New York, and Chapters 822 and 823, Laws of 1961, State of New York. Precedent for the removal of planning and zoning authority from small municipalities and vesting such powers in the county may be found in Kentucky under Chapter 139, Session Laws of 1964, Commonwealth of Kentucky. The State of Indiana has gone even further in Title 53, Chapter 9 of the Indiana Annotated Statutes

by abolishing the powers and duties of all existing city and county planning commissions and boards of zoning appeals and transferred such powers and duties to the Metropolitan Plan Commission and the Metropolitan Board of Zoning Appeals in the Indianapolis-Marion County metropolitan area.

The draft bill provides that certain planning and zoning actions of municipalities from 5,000 to 30,000 population must be submitted to the county for approval with respect to consistency with countywide planning objectives, including discouragement of exclusive or fiscal zoning practices. The county would not be concerned with all municipal planning and zoning matters, for many have little significance insofar as their effect outside municipal boundaries is concerned. The proposed legislation, therefore, does not remove the power to zone or plan from these municipalities; rather, it subjects certain municipal actions to an approval procedure by a larger unit of government and, in specified instances, review by abutting municipalities.

The draft bill authorizes the county to review all three major regulatory measures of local planning--zoning, subdivision regulation, and the official map--provided that the county has adopted, approved, or filed a comprehensive plan or development policy document. The municipalities must refer any proposals to the county that would have the effect of changing the types of use of real property bordering major county or state highways and parks, decreasing the front yard setback or minimum lot width of any property abutting any such county or state highway or park, connecting any new street into any such highways, connecting new drainage lines into existing channel lines, and, finally, reducing residential densities to less than three families per acre. These categories will include virtually all local planning or zoning actions likely to have an effect beyond the corporate limits.

The county may make recommendations to the municipality on a referral proposal. The municipality may not act contrary to the county recommendations unless it adopts a resolution setting forth its reasons for such action and files the resolution with the county planning agency. The county may then review the local resolution and reverse the municipality if, in its judgment, the proposal still does not meet countywide objectives as set forth in the county plan. The draft bill assumes that municipal or county action is subject to judicial review.



The county must adopt specific policies and standards to guide its review of local actions. The language of Section 5 recognizes that while local desires should not obstruct essential needs of the county, neither should local interests be arbitrarily overridden by a higher unit of government if countywide needs can be satisfied in a manner compatible with the interests of the locality.

The suggested legislation also contains provisions to maximize intermunicipal coordination of planning and zoning activities. Notice of certain municipal planning and zoning actions on real property within 500 feet of any abutting municipality must be sent to the affected municipality. The abutting municipality may recommend changes or modifications of the proposal. The municipal agency having jurisdiction may override changes suggested by the abutting municipality by a majority vote or by adoption of a resolution setting forth its reasons for contrary action. The resolution must be filed with the clerk of the abutting municipality and with the county planning agency.

As pointed out by the Council of State Governments in its report, State Responsibility in Urban Regional Development, the major problem in planning for future development--

...is not the lack of planning that is being done, but the quality of planning that is required to guide future urban development effectively....Volunteer public officials in too many areas are trying to cope with complex planning problems without any guidance. The rapid pace of urban development has swamped them in spite of their efforts to keep up.

Few small and newly incorporated municipalities have the technical and financial resources to provide continuing attention to development problems. A larger unit of government, however, is better equipped to provide such needed attention and technical skills. The draft bill, therefore, authorizes counties to exercise their planning and zoning power in all existing municipalities of less than 5,000 population and in all future incorporations until the municipality reaches 30,000 population. The suggested legislation presumes that municipalities of 30,000 or more persons are large enough to apply adequate financial and competent technical resources to development problems. Development decisions, furthermore, are less likely to be arbitrary as the larger community contains a greater diversity of interests more representative of areawide needs.

The draft bill is primarily concerned with a review and approval procedure. Many state legislatures may find it desirable, in addition, to redefine existing statutory powers and duties of county or areawide planning agencies. The legislature should provide clear direction for the planning agency to concern itself with matters of county or areawide significance rather than local concerns that have no areawide repercussions. It may be desirable to amend the general planning enabling statutes, therefore, to reflect this objective. The draft legislation for Metropolitan Area Planning Commissions appearing above, beginning on page 237, may be helpful (see especially Section 6, Powers and Duties).

#### Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act prescribing the planning and zoning powers and duties of counties<sup>1</sup> in metropolitan areas in relation to municipalities of the county."1

(Be it enacted, etc.)

1        Section 1. Purpose. It is in the public interest that within  
2 metropolitan areas certain classes of proposed municipal planning  
3 and zoning actions be subject to review and approval by the  
4 county planning agency for the county in which such municipality  
5 is located; that abutting municipalities be informed, in certain

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1        Some states may prefer to use regional agencies for this purpose.

6 instances, of such proposed actions, in order to aid in coor-  
7 dinating planning and zoning actions among municipalities; that  
8 the planning and zoning authority of certain small municipalities  
9 and newly incorporated municipalities be exercised by the county  
10 because of the lack of adequate technical and administrative re-  
11 sources in such municipalities to plan effectively for future  
12 development; and that counties exercise such planning and zoning  
13 authority by applying such pertinent intercommunity and county-  
14 wide considerations as may be set forth within the adopted,  
15 approved, or filed county comprehensive plan or development  
16 policy document.

17 Where a county has adopted, approved, or filed a compre-  
18 hensive plan or other overall development policy document, it is  
19 the purpose of this act to secure conformity to such plan not-  
20 withstanding any contrary municipal policies that may be in con-  
21 flict with such plan.

1 Section 2. Scope of this Act. This act shall be effective  
2 within metropolitan areas of the state.

1 Section 3. Definitions. As used herein:

2 (1) "Metropolitan area" is an area designated as a  
3 "standard metropolitan statistical area" by the U. S. Bureau

4 of the Census.<sup>2</sup>

5 (2) "Municipality" shall mean any city, town, village,  
6 or borough, but not a county.

1 Section 4. Municipal Planning and Zoning Actions to be  
2 Submitted to the County; Action by the County.

3 (a) Any municipality of less than 30,000 and more than  
4 5,000 population, as determined by the latest official census,  
5 located within a metropolitan area and in a county that has an  
6 adopted, approved, or filed county comprehensive plan or over-  
7 all development policy document shall give notice to the county  
8 of any proposal which, if adopted, would have the result of (1)  
9 changing the types of uses permitted on property abutting any  
10 federally aided or state highway, parkway, or throughway, or any  
11 county road or parkway or federal, state, or county park within  
12 the municipality, (2) decreasing the required minimum setback or  
13 the minimum frontage or average width of any property abutting

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<sup>2</sup> Particular states may find it necessary for constitutional reasons or otherwise desirable to apply a somewhat different definition, tailored to their circumstances, as some Bureau of Census designated "metropolitan areas" include counties primarily oriented to rural rather than urban problems. For example, other quantitative factors may be used in a metropolitan area definition, such as population density expressed in a number of persons per square mile, or percentage of county residents employed in the central city.

14 any federal or state highway, parkway, or throughway, or any  
15 county road or parkway or federal, state, or county park within  
16 the municipality, (3) connecting any new street directly into any  
17 federal, state, or county highway, parkway, throughway, or road,  
18 (4) connecting any new drainage lines directly into any channel  
19 lines as established by the county, or (5) reducing permitted  
20 residential density to less than three families per acre. Such  
21 notice shall be mailed by the municipality to the county at  
22 least 15 days prior to any hearing or other action scheduled  
23 in the municipality to consider the proposal.

24 (b) If the county to which referral is made or an author-  
25 ized agent of the county determines that the grant or denial of  
26 any proposal referred to in subsection (a) hereof would affect  
27 any county policy pursuant to Section 5 of this act, it shall  
28 report its recommendations thereon to the referring municipal  
29 agency, accompanied by a full statement of the reasons for such  
30 recommendation. If the county fails to report within 15 days  
31 after receiving notice of the hearing, the municipal body having  
32 jurisdiction to act may do so without such report.

33 (c) The municipality having jurisdiction shall act in  
34 accordance with the recommendations of the county unless such  
35 municipality adopts a resolution fully setting forth the reasons

36 for contrary action. The resolution shall be filed with the  
37 county within 7 days from the adoption of such resolution.  
38 The municipal action shall not become effective until 30 days  
39 have elapsed from the date the resolution is filed.

40 (d) Notwithstanding any resolution or action taken pursuant  
41 to subsections (b) and (c) hereof, the county within the 30 day  
42 period may review the municipal action and reverse such action  
43 by resolution of the county governing body upon specific find-  
44 ings of fact that such municipal action is not in accordance with  
45 the material provisions of the adopted, approved, or filed  
46 county comprehensive plan or overall development policy document.  
47 The comprehensive plan or development policy shall contain  
48 standards as set forth in Section 5 of this act.

1 Section 5. Standards and Policies for County Review.

2 (a) In the exercise of power conferred by this act, the  
3 county shall prepare and adopt standards and policies as part of  
4 its comprehensive plan or overall development policy document  
5 which takes into account the existing and future areawide needs  
6 with sufficient specificity that they may be used:

7 (1) by municipalities located within the county as a  
8 guide to municipal action that may affect development out-  
9 side its boundaries;

10 (2) by the courts in reviewing the decisions of  
11 government officials and agencies rendered pursuant to this  
12 act.

13 (b) County review of municipal planning and zoning actions,  
14 as set forth in Section 4 hereof, shall be governed by the adop-  
15 tion by the county of specific policies and standards to:

16 (1) assure that a wide range of housing choices and  
17 prices is available to residents of the county;

18 (2) assure that regulations and actions affecting the  
19 location of commercial and industrial development, hospitals,  
20 educational, religious, and charitable institutions take  
21 into consideration countywide needs.

22 (c) If the proposed municipal action excludes types of  
23 development set forth in subsection (b) hereof, the county shall  
24 declare such exclusionary action unreasonable if it is not:

25 (1) necessary to public health or safety; or

26 (2) necessary to the preservation of the established  
27 physical character of the area affected; or

28 (3) specifically authorized in the county comprehen-  
29 sive plan or other official development policy document.

1 Section 6. Municipal Planning and Zoning Actions to be  
2 Submitted to Contiguous Municipalities; Action by Contiguous  
3 Municipalities.

4 (a) Each municipality in the county shall give notice of  
5 any action scheduled in said municipality in connection with (1)  
6 changing the types of uses permitted of any property located with-  
7 in five hundred feet of any contiguous municipality in the  
8 county, (2) a subdivision plat relating to land within five  
9 hundred feet of any contiguous municipality in the county, or  
10 (3) the proposed adoption or amendment of any official map, re-  
11 lating to any land within five hundred feet of any contiguous  
12 municipality in the county, to such municipality. Such notice  
13 shall be given at least 15 days prior to any such action to  
14 the clerk of said contiguous municipality affected. Such action  
15 shall be deemed sufficient notice under this or any other law  
16 requiring notice of any such action.

17 (b) The municipality to which referral is made or an  
18 authorized agent of said municipality may file a memorandum of  
19 its position. If said municipality fails to report within such  
20 period of 15 days after receiving notice of the hearing, the  
21 municipality having jurisdiction to act may do so without such  
22 report. If the contiguous municipality disapproves the proposal,  
23 or recommends changes or modifications thereof, the municipal  
24 agency having jurisdiction shall not act contrary to such dis-  
25 approval or recommendation except by a majority vote of all the



26 members thereof and after the adoption of a resolution fully  
27 setting forth the reasons for its contrary action. Copies of  
28 the resolution shall be filed with the clerk of the contiguous  
29 municipality and with the county.

1       Section 7. County Planning and Zoning Authority in Small  
2 Municipalities.

3       (a) Each county located in a metropolitan area shall exer-  
4 cise planning and zoning authority for:

5               (1) All municipalities within the county having a  
6 population of less than 5,000 as determined by the latest  
7 official census; Provided that, existing plans and planning  
8 and zoning ordinances shall remain in effect until altered  
9 by the county; and

10              (2) All municipalities hereinafter incorporated  
11 within the county until the population of a municipality  
12 exceeds 30,000 persons as determined by the latest  
13 official census within its territory; Provided that, county  
14 authority shall continue until such municipality adopts a  
15 resolution ordinance whereby the municipality assumes  
16 planning and zoning authority and provides for the exercise  
17 thereof in conformance with cite appropriate planning and  
18 zoning enabling legislation.

19 County authority shall be exercised in accordance with, and in a  
20 manner prescribed by,        cite statute granting authority for  
21 counties to exercise planning and zoning authority<sup>7</sup>.

22       (b) If municipalities referred to in subsection (a) hereof  
23 are located in more than one county, the county having the larger  
24 population shall exercise planning and zoning authority within  
25 such municipality.<sup>3</sup>

1       Section 8. County Zoning Regulations Within Municipal Juris-  
2 dictions. The county zoning ordinance may regulate territory  
3 within the zoning jurisdiction of any municipality whose governing  
4 body, by resolution, agrees to such regulation; Provided that,  
5 the county governing body, by resolution, agrees to exercise such  
6 authority and that any such municipal governing body may, upon  
7 one year's written notice, withdraw its approval of the county  
8 zoning regulations; and those regulations shall have no further  
9 effect within the municipality's jurisdiction.

1       Section 9. Separability.        Insert separability clause<sup>7</sup>

1       Section 10. Effective Date.        Insert effective date<sup>7</sup>

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<sup>3</sup> When using this provision, states will want to review other statutory requirements applicable to municipalities in more than one county to assure that no statutory conflicts exist.

## UNIFORM RELOCATION ASSISTANCE

Relocation of persons and businesses displaced by governmental construction programs is a serious and growing problem in the United States. All indications are that this pace of displacement will accelerate with increased urbanization and the consequent mounting demands for urban services and the growth of federal, state, and local programs for the renewal of cities and the construction of roads. It has been estimated that from 1964 to 1972 the federally aided urban renewal and highway programs alone will dislocate 825,000 families and individuals and 136,000 businesses.

In a recent report, Relocation: Unequal Treatment of People and Businesses Displaced by Governments, the Advisory Commission on Intergovernmental Relations found great inconsistencies in provisions for relocation assistance among levels of government and among programs at the same level. As a result, a family may be displaced by a state or local public works project and receive no moving expense payments or advisory assistance, while a family across the street, displaced by a federally aided urban renewal project, is paid up to \$200 for moving expenses and receives governmental help in locating a new residence.

There are serious problems even where governments make earnest efforts to provide relocation assistance. The single greatest problem in relocating families is the shortage of standard housing for low income groups, particularly non-whites, the elderly, and large families. Among business displacees, small businesses owned and operated by the elderly are major displacement casualties. Advisory assistance is of growing importance for these groups that are most seriously affected by displacement.

In preparation of its relocation study, the Advisory Commission cooperated with the U. S. Conference of Mayors in a joint survey of the problems and practices of 100 cities over 100,000 population. The survey disclosed that federally assisted urban renewal and highway activities together account for about 65 percent of the people, and about 90 percent of the businesses displaced by governmental action in urban areas. Efforts are being made in Congress to establish uniform relocation policies for all federal and federally aided programs.

Establishment of uniformity among federally aided state and local programs would still leave the problem of inconsistencies and inadequacies among other state and local programs. In December 1964, only seven states had legislation requiring any kind of relocation payments for displacements caused by state activities other than federally assisted highways. In six of the seven states, local governments as well as state agencies were required to make relocation payments. No states required advisory services.

Apart from the federally aided urban renewal and highway programs, displacement in urban areas is largely caused by local government activities: building code enforcement, public buildings, public housing, and other activities involving acquisition of real estate for public use, such as local streets, parks, and off-street parking facilities. The Advisory Commission-Conference of Mayors survey found that less than 10 percent of the cities reporting displacement of families due to code enforcement made relocation payments, 30 percent of those making displacements due to public building construction made such payments, and less than one-third of those causing displacements by other public works activities made such payments. Similar low percentages of cities making relocation payments to businesses were reported. In general, therefore, persons displaced by state and local government action, other than federally aided projects, receive little or no relocation payments and services or receive a varying scale of payments and services, with resultant inequitable and inconsistent treatment of an increasing number of people and businesses.

State governments should assume responsibility for establishing greater consistency and equity in the relocation practices of state and local programs. The principles of fair treatment involved--as basic as those in the eminent domain law on which the process of public property taking depends--are matters of fundamental statewide concern, and therefore require legislative consideration.

The proposed legislation would establish within each state a uniform relocation policy for persons and businesses displaced by state and local programs. A displaced person would be entitled to reimbursement on the basis of either (a) actual and reasonable expenses involved in moving himself, his family, his business or farm operation, or other personal property, or (b) a fixed payment in accordance with a

fixed schedule. The legislation would prescribe allowable maximums.

State or local agencies causing displacement would be required to provide a relocation assistance program which would include (1) determining the relocation needs of displacees; (2) assisting businessmen and farmers in obtaining and becoming established in suitable business locations or replacement farms; (3) supplying information about Federal Government assistance programs; and (4) helping to minimize hardships caused by relocation. State or local agencies would also be required to provide temporary relocation for displaced families and individuals and to provide assurance that standard housing is available or being made available that is comparable in quality, cost, and location to that from which they are displaced.

The governor or appropriate state agency would be given authority to establish regulations to assure that payments are reasonable and fair, that payments are made with reasonable promptness, and that there is provision for appropriate administrative review of any determination as to the eligibility for relocation payment authorized by the Act.

In the interest of economy and efficiency, state agencies are authorized to use the administrative machinery of other state agencies or units of local government for making relocation payments and providing relocation services.

In cases where a local government causes displacement by a program in which the state shares part of the cost, the locality would be entitled to reimbursement for the relocation cost in the same manner, and to the same extent, as it receives reimbursement for other project costs.

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An Act to provide for uniform, fair, and equitable treatment of persons, businesses, and nonprofit organizations displaced by state and local programs."]

(Be it enacted, etc.)

1        Section 1. Declaration of Policy. The purpose of this act  
2 is to establish a uniform policy for the fair and equitable  
3 treatment of owners, tenants, other persons, and business con-  
4 cerns displaced by the acquisitions of real property by state  
5 and local land acquisition programs, by building code enforcement  
6 activities, or by a program of voluntary rehabilitation of  
7 buildings or other improvements conducted pursuant to govern-  
8 mental supervision. Such policy shall be uniform as to (1) re-  
9 location payments, (2) advisory assistance, (3) assurance of  
10 availability of standard housing, and (4) state reimbursement  
11 for local relocation payments under state assisted programs.

1        Section 2. Relocation Payments.

2        (a) If the state or any unit of local government acquires  
3 real property for public use, it shall make fair and reasonable  
4 relocation payments to displaced persons and business concerns  
5 as required by this act.

6 (b) A relocation payment to a displaced person shall be  
7 (1) for actual and reasonable expenses in moving himself, his  
8 family, business, farm operation, or other personal property, and  
9 in the case of a farm operation, for actual and reasonable  
10 expenses in searching for a replacement farm, or (2) a fixed  
11 payment in accordance with a schedule of fixed amounts approved  
12 by the Governor.

13 (c) Relocation payments shall not exceed \$  in the  
14 case of an individual or family, \$  in the case of a  
15 business concern or nonprofit organization, and \$  in the  
16 case of a farm operation; provided that such amounts may be  
17 exceeded where necessary to secure maximum participation in a  
18 program financed in whole or part by federal funds.

1 Section 3. Relocation Assistance Programs.

2 (a) When any state agency or unit of local government  
3 acquires real property for public use, it shall assure that a re-  
4 location assistance program for displaced persons and business  
5 concerns, offering the services herein prescribed, is available  
6 to reduce hardship to those affected, and to reduce delays  
7 in public improvements. If the state agency or local unit of  
8 government determines that other persons, business concerns, or  
9 nonprofit organizations occupying property adjacent to the real  
10 property acquired are caused substantial economic injury because

11 of the public improvement for which property is acquired, it may  
12 provide such persons or business concerns relocation services  
13 under such programs.

14 (b) Each relocation assistance program required by subsection  
15 (a) shall include such measures, facilities, or services as may  
16 be necessary or appropriate in order (1) to determine the needs  
17 of displaced persons, business concerns, and nonprofit organi-  
18 zations for relocation assistance; (2) to assist owners of dis-  
19 placed business concerns and farm operations in obtaining and  
20 becoming established in suitable business locations or replace-  
21 ment farms; (3) to supply information concerning programs of the  
22 Federal Government offering assistance to displaced persons and  
23 business concerns; (4) to assist in minimizing hardships to  
24 displaced persons in adjusting to relocation; and (5) to secure,  
25 to the greatest extent practicable, the coordination of re-  
26 location activities with other project activities and other  
27 planned or proposed governmental actions in the community or  
28 nearby areas which may affect the carrying out of the relocation  
29 program.

1 Section 4. Assurance of Availability of Standard Housing.

2 If any state agency or unit of local government acquires real



3 property for public use, it shall provide a feasible method  
4 for the temporary relocation of families and individuals  
5 displaced from the property acquired, and assurance that  
6 there are or are being provided, in areas not generally less  
7 desirable in regard to public utilities and public and  
8 commercial facilities, and at rents or prices within the  
9 financial means of the families and individuals displaced,  
10 decent, safe, and sanitary dwellings equal in number to the  
11 number of and available to such displaced families and  
12 individuals and reasonably accessible to their places of  
13 employment.

1 Section 5. Authority of the /Governor/ /Insert name of  
2 supervising agency/.

3 (a) The /Governor/ /state agency/ shall make such  
4 regulations as may be necessary to assure:

5 (1) that relocation payments authorized by Section 2  
6 are fair and reasonable;

7 (2) that a displaced person, business concern, or  
8 nonprofit organization that makes proper application  
9 for a relocation payment authorized by Section 2(b)(1) is,  
10 if personal property is disposed of and replaced for  
11 use at the new location, paid an amount equal to the reason-  
12 able expenses that would have been required in moving

13 such personal property to the new location;

14 (3) that a displaced person, business concern, or  
15 nonprofit organization making proper application for  
16 and entitled to receive a relocation payment authorized  
17 by this act is paid promptly after the relocation;

18 (4) that a displaced person, business concern, or  
19 nonprofit organization has a reasonable time from the  
20 date of displacement in which to apply for a relocation  
21 payment authorized by this act.

22 (b) In order to prevent unnecessary expense and  
23 duplication of functions, and to promote uniform and effective  
24 administration of relocation assistance programs for dis-  
25 placed persons, the Governor state agency may require  
26 that any state agency make relocation payments or provide  
27 relocation services, or otherwise carry out its functions under  
28 this act, by utilizing the facilities, personnel, and services  
29 of any other state agency or unit of local government, or by  
30 entering into appropriate contracts or agreements with any  
31 state agency or unit of local government having an established  
32 organization for conducting relocation assistance programs.

33 (c) The Governor head of state agency may make other  
34 necessary rules and regulations to carry out the purposes of  
35 this act.

1           Section 6. Local Government Programs. Units of local  
2 government may make relocation payments, provide relocation  
3 services, or otherwise carry out their functions under this  
4 act by entering into appropriate contracts or agreements with  
5 any state agency or unit of local government having an  
6 established organization for conducting relocation assistance  
7 programs.

1           Section 7. Fund Availability. Funds appropriated or  
2 otherwise available to any state agency or unit of local  
3 government for the acquisition of real property or any  
4 interest therein for a particular program or project shall  
5 be available also for obligation and expenditure to carry  
6 out the provisions of this act as applied to that program or  
7 project.

1           Section 8. State Participation in Cost of Local Relocation  
2 Payments and Services. If a unit of local government acquires  
3 real property, and state financial assistance is available  
4 to pay the cost, in whole or part, of the acquisition of such  
5 real property, or of the improvement for which such property  
6 is acquired, the cost to the unit of local government of  
7 providing the payments and services prescribed by this act  
8 shall be included as part of the costs of the project for

9       which state financial assistance is available to such unit  
10       of local government, and shall be eligible for state  
11       financial assistance in the same manner and to the same  
12       extent as other project costs.

1           Section 9. Displacement by Code Enforcement or Voluntary  
2       Rehabilitation. A person who moves his business concern or  
3       other personal property, or moves from his dwelling as the  
4       direct result of code enforcement activities, or a program  
5       of voluntary rehabilitation of buildings conducted pursuant  
6       to a governmental program, is deemed to be a displaced  
7       person for the purposes of this act.

1           Section 10. Appeal Procedure. Any person or business  
2       concern aggrieved by final administrative determination  
3       concerning eligibility for relocation payments authorized  
4       by this act may appeal such determination to the insert  
5       county court of original jurisdiction<sup>7</sup> in which the land  
6       taken for public use is located or in which the code or  
7       voluntary rehabilitation program is conducted.

1           Section 11. Definitions. As used in this Act--

2           (1) the term "state agency" means any department or  
3       agency of the state;

4           (2) the term "person" means any individual, family, or  
5       owner of a business concern or farm operation;

6           (3) the term "nonprofit organization" means define for  
7 state purposes; might use definition for tax exemption  
8 purposes;

9           (4) the term "business concern" means any firm, partner-  
10 ship, corporation, or nonprofit organization not engaged in  
11 the activity of holding property for the production of income;

12           (5) the term "farm operation" means any activity conducted  
13 solely or primarily for the production of one or more  
14 agricultural products or commodities for sale and home use,  
15 and customarily producing such products or commodities in  
16 sufficient quantity to be capable of contributing materially  
17 to the operator's support;

18           (6) the term "unit of local government" means a county,  
19 city, or insert names of others, such as school districts,  
20 special districts, townships, villages, authorities;

21           (7) the term "displaced" means any required movement  
22 from real property as a result of the acquisition or imminence  
23 of acquisition of such property for a public improvement  
24 constructed or developed by or with funds provided, in whole  
25 or part, by the state or local units of government or pur-  
26 suant to a governmental program of building code enforcement  
27 or voluntary rehabilitation.

1        Section 12. Severability.    /̄Insert severability clause.̄

1        Section 13. Effective Date.    /̄Insert effective date.̄

AREAWIDE VOCATIONAL EDUCATION PROGRAMS  
IN METROPOLITAN AREAS\*

In its report on Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs, the Advisory Commission on Intergovernmental Relations found that, relative to their population, suburban areas have almost as great a need as their central city for new and specialized vocational education programs to train dropouts and near dropouts and retrain adults who are undereducated or whose occupations have become obsolete. For the Nation as a whole, the number of persons 25 years of age and older with less than four years of high school (dropouts) living in suburban areas is nearly equal to the number living in the central cities. The percent of 16 and 17 year olds not enrolled in school (dropouts) is almost equal in central cities and suburbs. Furthermore, the occupational groups which are declining in relative demand (craftsmen, operatives, and laborers) are found living just as frequently, or more so, in suburbs as in central cities. Finally, unemployment is not much less in the suburbs (4 percent) than in the central cities (5 percent).

Despite this need for vocational education in suburban areas, suburban school districts frequently have inadequate vocational education facilities for both high school and post-high school students. Unlike large central city school districts, individual suburban school districts often lack a sufficient number of vocational students to warrant the investment in capital facilities and administrative organization to conduct adequate vocational education and retraining programs. Many also lack resources to finance such programs. In the suburban areas as a whole, however, and certainly in the metropolitan areas as a whole, there are enough potential vocational education students to justify the necessary investment and enough resources to support it. Thus, an areawide approach to vocational education is indicated.

Since states have the basic responsibility for providing public education, they have a key role in helping assure adequate vocational education opportunities for their citizens, inside and outside metropolitan areas. It is appropriate, therefore, that they help overcome deficiencies in vocational education in metropolitan areas as an important part of their responsibility for dealing with inadequacies throughout their jurisdiction.

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\* Included in the Council of State Governments' SUGGESTED STATE LEGISLATION.

Just how states go about providing necessary direction, coordination, and stimulus will necessarily vary because of wide variations in state and local sharing of responsibility for providing vocational education and retraining programs. These variations concern the relative responsibility vested in the local school boards and the state departments of education, whether administration is under an entirely separate vocational education system, and the relationship to community colleges. In any case, however, states tend to follow the same administrative pattern for post-high school technical education as they use for general education.

Organizational and financial patterns developed by the state to meet vocational education needs in metropolitan areas may also need to vary from area to area. Differences relate to size of the metropolitan area, relative dominance of the central city, number of counties constituting the area, the number, size, and needs of individual school districts within the area, and the degree to which they are individually capable of providing an adequate vocational program.

The American Vocational Association identified six general types of "area vocational education programs" in use in the states: (1) A decentralized area vocational program which makes arrangements for exchanging students among local high schools that provide different kinds of occupational training, as in Rockland County, New York; (2) Expansion of the area served by a vocational school to include contiguous nonserviced territory; (3) A separate school for vocational education built and maintained cooperatively by two or more existing school districts or units; Bucks County, Pennsylvania, is an example; (4) County units established as a basis for vocational education within a county or group of counties, as in New Jersey; (5) County schools controlled and financed jointly with a state; and (6) State controlled and financed vocational schools in specified regions or areas of a state, such as in Ashland, Kentucky.

Considerable stimulus toward adoption of areawide vocational education programs in the states has been given by the Federal Government, particularly since authorization of the grant-in-aid program under the Vocational Education Act of 1963. However, a number of states still have not established the legislative framework for such areawide programs.

The first three types of areawide arrangement listed above can be undertaken in states authorizing their political subdivisions, including school districts, to enter into interlocal contracts or joint agreements. Such authority is provided in the proposal on "Interlocal Contracting and Joint Enterprises," pp. 398-406, below.



The draft statute that follows authorizes one of the other alternative methods: use of the county as a geographic base for a vocational education system. In some states, particularly in the South, most or all local school districts are county school districts and therefore usually are already authorized to provide countywide vocational education as part of their general responsibility for public education. The draft legislation would authorize a countywide system for vocational education in states where elementary and secondary education is provided by local districts with less than countywide jurisdiction. Some states may wish to establish systems on a regional rather than a county basis. In either case, the draft is applicable only in states with a multiplicity of small school districts.

With over one-half of the nation's metropolitan areas contained within single counties, a county system is likely to prove attractive to many metropolitan areas in which small local districts are incapable individually of providing effective vocational school programs. The legislation also authorizes admission of students from neighboring districts on a charge basis, thus enabling service beyond the county line. Further expansion of the service area of a county vocational school district can be achieved, if desired, by joint action with neighboring counties under an interlocal contract or agreement. In any case, of course, existing state conditions, such as the education code, geography, and local customs, may make it desirable to combine legislation for a county district with statutes authorizing the other types of area vocational education programs cited above.

The statute authorizes establishment of a county vocational school district by (a) action of the county governing body upon recommendation of the state board of education or upon request of local school boards representing a prescribed percentage of enrolled students not served by an approved vocational program, or (b) vote of the people at a referendum initiated on petition of a prescribed percentage of voters in the area not served by an approved vocational program. The county vocational school district is not to include territory within the boundaries of local districts providing an approved vocational education program, unless such local districts vote to join the county district and the latter agrees to take them in. Taxes for support of the county vocational school district are levied only within its own boundaries rather than the entire county.

The draft statute is adapted from New Jersey Revised Statutes 18:15-30 through 18:15-58.

States interested in using the community junior college as one way of providing vocational education for the post-high school student are referred to the model "Community Junior College Act" in the Council's Suggested State Legislation--Volume XXIV (1965), pp. 69-79.

Suggested Legislation

      Title should conform to state requirements.  
The following is a suggestion: "An act to authorize county vocational education school districts."      

(Be it enacted, etc.)

1           Section 1. Establishment of County Vocational School

2           Districts. (a) The       county board       shall vote on the question of  
3 whether a county vocational school district shall be established  
4 in the county when it receives:

5                       (1) a resolution of the       state board of education        
6 that a need exists in the county for operation of county  
7 industrial, commercial, agricultural, or household arts  
8 programs; or

9                       (2) a request in writing from       local       school  
10 districts containing not less than               percent of the  
11 public school enrollment of the county not served by a  
12 system of vocational education approved for the purposes of  
13 Federal or state allotments of vocational funds by the  
14       state commissioner of education       under regulations of the  
15       state board of education       that such a district be estab-  
16 lished.

17 If the county board by a majority vote favors the  
18 establishment of such a district in the county, such district  
19 shall be forthwith established and maintained in the county and  
20 shall be known as the "vocational school district of the county  
21 of  ."

22 (b) At the request in writing of not less than    
23 percent of the registered voters of any county living within  
24 local school districts not served by a system of vocational  
25 education approved for the purpose of Federal or state allotments  
26 of vocational funds by the state commissioner of education  
27 under regulations of the state board of education, the county  
28 clerk shall submit at any general election, and shall cause to  
29 be printed upon the ballot to be voted at such election, the  
30 following question:

31 "Shall a county vocational school district be  
32 established in the county of   pursuant to provi-  
33 sions of cite this statute?"

34 In squares at the right shall be placed the words "Yes" and  
35 "No." Any person desiring the establishment of a county voca-  
36 tional school district shall mark an "X" opposite the word "Yes,"  
37 and any person opposed thereto shall mark an "X" opposite the  
38 word "No." 1/

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1/ This paragraph should be written to conform with balloting  
procedures in the state.

39           If a majority of all the ballots so voted shall favor the  
40 establishment of the county vocational school district, the  
41 district shall be forthwith established and maintained as  
42 provided in this act. The results of such election shall be  
43 returned and canvassed in the same manner and at the same time  
44 as other election returns are canvassed.

1           Section 2. County Districts Not to Include Certain Terri-  
2 tory of County; Exception; Agreements; Principals, Teachers, and  
3 Employees.

4           (a) The county vocational school district shall include  
5 within its boundaries all the territory of the county not  
6 included within the boundaries of any local school district if  
7 such local district is maintaining a system of vocational  
8 education approved for the purposes of Federal or state allotment  
9 of vocational funds by the state commissioner of education  
10 under the regulations of the state board of education.

11           (b) Notwithstanding the provisions of subsection (a) of  
12 this section, any county vocational school district shall include  
13 the territory within the boundaries of any local school  
14 district referred to in subsection (a) of this section after the  
15 date of filing in the office of the state commissioner of  
16 education of a certified copy of a resolution adopted by the  
17 county board of the county subsequent to the organization of the

18 county vocational school district and of a resolution adopted by  
19 the board of education of the local district setting forth the  
20 finding that it is in the best interest of the county vocational  
21 school district and of the local district that the county  
22 vocational school district shall include within its boundaries  
23 the territory of the local district.

24 (c) The board of education of the county vocational  
25 school district and the board of education of each local  
26 district referred to in subsection (b) of this section are each  
27 hereby authorized and empowered to undertake and to enter into  
28 agreements of any nature whatsoever necessary, desirable,  
29 useful, or convenient for and with respect to the assumption,  
30 operation, or administration by the county vocational school  
31 district of any system of vocational education then being main-  
32 tained in the local district, including, but not limited to,  
33 the transfer of principals, teachers, employees, pupils, or  
34 classes; the purchase, grant, transfer, or lease to the county  
35 vocational school district of any lands, schools, buildings,  
36 furnishings, equipment, apparatus, or supplies constituting  
37 part of or used in connection with the local system; and the  
38 making of or provision for payments, costs, or expenses in  
39 connection with any of the aforesaid, and copy of any such agree-  
40 ment shall be filed in the office of the state commissioner of  
41 education.

42           (d) All principals, teachers, and employees of any [local]  
43 district referred to in subsection (b) of this section who are  
44 employed in or assigned to the system of vocational education in  
45 any such district shall be transferred to and continue their  
46 respective employments in the employ of the county vocational  
47 school district from and after the date of transfer provided for  
48 in any agreement entered into pursuant to subsection (c) of this  
49 section, and their rights to tenure, pension, and accumulated  
50 leave of absence accorded under the laws of the state shall not  
51 be affected by the transfer to the county vocational school  
52 district.

1           Section 3. Rules for Organization and Management. The  
2 [state board of education] shall prescribe rules and regulations  
3 for the organization, management, and control of schools operated  
4 and maintained by a county vocational school district.

1           Section 4. Receiving Pupils from Other Districts. The  
2 board of education of county vocational school districts shall  
3 receive pupils from other school districts so far as their  
4 facilities will permit, provided a rate of tuition not exceeding  
5 the cost of such education is paid by the sending districts.

1           Section 5. School Year. The school year for a county  
2 vocational school district shall begin on [    ] and end on  
3 [    ].

1           Section 6. Board of Education; Appointment, Terms, and  
2 Vacancies. 2/ A county vocational school district established  
3 in accordance with this act shall be under the control and  
4 management of a board of education consisting of five persons  
5 to be appointed by the county board. In making the first  
6 appointments to a board, one person shall be appointed to serve  
7 for one year, one for two years, one for three years, one for  
8 four years, and one for five years. Annually during the month of  
9     , a member of the board shall be appointed to serve for a  
10 term of five years, and until the appointment and qualification  
11 of his successor. 3/

12           A vacancy on the board caused by the death, resignation, or  
13 removal of a member shall be reported forthwith by the secretary  
14 of the board to the county board which, within 30 days there-  
15 after, and in the manner prescribed for making appointments for  
16 a full term, shall appoint a person to fill the vacancy for the  
17 unexpired term.

1           Section 7. Qualifications of Board Members. A member of  
2 a board of education created under the provisions of this act

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2/ A state may prefer to have the county board serve as the  
board of education. Appropriate changes would need to be made in  
sections 6, 7, 9, 10, and 11.

3/ States having county superintendents of schools may wish to  
make them ex officio members of the boards.

3 shall be a citizen and resident of the county and shall have been  
4 such citizen and resident for at least three years immediately  
5 preceding his becoming a member of the board.

1 Section 8. Organization of Boards of Education. Each  
2 board of education for a county vocational school district shall  
3 organize annually on [specify date] by election of a president  
4 and vice president, unless the [specified date of organization]  
5 shall fall on Sunday, in which case the board shall organize on  
6 the following day.

1 Section 9. Board a Body Corporate; Name. The body having  
2 the control and management of a county vocational school district  
3 shall be a body corporate and shall be known as and called "the  
4 board of education of the county vocational school district in  
5 the county of [ ]."

1 Section 10. Applicability of Laws Governing [Local] School  
2 Districts and Counties.

3 (a) County vocational school districts are subject to the  
4 statutes governing [local] school districts with respect to  
5 [powers] of the board of education; approval of courses of study  
6 by the [state commissioner of education]; the making of contracts  
7 and payment of bills; advertisement for proposals for supplies or  
8 construction; and rights and privileges of teachers, principals,  
9 and members of the boards of education].



10           (b) In appropriating money and levying taxes for current  
11 expenses, county vocational school districts are subject to the  
12 statutes governing appropriating money and levying taxes for  
13 other purposes in the county, except that taxes for a county  
14 vocational school district shall be levied only within the  
15 boundaries of the district as determined under section 2 of this  
16 act.

17           (c) In the issuance of bonds, county vocational school  
18 districts are subject to the statutes governing borrowing for  
19 other county purposes; Provided, that any debt limitation or  
20 requirement for down payment therein shall not apply; and  
21 Provided further; that taxes levied for the payment of principal  
22 and interest of such bonds shall be levied only within the  
23 boundaries of the county vocational school district as deter-  
24 mined under section 2 of this act.

1           Section 11. Severability. /Insert severability clause./

1           Section 12. Effective Date. /Insert effective date./

ADOPTION OF MODEL UNIFORM CODES BY REFERENCE\*

Draft legislation, authorizing municipalities to incorporate by reference the provisions of nationally known technical codes and model codes prepared by state and federal agencies, was contained in Suggested State Legislation--Program for 1963. The suggested legislation closely follows a model act developed in 1961 by the National Institute of Municipal Law Officers. A modified version of the 1963 draft bill is presented below by expanding subhead (3) of Section 1 of the bill to clearly authorize adoption by reference of such codes as may be prepared by county, metropolitan, or regional agencies for local governments within the boundaries of such county or agencies, as well as model codes prepared by professional code organizations and federal and state agencies.

The general rule with respect to adoption of municipal ordinances is that they must be published if they are to be valid, but incorporation by reference of state statutes or any map or other regulation already in existence and part of the public record of the city is permitted. The widespread acceptance of such incorporation by reference, however, does not settle the question of the validity of adoption by reference of various technical codes prepared by nationally recognized trade or professional associations. These codes are generally long, exhaustive treatments of the respective subjects with which they deal. Their adoption by reference, when permitted, enables a municipality to avoid the very considerable expense incident to their publication.

Building regulations that are uniform from one jurisdiction to another in metropolitan areas have been singled out by the Advisory Commission on Intergovernmental Relations as one of the keys to improved local building and housing code practices. Modernization and uniformity of building codes in metropolitan areas would contribute to lower housing costs. In its report entitled Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs, the Advisory Commission recommended "(a) the enactment by the states of legislation authorizing the adoption of uniform housing and building codes within metropolitan areas,

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\* Included in the Council of State Governments' SUGGESTED STATE LEGISLATION.

and (b) action by local governments to utilize such authority..." to encourage uniformity among municipal codes, increase the coverage, and allow more expert application of reasonable requirements.

Uniform code committees, representing local governments within the metropolitan area, have been established in several places in the country. Denver and the surrounding counties and incorporated municipalities formed the Metro Building Code Committee to prepare a comprehensive uniform building code for adoption by the local governments within the metropolitan area. The uniform code developed by the Committee will be adopted first by Denver with other participating governments then adopting the Denver code by reference. In Atlanta, the metropolitan planning commission is undertaking preparation of uniform housing, plumbing and building codes for adoption throughout the five-county planning area. Uniform code committees have also been established in San Francisco and Detroit to develop uniform standards and in the Washington, D.C. metropolitan area, a committee of the Council of Governments, representing local governments in Virginia and Maryland, is preparing a uniform plumbing code for adoption by reference. State enabling legislation, therefore, should authorize municipalities to adopt by reference codes prepared by such county or metropolitan committees where such codes are readily available to the general public.\* The revised draft bill below would also permit such action.

#### Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An Act to authorize municipalities to incorporate by reference the provisions of nationally known technical codes or codes prepared by state, county, metropolitan, or regional agencies."]

(Be it enacted, etc.)

1 Section 1. Definitions. As used in this Act, the

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\* In some states incorporation by reference may be prohibited by the constitution.

2 following terms shall have the meanings indicated, unless  
3 the context otherwise requires:

4 (1) "Municipality" means any local government unit  
5 which under state law may adopt ordinances or local lawsl;

6 (2) "Rules" means rules, regulations, and general orders  
7 that have general application;

8 (3) "Code" means any published compilation of rules  
9 which has been prepared by various technical trade  
10 associations, federal agencies, this state or any agency  
11 thereof, counties of this state or any agency thereof, and  
12 any official metropolitan or regional agency within the  
13 state publishing a code; and shall include specifically, but shall  
14 not be limited to: building codes; plumbing codes; electrical  
15 wiring codes; health or sanitation codes; fire prevention  
16 codes; inflammable liquids codes; codes for the slaughtering,  
17 processing, and selling of meats and meat products for  
18 human consumption; codes for the production, pasteurizing,  
19 and sale of milk and milk products; together with any other  
20 code which embraces rules pertinent to a subject which is a  
21 proper municipal legislative matter;

22 (4) "Published" means printed or otherwise reproduced.

1 Section 2. Adoption of Codes by Reference. Any

2 municipality may adopt or repeal lan ordinancel la local lawl

3 which incorporates by reference the provisions of any  
4 code or portions of any code, or any amendment thereof,  
5 properly identified as to date and source, without setting  
6 forth the provisions of such code in full. At least  
7 [ ] copies of such code, portion, or amendment which  
8 is incorporated or adopted by reference, shall be filed  
9 in the office of the clerk of the municipality and there  
10 kept available for public use, inspection, and examination.  
11 The filing requirements herein prescribed shall not be  
12 deemed to be complied with unless the required copies  
13 of such codes, portion, or amendment or public record are  
14 filed with the clerk of such municipality for a period of  
15 [90] days prior to the adoption of the [ordinance]  
16 [local law] which incorporates such code, portion, or  
17 amendment by reference. If such a code, portion, or amend-  
18 ment is promulgated by a county, or metropolitan or  
19 regional agency, the adopting unit of local government must  
20 be within the territorial boundaries of such county or  
21 agency.

1 Section 3. Publication of Adopting Ordinance. Nothing  
2 contained in this Act shall be deemed to relieve any  
3 municipality of the requirement of publishing in full the

4 ordinance local law which adopts such code, portion,  
5 or amendment by reference, and all provisions applicable  
6 to such publication shall be fully and completely carried  
7 out as if no code, portion, or amendment were incorporated  
8 therein.

1 Section 4. Adoption of Penalty Clauses. Any ordinance  
2 local law adopting a code, portion, or amendment by  
3 reference shall state the penalty for violating such code,  
4 portion, or amendment, or any provision thereof separately,  
5 and no part of any such penalty shall be incorporated by  
5 reference.

1 Section 5. Effective Date. Insert effective date.

## REGIONAL COUNCILS OF PUBLIC OFFICIALS

Among the many devices proposed or used to enable citizens and local government officials of metropolitan areas to cope more effectively with the growing number of areawide problems is the regional or metropolitan council of public officials. These are voluntary associations of public officials, usually elected, from most or all of the governments of a metropolitan area, formed to seek a better understanding among the governments and officials in the area, to develop a consensus regarding metropolitan needs, and to promote coordinated action in solving their problems.

About a dozen regional councils have been established since the first, the Supervisors Inter-County Committee, was organized in 1954 in the Detroit area. Among the well-known councils, besides the Detroit group, are the Metropolitan Regional Council of New York, New Jersey, and Connecticut, in the New York City area; the Association of Bay Area Governments in the San Francisco area; the Mid-Willamette Valley Intergovernmental Cooperation Council (Salem, Oregon); and the Metropolitan Council of Governments in Washington, D.C.

Although councils vary with respect to their manner of establishment and membership, they usually have three characteristics: (1) They cut across or embrace several local jurisdictions, and sometimes do not stop at state lines. (2) They are composed of the chief elected officials of the local governments, and sometimes have representation from the state government. (3) As an association of representatives from individual governments which retain their power to act as they please with reference to the decisions of the regional councils, they function primarily as forums for discussion, research, and recommendation only. None has powers to compel either participation in the first instance or acceptance of recommendations in the end. Such operating functions as they may be given by their participating governments are always legally subject to the right of any individual constituent to withhold its support. Each, therefore, is voluntary in the fullest sense of the word. (4) They are multi-purpose, concerning themselves with many areawide problems. (5) They employ a full-time staff.

There has been a growing interest in regional councils, as reflected in the gradual increase in their number. It is anticipated, moreover, that the number will experience rapid expansion as a consequence of Section 1102(c) of the Federal Housing and Urban Development Act of 1965. This provision makes Federal grants available to "organizations composed of public officials whom (the HHFA Administrator) finds to be representative of the political

jurisdictions within a metropolitan area or urban region for the purpose of assisting such organizations to undertake studies, collect data, develop regional plans and programs, and engage in such other activities as the Administrator finds necessary or desirable for the solution of the metropolitan or regional problems in such areas or regions. Grants may be as much as two-thirds of the estimated cost of the work assisted.

In light of these developments it seems that states would be well advised to grant local officials necessary authority to form regional councils. Two basic methods have been used to provide this authority. The first is passage of special acts by the state legislature creating each council. This is the method followed in the 1957 Michigan Legislature for the Supervisors Intercounty Committee (Michigan Public Acts 1957, No. 21). The alternative, and more common approach, is a general interlocal cooperation enabling act that permits local units of government to undertake jointly any action they are empowered to undertake separately. A model interlocal agreement act of this kind has been previously proposed by the Advisory Commission and is presented on page 398 below. Such general authority has been used to establish the Association of Bay Area Governments in California and the Mid-Willamette Valley (Oregon) Council of Governments.

A third statutory approach is provided in the statute presented below. This is a bill authorizing local governments to join together for the specific purpose of forming and operating a regional council of officials.

Section 1 provides that the governing bodies of any two or more general purpose units of local government, such as cities and counties, may establish a regional council of public officials. It authorizes agreements to be made with governing bodies of similar units in other states in order to permit establishment of a council which would draw membership throughout the entire territory of an interstate metropolitan area. Some states might wish to broaden permissive membership to include representatives from local school districts or from the state government.

Section 2 specifies that each constituent local unit shall be represented by its elected chief executive or if it has no elected chief executive, by a member of its governing body chosen by that body. Reflecting the voluntary nature of the organization, it further provides that any constituent unit may withdraw at will upon giving 60 days' notice.

Two types of powers are authorized by Section 3. The first, which may be exercised by vote of the council, includes the power



to make studies of areawide problems of common interest, promote cooperation among the members, and make recommendations to the members and other public agencies operating in the area. These powers are purely of an advisory, research, encouragement, and recommendation nature. They do not involve carrying out any kind of "line" function normally carried out by the member governments within their individual jurisdictions.

The second category of powers are all other powers that the member governments may exercise individually. Since these would involve direct public services, the application of such powers to each participating government is a matter of basic importance to the governing bodies of those governments. Therefore it is provided that for such powers to be exercised by the council, appropriate action by each constituent government would be required.

The remaining sections authorize the council to adopt by-laws, employ staff and consultants, and receive funds from all sources, including grants from the Federal Government. Governing bodies of the member governments are permitted to appropriate funds for the council.

#### Suggested Legislation

Title should conform to state requirements.  
The following is a suggestion: "An act to authorize regional councils of public officials."7

(Be it enacted, etc.)

1        Section 1. Establishment.    The governing bodies of  
2        any two or more counties, cities, insert names of other general  
3        purpose units of local government7 by appropriate action, may  
4        enter into an agreement with each other, or with the governing  
5        bodies of any counties, cities, insert names of other general  
6        purpose units as above7 of any other state to the extent that

7 laws of such state permit, for establishment of a regional  
8 council of public officials.

1       Section 2. Membership. Membership of the council shall  
2 consist of one representative from each county, city, insert  
3 as above<sup>7</sup> entering into the agreement. The representative  
4 from each member county, city, insert as above<sup>7</sup> shall be the  
5 elected chief executive of the member county, city, insert as  
6 above<sup>7</sup>, or, if such county, city, insert as above<sup>7</sup> does not  
7 have an elected chief executive, a member of its governing  
8 body chosen by such body to be its representative. Any county,  
9 city, insert as above<sup>7</sup> which has become a member of the  
10 council may withdraw upon 60 days notice subsequent to formal  
11 action by its governing body.

1       Section 3. Powers and Duties. (a) The council shall have  
2 the power to (1) study such area governmental problems common  
3 to two or more members of the council as it deems appropriate,  
4 including but not limited to matters affecting health, safety,  
5 welfare, education, economic conditions, and regional develop-  
6 ment; (2) promote cooperative arrangements and coordinate  
7 action among its members; and (3) make recommendations for  
8 review and action to the members and other public agencies that  
9 perform functions within the region.

10 (b) The council may, by appropriate action of the govern-  
11 ing bodies of the member governments, exercise such other  
12 powers as are exercised or capable of exercise by the member  
13 governments and necessary or desirable for dealing with  
14 problems of mutual concern.

1 Section 4. By-Laws. The council shall adopt by-laws  
2 designating the officers of the council and providing for the  
3 conduct of its business.

1 Section 5. Staff. The council may employ such staff, and  
2 consult and retain such experts, as it deems necessary.

1 Section 6. Finances; Annual Report. (a) The governing  
2 bodies of the member governments may appropriate funds to  
3 meet the expenses of the council. Services of personnel, use  
4 of equipment and office space, and other necessary services may  
5 be accepted from members as part of their financial support.

6 (b) The council may accept funds, grants, gifts, and  
7 services from the government of the United States or its  
8 agencies, from the state of [ . . . ] or its departments,  
9 agencies or instrumentalities, or from any governmental unit  
10 whether participating in the council or not, and from private  
11 and civic sources.

12 (c) It shall make an annual report of its activities to the  
13 member governments.

1        Section 7.    /Insert severability clause./

1        Section 8.    /Insert effective date./

## URBAN RENEWAL AND PUBLIC HOUSING

All but two States now provide authority for municipalities to undertake urban renewal programs and, similarly, all but two States have legislation authorizing the provision of low rent housing by municipalities. Only 16 States, however, have enabled counties to undertake urban renewal whereas 42 States enable counties to provide low-rent housing for families of low income. According to the best information available, only about 32 counties have urban renewal agencies, with only one-third of these agencies operating in unincorporated areas. Suburban participation in public housing programs is also limited in spite of the large number of States authorizing such projects.

Notwithstanding the relatively small amount of current suburban concern, urban renewal and housing programs are needed and should be carried out in all parts of most of our metropolitan areas. The Advisory Commission on Intergovernmental Relations has recommended:

That States enact legislation authorizing counties in metropolitan areas to provide urban renewal and public housing services to unincorporated areas and small municipalities; and further provide for financial and technical assistance to the counties as well as municipalities for establishing such services and coordinating their administration, especially in multicounty metropolitan areas.\*

In most metropolitan areas throughout the country the central city is making strong efforts to strengthen and renew its deteriorating and blighted neighborhoods. In many suburban areas which surround these central cities the problems are not yet so formidable, although they are likely to become so as the suburbs grow, particularly the older ones whose industry and residential character is becoming more like the central cities they border.

Increased county responsibility for urban renewal and public housing programs would tend to broaden the area of jurisdiction by including unincorporated and incorporated areas that do not have programs of their own. In those counties where slum clearance and residential dislocation will be substantial, public housing would probably be necessary

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\* Advisory Commission on Intergovernmental Relations, Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs, (Washington: U.S. Government Printing Office, 1965), p. 114.

to enable relocation needs to be met. This has been the case in central cities where the proportion of families with incomes under \$4,000 is nearly as large as it is in the suburbs. Cooperation between counties and city renewal and housing agencies, and even joint city-county programs in certain cases, would be mutually advantageous. Such cooperation is fairly common where county programs now exist.

County renewal and public housing powers would not exclude continued exercise of similar powers by municipal governments and, to the contrary, might facilitate the programs of small municipalities which could not maintain full professional staffs of their own or provide adequate relocation housing within their own borders. Examples of this can be found in the Pittsburgh metropolitan area, among others, where county renewal staffs perform, under contract, the technical services needed to carry out renewal projects for which the individual municipality is the actual sponsor. Larger municipalities within counties, especially major central cities, will undoubtedly want to continue using their own highly developed staffs, with the counties performing renewal services and sponsoring projects only in unincorporated areas. Where central city renewal staff is available, a county might find it advantageous to contract with it for staff services. The indispensable role of the counties is that of project sponsor and provider of workable program certification in unincorporated areas where there is no other government capable of performing this role.

Many counties, both within and outside metropolitan areas, may have large rural populations that might resist having the county provide urban-type renewal and public housing services. A municipality with an active renewal and public housing program of its own might also resist contributing to a county program out of general county revenues. In such situations, the Commission has recommended that it may be appropriate to create a county subordinate tax area in order to administer and finance a needed service in the selected area. At least 20 States currently utilize the subordinate taxing area device to provide governmental services. Draft legislation establishing county subordinate taxing areas may be found on page 47 of this publication.

State programs of technical and financial assistance can do much to encourage needed urban renewal and public housing programs in small suburban jurisdictions and outlying unincorporated areas. Kentucky and Maine, for example, provide localities with staff assistance to prepare

local workable programs needed to qualify for Federal urban renewal and public housing grants and to advise local officials on planning and carrying out their programs. The State might also stimulate local programs by matching the local share of costs. Where the establishment of a local renewal agency in small municipalities and unincorporated areas is impractical, the State itself might undertake this responsibility.

The suggested legislation below authorizes municipalities and counties to provide for the rehabilitation, clearance, and redevelopment of slums and blighted areas. The bill contains provisions making local activities eligible for Federal assistance under the provisions of recent amendments of the Federal Housing Act. Existing State urban renewal laws may require new or amendatory legislation in order for States and localities to receive the full benefits from the Federal program.

The following legislation places the urban renewal responsibility in the hands of the general purpose unit of government rather than in a separate authority. The governing body may exercise its urban renewal powers through a board or a commissioner or through such offices of a municipality or county as it may by resolution determine. If the local governing body itself does not choose to exercise urban renewal powers, it may have such powers carried out by an urban renewal agency or by the housing authority, if one exists or is subsequently established in the community. The urban renewal agency or the housing authority then is vested with all the urban renewal powers in the same manner as though all powers were vested in the local governing body. The urban renewal agency, however, is given limited autonomy. As required by Federal law, it cannot proceed with a renewal project without (a) a workable program supported by the local governing body, (b) approval of the project by the local governing body, (c) conformance with the locality's general plan, (d) provision of the local share of funds by the local governing body, and (e) a public hearing.

The bill would permit political subdivisions to enter into interlocal agreements to jointly or cooperatively undertake urban renewal activities. The initiative in such joint undertakings is left with the localities themselves. The suggested act specifies the basic contents of such agreements and requires review by the Attorney General before an agreement goes into effect.

So that the States may assume an appropriate role, provision is made for State technical and financial assistance to municipalities and counties in planning and carrying out urban renewal activities.

In some States it may be desirable to authorize a State agency to exercise the powers given to municipalities and counties under this act. The State could then undertake urban renewal projects in small communities and unincorporated areas where carrying out a program would otherwise be impracticable or impossible. Any State, wishing to follow this course, might add appropriate provisions to the suggested act. In this case, a finding should be added to Section 1 of the act and a new section drafted specifying appropriate procedures to carry out this function.

Draft legislation permitting municipalities and counties to undertake low rent housing for low income families is not available at this time because of the substantial changes of emphasis in the Federal Housing Act of 1965, including a new program of rent subsidies. Such legislation will be included in the 1967 State Legislative Program of the Advisory Commission. Assistance in the preparation of legislation can be obtained in the meantime from the Office of General Counsel, Housing and Home Finance Agency, Washington, D. C., 20410.

#### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act providing authorization for municipalities and counties to undertake slum clearance and urban renewal."]

(Be it enacted, etc.)

1        Section 1. Findings and Declarations of Necessity. It is  
2        hereby found and declared that there exist in municipalities  
3        and counties of the state slum and blighted areas (as herein  
4        defined) which constitute a serious and growing menace, in-  
5        jurious to the public health, safety, morals and welfare of



6 the residents of the state; that the existence of such areas  
7 contributes substantially and increasingly to the spread of  
8 disease and crime, constitutes an economic and social liability  
9 imposing onerous local government burdens which decrease the tax  
10 base and reduce tax revenues, substantially impairs or arrests  
11 the sound growth of communities, retards the provision of housing  
12 accommodations, aggravates traffic problems and substantially  
13 impairs or arrests the elimination of traffic hazards and the  
14 improvement of traffic facilities; and that the prevention and  
15 elimination of slums and blight is a matter of state policy and  
16 state concern in order that the state and its communities shall  
17 not continue to be endangered by areas which are focal centers  
18 of disease, promote juvenile delinquency, and consume an ex-  
19 cessive proportion of its revenues because of the extra services  
20 required for police, fire, accident, hospitalization and other  
21 forms of public protection, services and facilities.

22 It is further found and declared that certain slum or  
23 blighted areas, or portions thereof, may require acquisition,  
24 clearance, and disposition subject to use restrictions, as  
25 provided in this Act, since the prevailing condition of decay  
26 may make impracticable the reclamation of the area by conserva-  
27 tion or rehabilitation; that other areas or portions thereof may,

28 through the means provided in this Act, be susceptible of con-  
29 servation or rehabilitation in such a manner that the conditions  
30 and evils hereinbefore enumerated may be eliminated, remedied  
31 or prevented; and that salvageable slum and blighted areas can  
32 be conserved and rehabilitated through appropriate public action  
33 as herein authorized, and the cooperation and voluntary action  
34 of the owners and tenants of property in such areas.

35 It is further found and declared that the powers conferred  
36 by this Act on municipalities and counties will enable the  
37 elimination and prevention of slums and blight in a more co-  
38 ordinated, orderly and efficient manner, and the carrying out of  
39 these activities in small communities or unincorporated areas  
40 where their undertaking is impractical without the provisions of  
41 this Act.

42 It is further found and declared that municipalities and  
43 counties are unable to provide for the rehabilitation, clearance  
44 and redevelopment of such slums and blighted areas without state  
45 technical services and financial assistance and that the  
46 granting of state financial assistance is a public purpose for  
47 which public monies may be expended.<sup>1</sup>

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1. If state financial assistance is not to be included in this bill, this paragraph should be omitted.

48           It is further found and declared that the powers conferred  
49 by this Act are for public uses and purposes for which public  
50 money may be expended and the power of eminent domain and police  
51 power exercised; and that the necessity in the public interest  
52 for the provisions herein enacted is hereby declared as a matter  
53 of legislative determination.

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

4           (a) "Agency" or "Urban Renewal Agency" shall mean a public  
5 agency created by section 17 of this Act.

6           (b) "Municipality" shall mean any incorporated city,  
7 village, or town in the state.

8           (c) "County" shall mean any county in the state of  
9 \_\_\_\_\_.

10           (d) "Public body" shall mean the state or any county,  
11 municipality, township, village, board, commission, authority,  
12 district, or any other subdivision or public body of the state.

13           (e) "Local governing body" shall mean the Council, Board  
14 of Commissioners, or other legislative body charged with  
15 governing the municipality or county.

16           (f) "Mayor" shall mean the mayor of a municipality or

17 other officer or body having the duties customarily imposed upon  
18 the executive head of a municipality.

19 (g) "County Chairman" shall mean the presiding officer of  
20 a county governing board.

21 (h) "Clerk" shall mean the clerk or other official of the  
22 municipality or county who is the custodian of the official  
23 records of such municipality or county.

24 (i) "Federal Government" shall include the United States  
25 of America or any agency or instrumentality, corporate or other-  
26 wise, of the United States of America.

27 (j) "Slum area" shall mean an area in which there is a  
28 predominance of buildings or improvements, whether residential  
29 or non residential, which by reason of dilapidation, deteriora-  
30 tion, age or obsolescence, inadequate provision for ventilation,  
31 light, air, sanitation, or open spaces, high density of popula-  
32 tion and overcrowding, or the existence of conditions which  
33 endanger life or property by fire and other causes, or any  
34 combination of such factors is conducive to ill health, trans-  
35 mission of disease, infant mortality, juvenile delinquency, or  
36 crime, and is detrimental to the public health, safety, morals  
37 or welfare.

38 (k) "Blighted area" shall mean an area which by reason of

39 the presence of a substantial number of slum, deteriorated or  
40 deteriorating structures, predominance of defective or inadequate  
41 street layout, faulty lot layout in relation to size, adequacy,  
42 accessibility or usefulness, insanitary or unsafe conditions,  
43 deterioration of site or other improvements, diversity of owner-  
44 ship, tax or special assessment delinquency exceeding the fair  
45 value of the land, defective or unusual conditions of title, or  
46 the existence of conditions which endanger life or property by  
47 fire and other causes, or any combination of such factors, sub-  
48 stantially impairs or arrests the sound growth of a municipality  
49 or county, retards the provision of housing accommodations or  
50 constitutes an economic or social liability and is a menace to  
51 the public health, safety, morals, or welfare in its present  
52 condition and use: Provided that, if such blighted area consists  
53 of open land the conditions contained in the proviso in section  
54 5 (d) shall apply; And provided further, that any disaster area  
55 referred to in subsection 5 (g) shall constitute a "blighted  
56 area."

57 (1) "Urban Renewal project" may include undertakings and  
58 activities in an urban renewal area for the elimination and for  
59 the prevention of the development or spread of slums and blight,  
60 and may involve slum clearance and redevelopment in an urban

61 renewal area, or rehabilitation or conservation in an urban renewal  
62 area, or a program or code enforcement in an urban renewal area,  
63 or any combination or part thereof in accordance with an urban  
64 renewal plan. Such undertakings and activities may include:

65 (1) acquisition of a slum area or a blighted area or  
66 portion thereof;

67 (2) demolition and removal of buildings and improve-  
68 ments;

69 (3) installation, construction, or reconstruction of  
70 streets, utilities, parks, playgrounds, and other improve-  
71 ments necessary for carrying out in the urban renewal area  
72 the urban renewal objectives of this Act in accordance with  
73 the urban renewal plan;

74 (4) disposition of any property acquired in the urban  
75 renewal area (including sale, initial leasing or retention  
76 by the municipality or county itself) at its fair value for  
77 uses in accordance with the urban renewal plan;

78 (5) carrying out plans for a program of code enforce-  
79 ment and a program of voluntary or compulsory repair and  
80 rehabilitation of buildings or other improvements in  
81 accordance with the urban renewal plan;

82 (6) acquisition of real property in the urban renewal

83 area which, under the urban renewal plan, is to be repaired  
84 or rehabilitated for dwelling use or related facilities,  
85 repair or rehabilitation of the structures for guidance  
86 purposes, and resale of the property;

87 (7) acquisition of any other real property in the  
88 urban renewal area where necessary to eliminate unhealthful,  
89 insanitary or unsafe conditions, lessen density, eliminate  
90 obsolete or other uses detrimental to the public welfare,  
91 or otherwise to remove or prevent the spread of blight or  
92 deterioration, or to provide land for needed public  
93 facilities;

94 (8) acquisition, without regard to any requirement  
95 that the area be a slum or blighted area, of air rights in  
96 an area consisting principally of land in highways, railway  
97 or subway tracks, bridge or tunnel entrances, or other  
98 similar facilities which have a blighting influence on the  
99 surrounding area and over which air rights sites are to be  
100 developed for the elimination of such blighting influences  
101 and for the provision of housing (and related facilities  
102 and uses) designed specifically for, and limited to,  
103 families and individuals of low or moderate income;

104 (9) construction of foundations and platforms necessary

105 for the provision of air rights sites of housing (and  
106 related facilities and uses) designed specifically for, and  
107 limited to, families and individuals of low or moderate  
108 income.

109 (m) "Urban renewal area" means a slum area or a blighted  
110 area or a combination thereof which the local governing body  
111 designates as appropriate for an urban renewal project.

112 (n) "Urban renewal plan" means a plan, as it exists from  
113 time to time, for an urban renewal project, which plan (1) shall  
114 conform to the general plan for the municipality or county as a  
115 whole except as provided in subsection 5 (g); and (2) shall be  
116 sufficiently complete to indicate such land acquisition, demo-  
117 lition and removal of structures, redevelopment, improvements,  
118 and rehabilitation as may be proposed to be carried out in the  
119 urban renewal area, zoning and planning changes, if any, land  
120 uses, maximum densities, and building requirements.

121 (o) "Related activities" shall mean (1) planning work for  
122 the preparation of a general neighborhood renewal plan, or for  
123 the preparation or completion of a communitywide plan or program  
124 pursuant to section 6 of this Act, and (2) the functions related  
125 to the acquisition and disposal of real property pursuant to  
126 section 7 (d) of this Act.



127           (p) "Real property" shall include all lands, including  
128 improvements and fixtures thereon, and property of any nature  
129 appurtenant thereto, or used in connection therewith, and every  
130 estate, interest, right and use, legal or equitable, therein,  
131 including terms for years and liens by way of judgment, mortgage  
132 or otherwise.

133           (q) "Bonds" shall mean any bonds (including refunding  
134 bonds), notes, interim certificates, certificates of indebtedness,  
135 debentures or other obligations.

136           (r) "Obligee" shall include any bondholder, agents or  
137 trustees for any bondholders, or lessor demising to the municipi-  
138 pality or county property used in connection with urban renewal,  
139 or any assignee or assignees of such lessor's interest or any  
140 part thereof, and the Federal Government when it is a party to  
141 any contract with the municipality or county.

142           (s) "Person" shall mean any individual, firm, partnership,  
143 corporation, company, association, joint stock association, or  
144 body politic; and shall include any trustee, receiver, assignee,  
145 or other person acting in a similar representative capacity.

146           (t) "Area of operation" shall mean the area within the  
147 corporate limits of the municipality or the territorial limits  
148 of the county; Provided, however, that a county shall not under-  
149 take any project or projects within the boundaries of any

150 municipality without the request or consent, by resolution, of  
151 the local governing body of the municipality and provided further  
152 that a municipality cannot undertake any project or projects  
153 outside its area of operation without the request or consent of  
154 the local governing body of the county.

155 (u) "Housing Authority" shall mean a housing authority  
156 created by and established pursuant to the \_\_\_\_\_  
157 Law.

158 (v) "Board" or "Commission" shall mean a board, commission,  
159 department, division, office, body or other unit of the munici-  
160 pality or county.

161 (w) "Public officer" shall mean any officer who is in  
162 charge of any department or branch of the government of the  
163 municipality or county relating to health, fire, building regu-  
164 lations, or to other activities concerning dwellings in the  
165 municipality or county.

1 Section 3. Encouragement of Private Enterprise. A munici-  
2 pality or county, to the greatest extent it determines to be  
3 feasible in carrying out the provision of this Act, shall afford  
4 maximum opportunity, consistent with the sound needs of the  
5 municipality or county as a whole, to the rehabilitation or  
6 redevelopment of the urban renewal area by private enterprise.  
7 A municipality or county shall give consideration to this

8 objective in exercising its powers under this Act, including the  
9 approval of urban renewal plans, communitywide plans or programs  
10 for urban renewal, and general neighborhood renewal plans, the  
11 exercise of its zoning powers, the enforcement of other laws,  
12 codes and regulations relating to the use of land and the use  
13 and occupancy of buildings and improvements, the disposition of  
14 any property acquired, and the provision of necessary public  
15 improvements.

1 Section 4. Finding of Necessity by Local Governing Body.

2 No municipality or county shall exercise the authority hereafter  
3 conferred upon municipalities or counties by this Act until  
4 after the local governing body of the municipality or county  
5 shall have adopted a resolution finding that: (1) one or more  
6 slum or blighted areas exist in such municipality or county; and  
7 (2) the rehabilitation, conservation, redevelopment, or a  
8 combination thereof, of such area or areas is necessary in the  
9 interest of the public health, safety, morals or welfare of the  
10 residents of such municipality or county.

11 Section 5. Preparation and Approval of Plan for Urban  
12 Renewal Project.

13 (a) An urban renewal project for an urban renewal area  
14 shall not be planned or initiated unless the governing body has,

15 by resolution, determined such area to be a slum area or a  
16 blighted area or a combination thereof and designates such area  
17 as appropriate for an urban renewal project.

18 (b) The municipality or county may itself prepare or  
19 cause to be prepared an urban renewal plan, or any person or  
20 agency, public or private, may submit such a plan to a munici-  
21 pality or county. Prior to its approval of an urban renewal  
22 project, the local governing body shall submit such plan to the  
23 planning commission of the municipality or county, if any, for  
24 review and recommendations as to its conformity with the general  
25 plan for the development of the municipality or county as a  
26 whole. The planning commission shall submit its written recom-  
27 mendations with respect to the proposed urban renewal plan to  
28 the local governing body within thirty days after receipt of the  
29 plan for review. Upon receipt of the recommendations of the  
30 planning commission or, if no recommendations are received within  
31 said 30 days, then without such recommendations, the local  
32 governing body may proceed with the hearing on the proposed  
33 urban renewal project prescribed by subsection (c) hereof.

34 (c) The local governing body shall hold a public hearing  
35 on an urban renewal project after public notice thereof by  
36 publication in a newspaper having a general circulation in the  
37 area of operation of the municipality or county. The notice

38 shall describe the time, date, place, and purpose of the hearing,  
39 shall generally identify the urban renewal area covered by the  
40 plan, and shall outline the general scope of the urban renewal  
41 project under consideration.

42 (d) Following such hearing, the local governing body may  
43 approve an urban renewal project and the plan therefor if it  
44 finds that:

45 (1) A feasible method exists for the location of  
46 families who will be displaced from the urban renewal  
47 area in decent, safe, and sanitary dwelling accommoda-  
48 tions within their means and without undue hardship to  
49 such families;

50 (2) The urban renewal plan conforms to the general  
51 plan of the municipality or county as a whole;

52 (3) The urban renewal plan gives due consideration  
53 to the provision of adequate park and recreational areas  
54 and facilities that may be desirable for neighborhood  
55 improvement, with special consideration for the health,  
56 safety, and welfare of children residing in the general  
57 vicinity of the site covered by the plan; and

58 (4) The urban renewal plan will afford maximum  
59 opportunity, consistent with the sound needs of the  
60 municipality or county as a whole, for the rehabilitation

61 or redevelopment of the urban renewal area by private  
62 enterprise;

63 Provided that, if the urban renewal area consists of an area of  
64 open land to be acquired by the municipality or county, such  
65 area shall not be so acquired unless:

66 (1) If it is to be developed for residential uses,  
67 the local governing body shall determine that a shortage  
68 of housing of sound standards and design which is decent,  
69 safe, and sanitary exists in the municipality or county;  
70 that the need for housing accommodations has been or will  
71 be increased as a result of the clearance of slums in  
72 other areas; that the conditions of blight in the area  
73 and the shortage of decent, safe, and sanitary housing  
74 cause or contribute to an increase in and spread of  
75 disease and crime and constitute a menace to the public  
76 health, safety, morals, or welfare; and that the acquisi-  
77 tion of the area for residential uses is an integral part  
78 of and essential to the program of the municipality or  
79 county; or

80 (2) If it is to be developed for nonresidential  
81 uses, the local governing body shall determine that such  
82 nonresidential uses are necessary and appropriate to  
83 facilitate the proper growth and development of the

84 community in accordance with sound planning standards and  
85 local community objectives, which acquisition may require  
86 the exercise of governmental action, as provided in this  
87 Act, because of defective or unusual conditions of title,  
88 diversity of ownership, tax delinquency, improper subdivi-  
89 sions, outmoded street patterns, deterioration of site,  
90 economic disuse, unsuitable topography or faulty lot  
91 layouts, the need for the correlation of the area with  
92 other areas of a municipality or county by streets and  
93 modern traffic requirements, or any combination of such  
94 factors or other conditions which retard development of the  
95 area.

96 (e) An urban renewal plan may be modified at any time;  
97 Provided that, if modified after the lease or sale by the muni-  
98 cipality or county of real property in the urban renewal  
99 project area, such modification may be conditioned upon such  
100 approval of the owner, lessee, or successor in interest as the  
101 municipality or county may deem advisable and in any event shall  
102 be subject to such rights at law or in equity as a lessee or  
103 purchaser, or his successor or successors in interest, may be  
104 entitled to assert.

105 (f) Upon the approval by the local governing body of an  
106 urban renewal plan or of any modifications thereof, such plan

107 or modifications shall be deemed to be in full force and effect  
108 for the respective urban renewal area and the municipality or  
109 county may then cause such plan or modification to be carried  
110 out in accordance with its terms.

111 (g) Notwithstanding any other provisions of this Act,  
112 where the local governing body certifies that an area is in need  
113 of redevelopment or rehabilitation as a result of a flood, fire,  
114 hurricane, earthquake, storm, or other catastrophe respecting  
115 which the Governor of the state has certified the need for  
116 disaster assistance under Public Law 875, Eighty-First Congress,  
117 or other Federal law, the local governing body may approve an  
118 urban renewal plan and an urban renewal project with respect to  
119 such area without regard to the provisions of subsection (d) of  
120 this section and the provisions of this section requiring a  
121 general plan for the municipality or county and a public hearing  
122 on the urban renewal project.

1 Section 6. Neighborhood and Communitywide Plans.

2 (a) A municipality, county, or any public body authorized  
3 to perform planning work may prepare a general neighborhood  
4 renewal plan for an urban renewal area or areas, together with  
5 any adjoining areas having specially related problems which may  
6 be of such scope that urban renewal activities may have to be  
7 carried out in stages. Such plan may include, but is not  
8 limited to, a preliminary plan which:



9                   (1) Outlines the urban renewal activities proposed  
10                   for the area or areas involved;

11                   (2) Provides a framework for the preparation of  
12                   urban renewal plans; and

13                   (3) Indicates generally the land uses, population  
14                   density, building coverage, prospective requirements for  
15                   rehabilitation and improvement of property and portions  
16                   of the area or areas contemplated for clearance and  
17                   redevelopment.

18                   A general neighborhood renewal plan shall, in the deter-  
19                   mination of the local governing body, conform to the general  
20                   plan of the locality as a whole.

21                   (b) A municipality, county, or any public body authorized  
22                   to perform planning work may prepare or complete a communitywide  
23                   plan or program for urban renewal which shall conform to the  
24                   general plan for the development of the municipality or county  
25                   as a whole and may include, but is not limited to, identification  
26                   of slum or blighted areas, measurement of blight, determination  
27                   of resources needed and available to renew such areas, identifi-  
28                   cation of potential project areas and types of action contem-  
29                   plated, and scheduling of urban renewal activities.

30                   (c) Authority is hereby vested in every municipality and  
31                   county to prepare, to adopt, and to revise from time to time a  
32                   general plan for the physical development of the municipality or

33 county as a whole (giving due regard to the environs and metro-  
34 politan surroundings), to establish and maintain a planning  
35 commission for such purpose and related planning activities,  
36 and to make available and to appropriate necessary funds there-  
37 for.<sup>7 2</sup>

1           Section 7. Powers. Every municipality and county shall  
2 have all the powers necessary or convenient to carry out and  
3 effectuate the purposes and provisions of this Act, including  
4 the following powers in addition to others herein granted:

5           (a) To undertake and carry out urban renewal projects and  
6 related activities within its area of operation; and to make  
7 and execute contracts and other instruments necessary or  
8 convenient to the exercise of its powers under this Act; and to  
9 disseminate slum clearance and urban renewal information;

10           (b) To provide or to arrange or contract for the furnish-  
11 ing or repair by any person or agency, public or private, of  
12 services, privileges, works, streets, roads, public utilities  
13 or other facilities for or in connection with an urban renewal  
14 project; to install, construct, and reconstruct streets,  
15 utilities, parks, playgrounds, and other public improvements;  
16 and to agree to any conditions that it may deem reasonable and

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2. This subsection is suggested for inclusion only in states where municipalities and counties lack legislative authorization for the preparation of a general plan.

17 appropriate attached to Federal financial assistance and imposed  
18 pursuant to Federal law relating to the determination of  
19 prevailing salaries or wages or compliance with labor standards,  
20 in the undertaking or carrying out of an urban renewal project  
21 and related activities, and to include in any contract let in  
22 connection with such a project and related activities,  
23 provisions to fulfill such of said conditions as it may deem  
24 reasonable and appropriate;

25 (c) Within its area of operation, to enter into any  
26 building or property in any urban renewal area in order to make  
27 inspections, surveys, appraisals, soundings or test borings, and  
28 to obtain an order for this purpose from a court of competent  
29 jurisdiction in the event entry is denied or resisted; to  
30 acquire by purchase, lease, option, gift, grant, bequest, devise,  
31 eminent domain, or otherwise, any real property (or personal  
32 property for its administrative purposes) together with any  
33 improvements thereon; to hold, improve, clear, or prepare for  
34 redevelopment any such property; to mortgage, pledge, hypothecate,  
35 or otherwise encumber or dispose of any real property; to insure  
36 or provide for the insurance of any real or personal property or  
37 operations of the municipality or county against any risks or  
38 hazards, including the power to pay premiums on any such insur-  
39 ance; and to enter into any contracts necessary to effectuate

40 the purpose of this Act; Provided, however, that no statutory  
41 provision with respect to the acquisition, clearance, or dispo-  
42 sition of property by public bodies shall restrict a municipality,  
43 county, or other public body exercising powers hereunder, in the  
44 exercise of such functions with respect to an urban renewal  
45 project and related activities, unless the legislature shall  
46 specifically so state;

47 (d) With the approval of the local governing body:

48 (1) Prior to approval of an urban renewal plan, or  
49 approval of any modifications of the plan, to acquire real  
50 property in an urban renewal area, demolish and remove  
51 any structures on the property, and pay all costs related  
52 to the acquisition, demolition, or removal, including any  
53 administrative or relocation expenses; and

54 (2) To assume the responsibility to bear any loss  
55 that may arise as the result of the exercise of authority  
56 under this subsection in the event that the real property  
57 is not made part of the urban renewal project;

58 (e) To invest any urban renewal funds held in reserve or  
59 sinking funds or any such funds not required for immediate  
60 disbursement, in property or securities in which savings banks  
61 may legally invest funds subject to their control; to redeem  
62 such bonds as have been issued pursuant to section 11 of this

63 Act at the redemption price established therein or to purchase  
64 such bonds at less than redemption price, all such bonds so  
65 redeemed or purchased to be cancelled;

66 (f) To borrow money and to apply for and accept advances,  
67 loans, grants, contributions, and any other form of financial  
68 assistance from the Federal Government, the state, county, or  
69 other public body, or from any sources, public or private, for  
70 the purposes of this Act, and to give such security as may be  
71 required and to enter into and carry out contracts or agreements  
72 in connection therewith; and to include in any contract for  
73 financial assistance with the Federal Government for or with  
74 respect to an urban renewal project and related activities such  
75 conditions imposed pursuant to Federal laws as the municipality  
76 or county may deem reasonable and appropriate and which are not  
77 inconsistent with the purposes of this Act.

78 (g) Within its area of operation, to make or have made  
79 all surveys and plans necessary to the carrying out of the  
80 purposes of this Act and to contract with any person, public or  
81 private, in making and carrying out such plans and to adopt or  
82 approve, modify, and amend such plans, which plans may include,  
83 but are not limited to:

84 (1) Plans for carrying out a program of voluntary  
85 or compulsory repair or rehabilitation of buildings and  
86 improvements;

87                   (2) Plans for the enforcement of state and local  
88                   laws, codes, and regulations relating to the use of land  
89                   and the use and occupancy of buildings and improvements  
90                   and to the compulsory repair, rehabilitation, demolition,  
91                   or removal of buildings and improvements; and

92                   (3) Appraisals, title searches, surveys, studies,  
93                   and other plans and work necessary to prepare for the  
94                   undertaking of urban renewal projects and related  
95                   activities;

96                   and to develop, test, and report methods and techniques, and  
97                   carry out demonstrations and other activities, for the prevention  
98                   and the elimination of slums and urban blight and developing and  
99                   demonstrating new or improved means of providing housing for  
100                   families and persons of low income and to apply for, accept, and  
101                   utilize grants of funds from the Federal Government for such  
102                   purposes;

103                   (h) To prepare plans for and assist in the relocation of  
104                   persons (including individuals, families, business concerns,  
105                   nonprofit organizations and others) displaced from an urban  
106                   renewal area, and to make relocation payments to or with respect  
107                   to such persons for moving and readjustment expenses and losses  
108                   of property for which reimbursement or compensation is not  
109                   otherwise made, including the making of such payments financed  
110                   by the Federal Government;

111           (i) To appropriate such funds and make such expenditures  
112 as may be necessary to carry out the purposes of this Act, and  
113 to levy taxes and assessments for such purposes; to zone or  
114 rezone any part of the municipality or county within its area  
115 of operation or make exceptions from building regulations; and  
116 to enter into agreements with a housing authority or an urban  
117 renewal agency vested with urban renewal powers under section 16  
118 of this Act (which agreements may extend over any period,  
119 notwithstanding any provision or rule of law to the contrary),  
120 respecting action to be taken by such municipality or county  
121 pursuant to any of the powers granted by this Act;

122           (j) To close, vacate, plan, or replan streets, roads,  
123 sidewalks, ways, or other places; and to plan or replan any  
124 part of the municipality or county;

125           (k) Within its area of operation, to organize, coordinate,  
126 and direct the administration of the provisions of this Act as  
127 they apply to such municipality or county in order that the  
128 objective of remedying slum and blighted areas and preventing  
129 the causes thereof within such municipality or county may be  
130 most effectively promoted and achieved, and to establish such  
131 new office or offices of the municipality or county or to  
132 reorganize existing offices in order to carry out such purpose  
133 most effectively; and

134 (1) To exercise all or any part or combination of powers  
135 herein granted.

1 Section 8. Cooperation Among Municipalities and Counties.<sup>3</sup>

2 (a) Any power or powers, privileges, or authority exercised  
3 or capable of exercise by a municipality or a county under this  
4 Act may be exercised and enjoyed jointly with any other munic-  
5 ipality or county, including but not limited to the preparation of  
6 urban renewal plans, the undertaking and carrying out of urban  
7 renewal projects and related activities, the power of eminent  
8 domain, and the issuance of bonds.

9 (b) Any two or more municipalities, two or more counties,  
10 or any combination thereof may enter into agreements with one  
11 another for joint or cooperative action pursuant to the  
12 provisions of this Act. Entry into such agreements shall be  
13 authorized by the local governing bodies of the participating  
14 municipalities and counties.

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3. Section 8 constitutes one method of authorizing two or more municipalities, counties, or combinations of municipalities and counties, to undertake urban renewal projects. It is possible that states which already have a general interlocal cooperation act would not need this specific authorization. Another method would be a separate regional urban renewal law. Each state must carefully consider its own constitutional and legal requirements in determining which method to use. Additionally, local counsel should be consulted particularly concerning bond issuances and other financing problems.



15 (c) Agreements entered into pursuant to this section shall  
16 specify the following:

17 (1) The duration of the agreement;

18 (2) The precise organization, composition, and  
19 nature of any separate legal administrative entity created  
20 thereby together with the powers delegated thereto;

21 (3) The purpose or purposes of the agreement;

22 (4) The manner of financing the joint or coopera-  
23 tive exercise of powers under this Act and of establishing  
24 and maintaining a budget therefor;

25 (5) The permissible method or methods of terminat-  
26 ing the agreement and for the disposal of property upon  
27 termination;

28 (6) Any other necessary or proper matters.

29 (d) In the event that the agreement does not establish  
30 a separate legal entity to conduct the joint or cooperative  
31 undertaking, the agreement shall, in addition to items 1, 3, 4,  
32 5, and 6 enumerated in subdivision (c) hereof, contain the  
33 following:

34 (1) Provisions for an administrator or a joint  
35 board responsible for administering the joint or  
36 cooperative undertaking. In the case of a joint board,  
37 municipalities and counties party to the agreement shall  
38 be represented;

39                   (2) The manner of acquiring, holding, and disposing  
40                   of real and personal property used in the joint or cooper-  
41                   ative undertaking.

42                   (e) Every agreement made hereunder shall, prior to and as  
43                   a condition precedent to its entry into force, be submitted to the  
44                   Attorney General who shall determine whether the agreement is in  
45                   proper form and compatible with the laws of this state. The  
46                   Attorney General shall approve any agreement submitted to him  
47                   hereunder unless he shall find that it does not meet the conditions  
48                   set forth herein and shall detail in writing addressed to the  
49                   local governing bodies of the municipalities and counties concerned  
50                   the specific respects in which the proposed agreement fails to  
51                   meet the requirements of law. Failure to disapprove an agreement  
52                   submitted hereunder within sixty days of its submission shall  
53                   constitute approval thereof.

54                   (f) Financing of joint projects by agreement shall be as  
55                   provided by law.

56                   (g) Prior to its entry into force, an agreement made  
57                   pursuant to this Act shall be filed with the municipal or county  
58                   clerk of the respective municipalities or counties concerned and  
59                   with the Secretary of State.

60                   (h) Any municipality or county entering into an agreement  
61                   pursuant to this section may appropriate funds and may sell,  
62                   lease, give, or otherwise supply the administrative joint board

63 or other legal or administrative entity created to operate the  
64 joint or cooperative undertaking by providing personnel or  
65 services therefor.

66 (i) Any one or more municipalities or counties may  
67 contract with any one or more other municipalities or counties  
68 to perform any governmental service, activity, or undertaking  
69 which any entering into the contract are authorized by law to  
70 perform; Provided that such contract shall be authorized by the  
71 local governing body of each party to the contract. Such  
72 contract shall set forth fully the purposes, powers, rights,  
73 objectives, and responsibilities of the contracting parties.

1 Section 9. Eminent Domain.

2 (a) A municipality or county shall have the right to  
3 acquire by condemnation any interest in real property, including  
4 a fee simple title thereto, which it may deem necessary for or  
5 in connection with an urban renewal project and related activi-  
6 ties under this Act. A municipality or county may exercise the  
7 power of eminent domain in the manner provided in \_\_\_\_\_, and  
8 acts amendatory thereof or supplementary thereto, or it may  
9 exercise the power of eminent domain in the manner now or which  
10 may be hereafter provided by any other statutory provisions for  
11 the exercise of the power of eminent domain. Property already  
12 devoted to a public use may be acquired in like manner; Provided,  
13 that no real property belonging to the United States, the state,

14 or any political subdivision of the state, may be acquired  
15 without its consent.

16 (b) In any proceeding to fix or assess compensation for  
17 damages for the taking or <sup>74</sup>damaging of property, or any  
18 interest therein, through the exercise of the power of eminent  
19 domain or condemnation, evidence or testimony bearing upon the  
20 following matters shall be admissible and shall be considered in  
21 fixing such compensation or damages, in addition to evidence or  
22 testimony otherwise admissible:

23 (1) Any use, condition, occupancy, or operation of  
24 such property, which is unlawful or violative of, or  
25 subject to elimination, abatement, prohibition, or  
26 correction under, any law or any ordinance or regulatory  
27 measure of the state, county, municipality, other  
28 political subdivision, or any agency thereof, in which  
29 such property is located, as being unsafe, substandard,  
30 insanitary, or otherwise contrary to the public health,  
31 safety, or welfare;

32 (2) The effect on the value of such property, or  
33 any such use, condition, occupancy, or operation, or of  
34 the elimination, abatement, prohibition, or correction of

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4. Insert if required by state constitution.

35 any such use, condition, occupancy, or operation.

36 (c) The foregoing testimony and evidence shall be  
37 admissible notwithstanding that no action has been taken by any  
38 public body or public officer toward the abatement, prohibition,  
39 elimination, or correction of any such use, condition, occu-  
40 pancy, or operation. Testimony or evidence that any public  
41 body or public officer charged with the duty or authority so  
42 to do has rendered, made or issued any judgment, decree, deter-  
43 mination, or order for the abatement, prohibition, elimination,  
44 or correction of any such use, condition, occupancy, or opera-  
45 tion shall be admissible and shall be prima facie evidence of  
46 the existence and character of such use, condition, or operation.

1 Section 10. Disposal of Property in Urban Renewal Area.

2 (a) A municipality or county may sell, lease, or other-  
3 wise transfer real property or any interest therein acquired  
4 by it for an urban renewal project, and may enter into contracts  
5 with respect thereto, in an urban renewal area for residential,  
6 recreational, commercial, industrial, educational, or other uses  
7 or for public use, or may retain such property or interest for  
8 public use, in accordance with the urban renewal plan, subject  
9 to such covenants, conditions, and restrictions, including  
10 covenants running with the land, as it may deem to be necessary  
11 or desirable to assist in preventing the development or spread  
12 of future slums or blighted areas or to otherwise carry out the

13 purposes of this Act; Provided, that such sale, lease, other  
14 transfer, or retention, and any agreement relating thereto, may  
15 be made only after the approval of the urban renewal plan by  
16 the local governing body. The purchasers or lessees and their  
17 successors and assigns shall be obligated to devote such real  
18 property only to the uses specified in the urban renewal plan,  
19 and may be obligated to comply with such other requirements as  
20 the municipality or county may determine to be in the public  
21 interest, including the obligation to begin within a reasonable  
22 time any improvements on such real property required by the  
23 urban renewal plan. Such real property or interest shall be  
24 sold, leased, otherwise transferred, or retained at not less  
25 than its fair value for uses in accordance with the urban  
26 renewal plan. In determining the fair value of real property  
27 for uses in accordance with the urban renewal plan, a municipal-  
28 ity and county shall take into account and give consideration  
29 to the uses provided in such plan; the restrictions upon, and  
30 the covenants, conditions, and obligations assumed by the  
31 purchaser or lessee or by the municipality or county retaining  
32 the property; and the objectives of such plan for the prevention  
33 of the recurrence of slum or blighted areas. The municipality  
34 or county in any instrument of conveyance to a private purchaser  
35 or lessee may provide that such purchaser or lessee shall be  
36 without power to sell, lease, or otherwise transfer the real

37 property without the prior written consent of the municipality  
38 or county until he has completed the construction of any or all  
39 improvements which he has obligated himself to construct thereon.  
40 Real property acquired by a municipality or county which, in  
41 accordance with the provisions of the urban renewal plan, is to  
42 be transferred, shall be transferred as rapidly as feasible in  
43 the public interest consistent with the carrying out of the  
44 provisions of the urban renewal plan. Any contract for such  
45 transfer and the urban renewal plan (or such part or parts of  
46 such contract or plan as the municipality or county may deter-  
47 mine) may be recorded in the land records of the appropriate  
48 jurisdiction in such manner as to afford actual or constructive  
49 notice thereof.

50 (b) A municipality and county may dispose of real  
51 property in an urban renewal area to private persons only under  
52 such reasonable competitive bidding procedures as it shall  
53 prescribe or as hereinafter provided in this subsection. A  
54 municipality and county may, by public notice by publication in  
55 a newspaper having a general circulation in the community  
56 (thirty days prior to the execution of any contract to sell,  
57 lease, or otherwise transfer real property and prior to the  
58 delivery of any instrument of conveyance with respect thereto  
59 under the provisions of this section), invite proposals from and  
60 make available all pertinent information to private redevelopers

61 or any persons interested in undertaking to redevelop or  
62 rehabilitate an urban renewal area, or any part thereof. Such  
63 notice shall identify the area, or portion thereof, and shall  
64 state that proposals shall be made by those interested within  
65 30 days after the date of publication of such notice, and that  
66 such further information as is available may be obtained at such  
67 office as shall be designated in said notice. The municipality  
68 or county shall consider all such redevelopment or rehabilita-  
69 tion proposals and the financial and legal ability of the  
70 persons making such proposals to carry them out, and may  
71 negotiate with any persons for proposals for the purchase, lease,  
72 or other transfer of any real property acquired by the municipal-  
73 ity or county in the urban renewal area. The municipality or  
74 county may accept such proposal as it deems to be in the public  
75 interest and in furtherance of the purposes of this Act;  
76 Provided, that a notification of intention to accept such  
77 proposal shall be filed with the governing body not less than  
78 30 days prior to any such acceptance. Thereafter, the municipal-  
79 ity or county may execute such contract in accordance with the  
80 provisions of subsection (a) and deliver deeds, leases, and  
81 other instruments and take all steps necessary to effectuate  
82 such contract.

83 (c) A municipality and county may temporarily operate and  
84 maintain real property acquired by it in an urban renewal area



85 for or in connection with an urban renewal project pending the  
86 disposition of the property as authorized in this Act, without  
87 regard to the provisions of subsection (a) above, for such uses  
88 and purposes as may be deemed desirable even though not in  
89 conformity with the urban renewal plan.

90 (d) Any real property acquired pursuant to section 7(d)  
91 may be disposed of without regard to other provisions of this  
92 section if the local governing body has consented to the disposal.

93 (e) Notwithstanding any other provisions of this Act,  
94 where the municipality or county is situated in an area desig-  
95 nated as a redevelopment area under the Federal Area Redevelopment  
96 Act (Public Law 87-27), or any act supplementary thereto, land  
97 in an urban renewal project area designated under the urban  
98 renewal plan for industrial or commercial uses may be disposed  
99 of to any public body or nonprofit corporation for subsequent  
100 disposition as promptly as practicable by the public body or  
101 corporation for redevelopment in accordance with the urban  
102 renewal plan, and only the purchaser from or lessee of the public  
103 body or corporation, and their assignees, shall be required to  
104 assume the obligation of beginning the building of improvements  
105 within a reasonable time. Any disposition of land to a public  
106 body or corporation under this subsection shall be made at its  
107 fair value for uses in accordance with the urban renewal plan.

1           Section 11. Issuance of Bonds.<sup>5</sup>

2           (a) A municipality and county shall have power to issue  
3 bonds from time to time in its discretion to finance the under-  
4 taking of any urban renewal project under this Act, including,  
5 without limiting the generality thereof, the payment of principal  
6 and interest upon any advances for surveys and plans or prelim-  
7 inary loans, and shall also have power to issue refunding bonds  
8 for the payment or retirement of such bonds previously issued  
9 by it. Such bonds shall be made payable, as to both principal  
10 and interest, solely from the income, proceeds, revenues, and  
11 funds of the municipality or county derived from or held in  
12 connection with its undertaking and carrying out of urban  
13 renewal projects under this Act; Provided that, payment of such  
14 bonds, both as to principal and interest, may be further secured  
15 by a pledge of any loan, grant, or contribution from the  
16 Federal Government or other source, in aid of any urban renewal  
17 projects of the municipality or county under this Act, and by  
18 a mortgage of any such urban renewal projects, or any part  
19 thereof, title to which is in the municipality or county.

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5. In some states, municipalities and counties may already have adequate statutory bonding powers which can be used for urban renewal purposes. In these cases, these bonding powers could be incorporated by reference in this bill. Local counsel should be consulted concerning the legal acceptability of this method.

20           (b) Bonds issued under this section shall not constitute  
21 an indebtedness within the meaning of any constitutional or  
22 statutory debt limitation or restriction, and shall not be  
23 subject to the provisions of any other law or charter relating  
24 to the authorization, issuance, or sale of bonds. Bonds  
25 issued under the provisions of this Act are declared to be issued  
26 for an essential public and governmental purpose and, together  
27 with interest thereon and income therefrom, shall be exempted  
28 from all taxes.

29           (c) Bonds issued under this section shall be authorized by  
30 resolution or ordinance of the local governing body and may be  
31 issued in one or more series and shall bear such date or dates,  
32 be payable upon demand or mature at such time or times, bear  
33 interest at such rate or rates, not exceeding six per centum per  
34 annum, be in such denomination or denominations, be in such form  
35 either with or without coupon or registered, carry such conver-  
36 sion or registration privileges, have such rank or priority, be  
37 executed in such manner, be payable in such medium of payment,  
38 at such place or places, and be subject to such terms of  
39 redemption (with or without premium), be secured in such manner,  
40 and have such other characteristics, as may be provided by such  
41 resolution or ordinance, or trust indenture or mortgage issued  
42 pursuant thereto.

43           (d) Such bonds may be sold at not less than par at public  
44 sales held after notice published prior to such sale in a news-  
45 paper having a general circulation in the area of operation and  
46 in such other medium of publication as the municipality and  
47 county may determine or may be exchanged for other bonds on the  
48 basis of par; Provided that such bonds may be sold to the  
49 Federal Government at private sale at not less than par, and,  
50 in the event less than all of the authorized principal amount  
51 on such bonds is sold to the Federal Government, the balance  
52 may be sold at private sale at not less than par at an interest  
53 cost to the municipality or county of not to exceed the interest  
54 cost to the municipality or county of the portion of the bonds  
55 sold to the Federal Government.

56           (e) In case any of the public officials of the municipal-  
57 ity or county whose signatures appear on any bonds or coupons  
58 issued under this Act shall cease to be such officials before  
59 the delivery of such bonds, such signatures shall, nevertheless,  
60 be valid and sufficient for all purposes, the same as if such  
61 officials had remained in office until such delivery. Any  
62 provisions of any law to the contrary notwithstanding, any  
63 bonds issued pursuant to this Act shall be fully negotiable.

64           (f) In any suit, action, or proceeding involving the  
65 validity or enforceability of any bond issued under this Act or  
66 the security therefor, any such bond reciting in substance that

67 it has been issued by the municipality or county in connection  
68 with an urban renewal project, as herein defined, shall be  
69 conclusively deemed to have been issued for such purpose and  
70 such project shall be conclusively deemed to have been planned,  
71 located, and carried out in accordance with the provisions of  
72 this Act.

1       Section 12. Bonds as Legal Investments. All banks, trust  
2 companies, bankers, savings banks and institutions, building and  
3 loan associations, savings and loan associations, investment  
4 companies and other persons carrying on a banking or investment  
5 business; all insurance companies, insurance associations, and  
6 other persons carrying on an insurance business; and all executors,  
7 administrators, curators, trustees, and other fiduciaries, may  
8 legally invest any sinking funds, moneys, or other funds belonging  
9 to them or within their control in any bonds or other obligations  
10 issued by a municipality or county pursuant to this Act or by  
11 any urban renewal agency or housing authority vested with urban  
12 renewal project powers under section 16 of this Act; Provided  
13 that, such bonds and other obligations shall be secured by an  
14 agreement between the issuer and the Federal Government in  
15 which the issuer agrees to borrow from the Federal Government  
16 and the Federal Government agrees to lend to the issuer, prior  
17 to the maturity of such bonds or other obligations, moneys in  
18 any amount which (together with any other moneys irrevocably  
19 committed to the payment of principal and interest on such

20 bonds or other obligations) will suffice to pay the principal  
21 of such bonds or other obligations with interest to maturity  
22 thereon, which moneys under the terms of said agreement are  
23 required to be used for the purpose of paying the principal of  
24 and the interest on such bonds or other obligations at their  
25 maturity. Such bonds and other obligations shall be authorized  
26 security for all public deposits. It is the purpose of this  
27 section to authorize any persons, political subdivisions and  
28 officers, public or private, to use any funds owned or  
29 controlled by them for the purchase of any such bonds or other  
30 obligations. Nothing contained in this section with regard to  
31 legal investments shall be construed as relieving any person of  
32 any duty of exercising reasonable care in selecting securities.

1           Section 13. Property Exempt from Taxes and from Levy and  
2           Sale by Virtue of an Execution.

3           (a) All property of a municipality or county, including  
4 funds, owned or held by it for the purposes of this Act shall  
5 be exempt from levy and sale by virtue of an execution, and no  
6 execution or other judicial process shall issue against the  
7 same nor shall judgment against a municipality or county be a  
8 charge or lien upon such property; Provided, however, that the  
9 provisions of this section shall not apply to or limit the  
10 right of obligees to pursue any remedies for the enforcement  
11 of any pledge or lien given pursuant to this Act by a municipi-

12 pality or county on its rents, fees, grants, or revenues from  
13 urban renewal projects.

14 (b) The property of a municipality or county, acquired  
15 or held for the purposes of this Act, is declared to be public  
16 property used for essential public and governmental purposes  
17 and such property shall be exempt from all taxes of the  
18 municipality, the county, the state, or any political subdivi-  
19 sion thereof: Provided that such tax exemption shall terminate  
20 when the municipality or county sells, leases, or otherwise  
21 disposes of such property in an urban renewal area to a  
22 purchaser or lessee which is not a public body entitled to tax  
23 exemption with respect to such property.

1 Section 14. Cooperation by Public Bodies.

2 (a) For the purpose of aiding in the planning, under-  
3 taking, or carrying out of an urban renewal project and related  
4 activities authorized by this Act, any public body may, upon  
5 such terms, with or without consideration, as it may determine:

6 (1) Dedicate, sell, convey, or lease any of its  
7 interest in any property or grant easements, licenses, or  
8 other rights or privileges therein to a municipality or  
9 county;

10 (2) Incur the entire expense of any public improve-  
11 ments made by such public body in exercising the powers  
12 granted in this section;

13                   (3) Do any and all things necessary to aid or  
14 cooperate in the planning or carrying out of an urban  
15 renewal plan and related activities;

16                   (4) Lend, grant, or contribute funds to a municipal-  
17 ity or county, and borrow money and apply for and accept  
18 advances, loans, grants, contributions, and any other  
19 form of financial assistance from the Federal Government,  
20 the state, county, or other public body, or from any  
21 other source;

22                   (5) Enter into agreements (which may extend over  
23 any period, notwithstanding any provision or rule of law  
24 to the contrary) with the Federal Government, a  
25 municipality, county, or other public body respecting  
26 action to be taken pursuant to any of the powers granted  
27 by this Act, including the furnishing of funds or other  
28 assistance in connection with an urban renewal project  
29 and related activities; and

30                   (6) Cause public buildings and public facilities,  
31 including parks, playgrounds, recreational, community,  
32 educational, water, sewer or drainage facilities, or any  
33 other works which it is otherwise empowered to undertake  
34 to be furnished; furnish, dedicate, close, vacate, pave,  
35 install, grade, regrade, plan, or replan streets, roads,  
36 sidewalks, ways, or other places; plan or replan, zone or



37           rezone any part of the public body or make exceptions from  
38           building regulations; and cause administrative and other  
39           services to be furnished to the municipality or county.  
40   If at any time title to or possession of any urban renewal project  
41   is held by any public body or governmental agency, other than the  
42   municipality or county which is authorized by law to engage in  
43   the undertaking, carrying out, or administration of urban renewal  
44   projects and related activities (including any agency or instru-  
45   mentality of the United States of America), the provisions of the  
46   agreements referred to in this section shall inure to the benefit  
47   of and may be enforced by such public body or governmental agency.  
48   As used in this subsection, the terms "municipality" and "county"  
49   shall also include an urban renewal agency or a housing authority  
50   vested with all of the urban renewal powers pursuant to the  
51   provisions of section 16.

52           (b) Any sale, conveyance, lease, or agreement provided for  
53   in this section may be made by a public body without appraisal,  
54   public notice, advertisement, or public bidding.

55           (c) For the purpose of aiding in the planning, undertaking,  
56   or carrying out of any urban renewal project and related activi-  
57   ties of an Urban Renewal Agency or a housing authority hereunder,  
58   a municipality and county may (in addition to its other powers  
59   and upon such terms, with or without consideration, as it may

60 determine) do and perform any or all of the actions or things  
61 which, by the provisions of subsection (a) of this section, a  
62 public body is authorized to do or perform, including the  
63 furnishing of financial and other assistance.

64 (d) For the purposes of this section, or for the purpose  
65 of aiding in the planning, undertaking, or carrying out of an  
66 urban renewal project and related activities of a municipality  
67 or county, such municipality may (in addition to any authority  
68 to issue bonds pursuant to section 11) issue and sell its  
69 general obligation bonds. Any bonds issued by a municipality  
70 or county pursuant to this section shall be issued in the manner  
71 and within the limitations prescribed by the applicable laws of  
72 this state for the issuance and authorization of general obliga-  
73 tion bonds by such municipality or county. Nothing in this  
74 section shall limit or otherwise adversely affect any other  
75 section of this Act.

1 Section 15. Title of Purchaser. Any instrument executed  
2 by a municipality or county and purporting to convey any right,  
3 title, or interest in any property under this Act shall be  
4 conclusively presumed to have been executed in compliance with  
5 the provisions of this Act insofar as title or other interest of  
6 any bona fide purchasers, lessees, or transferees of such  
7 property is concerned.

1           Section 16. Exercise of Powers in Carrying Out Urban  
2           Renewal Project and Related Activities.

3           (a) A municipality or county may itself exercise its urban  
4 renewal powers (as herein defined) or may, if the local govern-  
5 ing body by resolution determines such action to be in the  
6 public interest, elect to have such powers exercised by the  
7 Urban Renewal Agency (created by section 17) or by its housing  
8 authority, if one exists or is subsequently established. In the  
9 event the local governing body makes such determination, the  
10 Urban Renewal Agency or the housing authority, as the case may  
11 be, shall be vested with all of the urban renewal powers in the  
12 same manner as though all such powers were conferred on such  
13 Agency or authority instead of the municipality or county. If  
14 the local governing body does not elect to make such determina-  
15 tion, the municipality or county in its discretion may exercise  
16 its urban renewal powers through a board or commission or  
17 through such officers as its local governing body may by resolu-  
18 tion determine.

19           (b) As used in this section, the term "urban renewal  
20 powers" shall include the rights, powers, functions, and duties  
21 of a municipality or county under this Act, except the following:  
22 the power to determine an area to be a slum or blighted area or  
23 combination thereof and to designate such area as appropriate for

24 an urban renewal project and to hold any public hearings  
25 required with respect thereto; the power to approve:  
26 (1) Urban renewal plans and modifications thereof;  
27 (2) General neighborhood renewal plans and community-  
28 wide plans or programs for urban renewal; and  
29 (3) The acquisition, demolition, removal, or disposal  
30 of property as provided in section 7(d);  
31 the power to establish a general plan for the locality as a  
32 whole; the power to carry out a program of code enforcement;  
33 the power to make the determinations and findings provided for  
34 in section 3, section 4, and section 5(d); the power to issue  
35 general obligation bonds under section 14; the power to assume  
36 the responsibility to bear loss as provided in section 7(d);  
37 and the power to appropriate funds, levy taxes and assessments,  
38 and to exercise other powers provided for in section 7(i).

1 Section 17. Urban Renewal Agency.

2 (a) There is hereby created in each municipality and  
3 county a public body corporate and politic to be known as the  
4 "Urban Renewal Agency" of the municipality or county; Provided,  
5 that such Agency shall not transact any business or exercise its  
6 powers hereunder until or unless the local governing body has  
7 made the finding prescribed in section 4 and has elected to have  
8 the urban renewal powers exercised by an Urban Renewal Agency  
9 as provided in section 16.

10 (b) If the Urban Renewal Agency is authorized to transact  
11 business and exercise powers hereunder, the Mayor or the  
12 County Chairman, as appropriate by and with the advice and  
13 consent of the local governing body<sup>7</sup>, shall appoint a Board of  
14 the Urban Renewal Agency which shall consist of five Commis-  
15 sioners.<sup>6</sup> The term of office of each such commissioner shall  
16 be one year.

17 (c) A commissioner shall receive no compensation for his  
18 services but shall be entitled to the necessary expenses,  
19 including traveling expenses, incurred in the discharge of his  
20 duties. Each commissioner shall hold office until his successor  
21 has been appointed and has qualified. A certificate of the  
22 appointment or reappointment of any commissioner shall be filed  
23 with the clerk of the municipality or county, as the case may  
24 be, and such certificate shall be conclusive evidence of the  
25 due and proper appointment of such commissioner.

26 The powers of an Urban Renewal Agency shall be exercised by  
27 the commissioners thereof. A majority of the commissioners  
28 shall constitute a quorum for the purpose of conducting business  
29 and exercising the powers of the Agency and for all other

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6. Variations in appointive practices among the states may require that other language be used to indicate what official or body appoints members to the Agency Board and how officers of the Agency Board are selected. Care should be taken to provide proper procedures for both municipalities and counties.

30 purposes. Action may be taken by the Agency upon a vote of a  
31 majority of the commissioners present, unless in any case the  
32 by-laws shall require a larger number. Any persons may be  
33 appointed as commissioners if they reside within the area of  
34 operation of the Agency (which shall be coterminous with the  
35 area of operation of the municipality or county) and are other-  
36 wise eligible for such appointments under this Act.

37 The Mayor or County Chairman, as appropriate, shall  
38 designate a Chairman and Vice Chairman from among the  
39 commissioners.<sup>7</sup> An Agency may employ an executive director,  
40 technical experts and such other agents and employees, permanent  
41 and temporary, as it may require, and determine their qualifica-  
42 tions, duties, and compensation. For such legal service as it  
43 may require, an Agency may employ or retain its own counsel and  
44 legal staff. An Agency authorized to transact business and  
45 exercise powers under this Act shall file, with the local  
46 governing body, on or before March 31 of each year, a report of  
47 its activities for the preceding calendar year, which report  
48 shall include a complete financial statement setting forth its  
49 assets, liabilities, income, and operating expense as of the  
50 end of such calendar year. At the time of filing the report,

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7. See footnote 6.

51 the Agency shall publish in a newspaper of general circulation  
52 in the community a notice to the effect that such report has  
53 been filed with the municipality or county and that the report  
54 is available for inspection during business hours in the office  
55 of the municipal or county clerk and in the office of the  
56 Agency.

57 (d) For inefficiency or neglect of duty or misconduct in  
58 office, a commissioner may be removed only after a hearing and  
59 after he shall have been given a copy of the charges at least  
60 10 days prior to such hearings and have had an opportunity to  
61 be heard in person or by counsel.

1 Section 18. Interested Public Officials, Commissioners, or  
2 Employees. No public official or employee of a municipality or  
3 county board or commission, and no commissioner or employee of  
4 a Housing Authority or Urban Renewal Agency which has been  
5 vested by a municipality or county with urban renewal powers  
6 under section 16 shall voluntarily acquire any personal interest,  
7 direct or indirect, in any urban renewal project, or in any  
8 property included or planned to be included in any urban renewal  
9 project of such municipality or county project. Where such  
10 acquisition is not voluntary, the interest acquired shall be  
11 immediately disclosed in writing to the local governing body and  
12 such disclosure shall be entered upon the minutes of the govern-  
13 ing body. If any such official, commissioner, or employee

14 presently owns or controls, or owned and controlled within the  
15 preceding two years, any interest, direct or indirect, in any  
16 property which he knows is included or planned to be included  
17 in an urban renewal project, he shall immediately disclose this  
18 fact in writing to the local governing body, and such disclosure  
19 shall be entered upon the minutes of the governing body, and  
20 any such official, commissioner, or employee shall not partici-  
21 pate in any action by any municipality or county board or  
22 commission, Housing Authority, or Urban Renewal Agency affecting  
23 such property. Any disclosure required to be made by this  
24 section to the local governing body shall concurrently be made  
25 to a Housing Authority or Urban Renewal Agency which has been  
26 vested with urban renewal powers by the municipality or county  
27 pursuant to the provisions of section 16. No commissioner or  
28 other officer of any Housing Authority, Urban Renewal Agency,  
29 board, or commission exercising powers pursuant to this Act  
30 shall hold any other public office under the municipality or  
31 county other than his commissionership or office with respect  
32 to such Housing Authority, Urban Renewal Agency, board, or  
33 commission. Any violation of the provisions of this section  
34 shall constitute misconduct in office.

1           Section 19. State Aid.

2           (a) The insert name of appropriate agency of state  
3 government is authorized and directed to provide technical and



4 advisory assistance, upon request, to municipalities and  
5 counties for an urban renewal project as defined in this Act.  
6 Such assistance shall include, but need not be limited to,  
7 special statistical and other studies and compilations,  
8 technical evaluations and information, training activities,  
9 professional services, surveys, reports, documents, and any  
10 other similar service functions.<sup>8</sup>

11 (b) The [appropriate state agency] is authorized to make  
12 urban renewal grants to municipalities and counties for  
13 [ ] percent of the individual net project costs. Such  
14 grants shall be made from funds appropriated by the legislature  
15 for these purposes and shall be exclusive of those costs  
16 reimbursed or paid by grants from the Federal Government.<sup>9</sup>

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8. States may wish to authorize provision of such technical services to local governments on a reimbursable basis. However, rather than provide authorization within this statute, such states might consider a separate act providing general authorization for all state agencies to provide technical services as proposed in the draft bill, "State Technical Services for Local Governments," page 466 of this publication.

9. The draft bill, "State Financial Assistance and Channelization of Federal Grant Programs for Urban Development," on page 226, gives the states a meaningful and effective role in federal programs of grants-in-aid to local governments for urban development. States may wish to consider the provisions set forth in this bill as guidelines in drafting this subsection or passage of a separate act to encompass several programs in the federally aided field of local activity.

17           (c) The appropriate state agency is hereby authorized  
18 to enter into agreements and contracts with municipalities,  
19 counties, or urban renewal agencies and with appropriate private  
20 organizations to carry out the purposes of this section.

1           Section 20. Separability. Insert separability clause.

1           Section 21. Effective Date. Insert effective date.

### III. OTHER INTERGOVERNMENTAL PROBLEMS

#### Introductory Statement

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.

Special districts have been widely used in some states and in certain functional areas particularly to overcome some of the legal restraints and area limitations on local governments. They can serve a useful and necessary function. However, they further diffuse local government responsibility and blur political responsibility. The use of general units of government to administer programs should be encouraged when feasible, the activities of special districts should be supervised by an appropriate state agency, and steps should be taken to insure that special district activities are related to those of general local government.

The basis for the distribution of seats in state legislatures lies at the core of the democratic process. Although the question of apportionment formulas to be used is now to be determined pursuant to interpretation of the Constitution of the United States, there remains significant scope for state discretion. However, if the task of apportioning legislative seats according to a state constitutional formula is not to be assumed by the courts, state constitutions must contain a detailed and specific procedure to insure proper and timely apportionment.

OFFICE OF LOCAL AFFAIRS\*

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

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\*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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.7<sup>1</sup>

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.<sup>2</sup>

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

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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; department 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./



## STATE ASSISTANCE FOR INTERLOCAL COOPERATION \*

Many organizations of Government officials have recognized the need for authority by local governments, especially in urban areas, to cooperate with each other where the efficient and economical provision of governmental services requires functions to be administered within geographic areas larger than the boundaries of the existing political subdivisions. Such cooperation permits local governments to cope more adequately with areawide problems, finance necessary services on an equitable basis, take advantage of the economies of scale, and avoid creation of special districts. The Committee on Suggested State Legislation included in its 1957 program proposed state legislation authorizing localities to participate in joint undertakings with other localities having common interests. At least 45 states have adopted all or a portion of such general interlocal cooperation authority. Other legislation endorsed in previous years by the Committee has included voluntary transfer of functions between municipalities and counties, and removal of constitutional barriers to intergovernmental cooperation.

However, such legislation by itself does not actively promote joint undertakings nor permit a positive state role. In addition, states should consider the enactment of legislation to actively encourage joint undertakings by local governments having common program objectives affecting the development of urban areas overlapping existing political boundaries. A new Georgia act, enacted in 1963, authorizes state aid where political subdivisions establish joint undertakings. It is an example of how other states might actively encourage joint urban development efforts by two or more of their political subdivisions.

Briefly, the Georgia act authorizes all state departments and agencies, empowered to assist individual political subdivisions in the state, to also assist any two or more such political subdivisions jointly in cases where the political subdivisions are "able and willing to provide for the consolidation, combining, merger, or joint administration of...any...function...by the two or more units, so as to effectuate economy or simplification in the administration or financing thereof." <sup>1</sup> The Georgia law also provides that the state share of financial assistance can be increased for joint projects.

The new Georgia law is reproduced below and suggested for consideration by other states wishing to furnish or make available services, assistance, funds, property and other incentives to any

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.

<sup>1</sup> Section 1, Act No. 303, Georgia Laws 1963, p. 354.

two or more localities in connection with joint undertakings.

The last sentence in Section 1 authorizing the state to assume up to the entire cost of the consolidated program, and Section 3 authorizing state agencies to consolidate their field offices for such consolidated programs are intended to meet Georgia's statutory needs which may not be present elsewhere. Other states considering this legislation may therefore not wish to include these provisions.

Suggested Legislation

Title should conform to state requirements.

(Be it enacted, etc.)

1        Section 1. The state and all departments, boards, bureaus,  
2        commissions and other agencies thereof are hereby authorized  
3        and empowered, within the limitations of the Constitution, to  
4        furnish and make available services, assistance, funds,  
5        property and other incentives to any two or more counties,  
6        municipal corporations, public corporations, and other sub-  
7        divisions of this state, or any combination thereof, in  
8        connection with any program of services, benefits, adminis-  
9        tration or other undertaking in which the state or any of its  
10       above-named agencies participates by furnishing supervision,  
11       services, property, administration of funds, where such counties,  
12       municipal corporations, public corporations or other subdivisions  
13       are thereby able and willing to provide for the consolidation,  
14       combining, merger or joint administration of such program or  
15       any part or function thereof, by the two or more units, so as to  
16       effectuate economy or simplification in the administration or  
17       financing thereof. The incentives hereinbefore referred to

18 shall also include the assuming by the state or its agencies  
19 of a greater share, or where funds are available and such is  
20 deemed feasible, the entire cost of such participating  
21 program.<sup>7 2</sup>

1 Section 2. The state and all of its aforesaid agencies  
2 are hereby authorized to execute such contracts, plans or  
3 other documents as may be necessary or desirable to effectuate  
4 the purposes hereof.

1 Section 3. The state and all of its aforesaid agencies  
2 are likewise empowered to establish and maintain area offices  
3 for such combined, consolidated or merged undertakings.<sup>7 2</sup>

1 Section 4. The state and its aforesaid agencies shall be  
2 authorized to prescribe such reasonable rules, regulations and  
3 requirements, and to require the submission of such plans and  
4 reports from the participating units, as may be deemed necessary  
5 or desirable to the proper administration of this act.

1 Section 5. Insert effective date.<sup>7</sup>

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2 As indicated in the explanatory statement, this language re-  
flects Georgia's statutory needs and may not be appropriate in  
other states.

## STATE WATER RESOURCES PLANNING AND COORDINATION\*

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

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\*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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 designate<sup>1</sup> (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.

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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./

## 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.

\*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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.<sup>1</sup>

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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 Committee on Suggested State Legislation.

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 five<sup>2</sup>

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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,<sup>3</sup> 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

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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 ten<sup>4</sup> or more years shall be the system to which

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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.<sup>7</sup>

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.

## LOCAL GOVERNMENT RESIDUAL POWERS\*

A familiar rule of law with respect to local governmental units is that they may exercise only those powers affirmatively conferred upon them by statute or constitutional provision. Even when legislatures have conferred powers affirmatively, 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 should, at the same time, exert greater leadership in resolving problems that are inter-local 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.

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.

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<sup>1</sup> shall  
3            have all residual functional powers of government not  
4            denied by this constitution or by general law. Denials  
5            may be expressed or take the form of legislative pre-  
6            emptio and may be in whole or in part. Express denials  
7            may be limitations of methods or procedure. Pre-empted  
8            powers may be exercised directly by the state or delegated  
9            by general law to such subdivisions of the state or other  
10           units of local government as the legislature may by  
11           general law determine."<sup>1</sup>

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<sup>1</sup> 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."

## CONSTITUTIONAL BARRIERS TO 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

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\*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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.

## 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.

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.

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.

The legislation submitted herewith is a means of implementing this objective. The suggested act authorizes three basic forms of county government and requires voter approval before a change may be made. It is patterned after a North Carolina statute (N C., Gen. Sts., Ch. 153, Art. 3).

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act to authorize optional forms of county government."]

(Be it enacted, etc.)

1        Section 1. Optional Forms of County Government

2        Authorized. Any county in this state may, pursuant  
3        to the provisions of this act and any other appropri-  
4        ate provisions of law, adopt any one of the optional  
5        forms of county government herein provided.

1        Section 2. County Commissioners Form. (a)

2        County Commissioners Form Defined. The County  
3        Commissioners Form of county government shall be  
4        that form in which the government is administered by  
5        a board of county commissioners.

6        (b) Modification or Regular Forms. There may be  
7        modifications of the County Commissioners Form adopted  
8        as hereinafter provided as follows: (1) the number of

9        commissioners may vary in number from three to five;  
10        and (2) all commissioners may be elected for uniform  
11        or overlapping terms not exceeding four years.

1        Section 3. Manager Form. (a) Manager Appointed or  
2        Designated. The board of county commissioners may  
3        appoint a county manager who shall be the administrative  
4        head of the county government, and shall be responsible  
5        for the administration of all departments of the county  
6        government which the board of county commissioners has  
7        the authority to control. He shall be appointed with  
8        regard to merit only, and he need not be a resident of  
9        the county at the time of his appointment. In lieu of  
10       the appointment of a county manager, the board may  
11       impose and confer upon the chairman of the board of  
12       county commissioners the duties and powers of a manager,  
13       as hereinafter set forth, and under such circumstances  
14       said chairman shall be considered a full-time chairman.  
15       Or the board may impose and confer such powers and  
16       duties upon any other officer or agent of the county who  
17       may be sufficiently qualified to perform such duties,  
18       and the compensation paid to such officer or agent may  
19       be revised or adjusted in order that it may be adequate  
20       compensation for all the duties of his office. The  
21       term "manager" herein used shall apply to such chairman,  
22       officer, or agent in the performance of such duties.

23           (b) Duties of the Manager. It shall be the duty of  
24 the county manager: (1) to see that all the orders,  
25 resolutions, and regulations of the board are faith-  
26 fully executed; (2) to attend all the meetings of the  
27 board and recommend such measures for adoption as he  
28 may deem expedient; (3) to make reports to the board  
29 from time to time upon the affairs of the county, and  
30 to keep the board fully advised as to the financial  
31 condition of the county and its future financial needs;  
32 (4) to appoint, with the approval of the board, such  
33 subordinate officers, agents, and employees for the  
34 general administration of county affairs as considered  
35 necessary; and (5) to perform such other duties as may be  
36 required of him by the board.

1           Section 4. Elected County Executive. (a) Elected  
2 County Executive Form Defined. The Elected County  
3 Executive form of government shall be that form in which  
4 the government is administered by a single county official,  
5 elected at large by the qualified voters of the county.  
6 The board of county commissioners shall act as the  
7 legislative body of the county under this form of county  
8 government. The elected county executive shall be responsible  
9 for the administration of all departments of the county  
10 government. Qualifications for the office of elected  
11 county executive shall be the same as those for the

12 board of county commissioners.

13 (b) Duties of the Elected County Executive. It

14 shall be the duty of the elected county executive:

15 (1) to see that all the orders, resolutions, and  
16 regulations of the board are faithfully executed;

17 (2) to attend all the meetings of the board and  
18 recommend such measures for adoption as he may deem  
19 expedient; (3) to make reports to the board from

20 time to time upon the affairs of the county, and to  
21 keep the board fully advised as to the financial  
22 condition of the county and its future financial needs;

23 (4) to appoint, with the approval of the board, such  
24 subordinate officers, agents, and employees for the  
25 general administration of county affairs as considered  
26 necessary; and (5) to perform such other duties as may  
27 be required of him by the board.

1 Section 5. Procedure. The board of county com-  
2 missioners may, upon its own motion, or shall upon  
3 receipt of a petition so requesting, signed by at least  
4 \_\_\_\_\_ percent of qualified voters within the county,  
5 submit to referendum vote of all qualified electors  
6 within the county the question of whether one of the  
7 optional forms of county government shall be established  
8 within a county. If a majority of those voting on the  
9 question favor the adoption of a new form of county



10 government, election of county officers for such  
11 optional form of county government shall be held at  
12 the next general election held within the county. If  
13 a majority of the voters disapprove, the existing form  
14 shall be continued and no new referendum may be held  
15 during the next two years following the date of such  
16 disapproval.

1 Section 6. Effective Date. Insert effective date.

## INTERLOCAL CONTRACTING AND JOINT ENTERPRISES\*

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

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\*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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.<sup>1</sup>

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

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<sup>1</sup> 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.

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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)<sup>1</sup>, 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

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<sup>1</sup> 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

1 Section 9. /Insert severability clause, if desired./

1 Section 10. /Insert effective date./

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1. This section is not included in suggested legislation approved by the Committee of State Officials on Suggested State Legislation.

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.<sup>1</sup> 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."]

(Be it enacted, etc.)

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

\*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

<sup>1</sup>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.<sup>1</sup>

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.<sup>2</sup>

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.

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

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

7 (b) The expression of official action<sup>3</sup> 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.<sup>4</sup>

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

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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./

## SUPERVISION OF SPECIAL DISTRICT ACTIVITIES

More than 18,000 "special districts" existed in the United States in 1962, according to the Census of Governments. These districts provide valuable governmental services to the people. In 1962 their total expenditures exceeded \$3.1 billion and their current revenues, mostly from taxes and service and toll charges, exceeded \$2.5 billion.

These financial data alone clearly indicate the impact of special districts upon local government in the United States. Despite this fact, the activities of special districts and the activities of state government and units of general local government are frequently not coordinated. In addition, adequate information concerning special district activities is often not available to the general public. Even where a special district is governed by elected officials, the turnout for district elections is extremely small and the availability of financial and other data relating to the district activities is often non-existent. This is true even in some states where statutes provide for a state agency to review, or at least be informed of, the financial operations of special districts. The recent report of the Advisory Commission on Intergovernmental Relations entitled The Problem of Special Districts in American Government noted, in a number of instances, the failure of both state supervisory agencies and special districts to comply with such requirements of state law.

The suggested act is designed, in a number of instances, to insure that special district activities are related to those of general local government, (i.e., counties, cities, and towns), as well as to insure the availability of appropriate information concerning the activities of districts available to the general public.

Section 3 requires the approval by a municipality and/or county of land acquisitions by special districts located in the county or municipality and, where the activity engaged in by the district affects a state function, by the appropriate state agency. If a local government or a state agency denies approval of the proposed land acquisition, the special district may seek judicial review of the decision.

Section 4 provides for an advisory review by a unit of general local government and, where appropriate, by state agencies of proposed capital improvements by a special district. Such review is merely advisory.

Section 5 requires that notification be given a state official and a county official of activities of existing and newly created special districts.

Section 6 directs a state agency, to the extent feasible, to establish uniform budget and account standards for all special districts and to audit or approve private audits of district accounts.

Section 7 provides a means whereby the taxpayer can be informed of all special district property taxes and assessments he pays at the same time that he is informed of county and municipal taxes and assessments.

Section 8 directs counties and municipalities in preparing annual reports to include pertinent information on the activities of special districts operating within their territory.

Finally, Section 9 provides for review and approval or modification, by a state agency, of service charges or tolls assessed by special districts where such services and tolls are not already approved or reviewed by a local government or a state or federal agency.

#### Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act to coordinate special district activities with activities of other governments and to insure public availability of information relating to special district activities.""

(Be it enacted, etc.)

- 1        Section 1. Purpose and Policy. It is the purpose of
- 2        this act to establish certain minimum procedures to insure
- 3        that the activities of special districts are properly



4 coordinated with those of other governmental units with-  
5 in the state. Further, it is essential that special  
6 districts, as well as other governmental units, take  
7 affirmative action to insure that the public is fully  
8 aware of the activities of all governmental entities  
9 operating within a particular community.

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

2 (1) "Special District" means any agency, authority,  
3 or political subdivision of the state organized for the  
4 purpose of performing governmental or prescribed functions  
5 within limited boundaries. It includes all political sub-  
6 divisions of the state except a city, a county, a town, or  
7 a school district<sup>7</sup>.

8 (2) "Governing Body" means the body possessing legis-  
9 lative authority in a city, county, or special district.

1 Section 3. Land Acquisitions by Special Districts.

2 (a) Prior to acquisition of title to any land by a  
3 special district authorized by law to acquire land, the  
4 district shall submit to the city and/or county in which  
5 such land is located a statement indicating its intention  
6 to acquire the land. If the land is located within the  
7 territorial limits of two or more cities and/or counties,  
8 the statement shall be submitted to each of them.

9           (b) The statement shall be in the form of a resolution  
10 adopted by the governing body of the district, indicating  
11 the intention of the district to acquire the land, and  
12 shall contain a brief but appropriate identification of  
13 the land to be acquired, an indication of the use to which  
14 it will be put, and other information the district deems  
15 appropriate.

16           (c) Within 30 days after receipt of the statement of  
17 intention to acquire land, the governing bodies of the city  
18 or county or cities or counties shall by resolution indicate  
19 their approval or disapproval of the proposed acquisition;  
20 a resolution disapproving the proposed acquisition shall  
21 state the reasons therefor.

22           (d) If the special district is performing a function  
23 which directly affects a program conducted by the state,  
24 upon receiving approval for the acquisition pursuant to  
25 subsection (b), it shall transmit a copy of its statement  
26 of intention and the approving resolution or resolutions to  
27 the office of local affairs or the Secretary of State who  
28 shall immediately refer the material to the state agency  
29 responsible for the administration of the state program

30 involved<sup>7</sup>. The state agency shall, <sup>7</sup>30<sup>7</sup> days from  
31 receipt of the material, either approve or disapprove the  
32 proposed acquisition. The agency shall approve the pro-  
33 posed acquisition of land unless it finds that the acqui-  
34 sition or proposed use would be inconsistent or in conflict  
35 with state policy or an approved state plan for providing  
36 governmental services. The state agency's action shall be  
37 communicated to the governing body of the district by an  
38 order signed by the <sup>7</sup>head of the state agency<sup>7</sup>, and if the  
39 proposed acquisition is disapproved, the order shall state  
40 the reasons therefor.

41 (e) Upon receiving approvals required pursuant to this  
42 section, a special district may proceed with the acquisition  
43 of land as otherwise authorized by law.

44 (f) If any governing body of a city or county or a  
45 state agency refuses to give approval to the proposed acqui-  
46 sition of land, the special district may challenge the  
47 decision by bringing suit in the (county court of general  
48 jurisdiction) in which the land is located. The court shall

49 review the material pertinent to the proposed land acqui-  
50 sition and reasons for disapproval of the acquisition and  
51 shall render a decision either sustaining or overruling the  
52 disapproval. Finding of the agency or local government  
53 shall be conclusive as to questions of fact. The court may  
54 affirm the decision or remand the matter for further con-  
55 sideration. The court may reverse a denial where it finds  
56 that the denial was arbitrary or capricious or characterized  
57 by abuse of discretion or clearly an unwarranted exercise  
58 of discretion.

1 Section 4. Capital Improvements by Special Districts.

2 (a) Any proposal by a special district for the con-  
3 struction of capital improvements shall be submitted, for  
4 comment, to the governing bodies of cities and counties  
5 within which the proposed improvements would be made, and  
6 in the event that the district is performing a function  
7 that directly affects a program conducted by the state, to  
8 the office of local affairs or Secretary of State for  
9 transmittal to the state agency responsible for the opera-  
10 tion of the state program at least 60 days prior to final  
11 action of the governing body of the district adopting the  
12 proposed capital improvement.

13           (b) Cities, counties, and/or state agencies receiving  
14 proposals for special district capital improvements shall  
15 review such proposals and, within 60 days after receipt  
16 thereof, may submit their comments thereon to the governing  
17 body of the special district. Upon receipt of the comments  
18 of all jurisdictions or agencies notified pursuant to this  
19 section, or 60 days after the transmittal of the proposed  
20 improvement program to such jurisdictions and agencies, the  
21 governing body of the district may adopt the proposed capital  
22 improvements, with or without modification, as part of the  
23 district program as otherwise authorized by law.

1           Section 5. Reporting the Creation of Special Districts.

2           (a) The governing body of any existing special district  
3 shall, within 30 days after the adoption of this act, notify  
4 the Office of local affairs or Secretary of State and the  
5 clerk of the county governing body or bodies in which it is  
6 authorized to operate of its existence. The notification  
7 shall include a citation to the statute pursuant to which it  
8 was created and a brief description of its activities and  
9 service area.

10           (b) The governing body of a newly created special dis-  
11 trict shall submit, at its first meeting, notification of its

12 existence as directed in subsection (a), and within one  
13 year of such meeting, a brief description of its activities  
14 and service area.

1 Section 6. Uniform Special District Accounts.

2 (a) The insert appropriate state agency<sup>1</sup> shall  
3 establish minimum standards of uniformity for the budget  
4 and accounts of all special districts operating within this  
5 state.

6 (b) The insert state agency annually shall audit the  
7 accounts of all special districts operating within the state,  
8 or may approve annual private audit of the accounts of  
9 special districts performed at the expense of the district<sup>1</sup>.  
10 The reports of private auditors shall be transmitted to the  
11 insert state agency and the reports of private auditors and<sup>1</sup>  
12 audits made by the state agency shall be transmitted to the  
13 county or counties within which the special district is au-  
14 thorized to operate.

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1 If there is an agency of state government exercising supervisory responsibility over the fiscal affairs or activities of local government, this agency should be inserted. If no such agency exists, either an office of local affairs or the state audit agency should be inserted.

1           Section 7. Special District Property Taxes and Special  
2           Assessments.

3           (a) Every special district authorized by law to levy a  
4           property tax or a special assessment shall annually inform  
5           each county and city within which it operates of the tax  
6           and/or special assessment rate levied by the district and  
7           the assessed valuation of property against which the tax is  
8           levied and the basis for the assessment rate.

9           (b) The counties and cities so notified shall provide  
10          an itemization of special district property taxes and asses-  
11          sments levied against the property when furnishing tax  bills  
12          or receipts<sup>]</sup> to property owners within their borders.

1           Section 8. City and County Annual Reports. The annual  
2           report of any county or city issuing a report shall include,  
3           in addition to any other information required by law, perti-  
4           nent information on the activities of all special districts  
5           operating wholly or partially within the territory of the  
6           city or county.

1           Section 9. Review of Special District Service Charges.  
2           The state public service commission shall review and approve,  
3           disapprove, or modify proposed service charges or tolls as-  
4           sessed by special districts within the state authorized to

5       levy such charges or tolls; provided, that the review shall  
6       not extend service charges or tolls levied by special  
7       districts which are otherwise approved or reviewed by the  
8       governing body of a county or a city or a state or federal  
9       agency. If the public service commission finds that the  
10      proposed service charge or toll is unreasonable or is ex-  
11      cessive in relation to the value of the service provided or  
12      to be provided, it may disapprove or modify the proposed  
13      charge or toll. The public service commission is author-  
14      ized to establish necessary rules and procedures to carry  
15      out its responsibilities under this section.

1       Section 10. Effective Date. Insert effective date.



## CREATION AND CONSOLIDATION OR DISSOLUTION OF SPECIAL DISTRICTS\*

The 1962 Census of Governments indicated the existence of 18,323 special districts in the United States in 1962. This was an increase of almost 40 percent over the comparable figure for 1952 (considering classification changes). The rapid growth of special districts during this 10-year period and since the end of World War II has been the cause of increasing concern to many state and local governments. As early as 1953 the Council of State Governments in Public Authorities in the States: A Report to the Governors' Conference discussed at length some of the problems created by resort to specialized agencies for undertaking governmental functions. In a subsequent report on metropolitan areas, State Responsibility in Urban Development, the Council indicated the difficulties often encountered in metropolitan areas where special districts exist.

The recent report of the Advisory Commission on Intergovernmental Relations, The Problem of Special Districts in American Government, noted that problems associated with the existence of special districts may occur in rural as well as urban areas. As a matter of fact, over two-thirds of the special districts in the United States in 1962 were not in metropolitan areas. Not only does the continued creation of numerous special districts tend to increase the complexity of government but the continued existence of some special districts may be unnecessary. Often special districts were created because local government did not have the statutory authority to provide a particular service or because of limitations on the borrowing or taxing powers of such governments. Numerous special districts created merely to circumvent such restrictions continue to exist, despite elimination or modification of the earlier restrictions. Their continued existence hinders efforts to secure economical performance of local governmental services.

The following draft bill would provide a procedure under which the creation of new special districts would be carefully reviewed by a local government body to determine whether an existing unit of general government--basically a county or municipality though in some instances an existing special district--could provide the service that the proposed district would provide. This procedure is not designed to eliminate the creation of special districts; it would merely restrict their use to those situations where an existing unit of general local government is unwilling

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\* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.

or unable to provide a service desired by the people. This aspect of the draft bill is patterned after legislation adopted by California, Nevada and Texas in 1963. The bill also establishes a procedure whereby existing districts can be merged, consolidated or dissolved when they have outlived their usefulness.

The draft bill contains no specific definition of special districts. In view of the diversity in the utilization of special districts by the individual states, each state must determine for itself what governmental entities should be affected by this statute. Generally speaking, those entities included as special districts by the Bureau of the Census should be included within the definition. In addition states may wish to include a number of other semi-autonomous governmental entities.

Section 2 authorizes the creation of a county special district commission in each county of the state. The commission would be composed of executive or legislative officials of the county government and municipalities within the county and consequently would not constitute a significant cost. Such a body would be activated only when and if the need arose. Section 3 defines the powers of the commission to review proposals for the creation or dissolution, merger, or consolidation of special districts. Sections 4, 5, 6, 8, and 9 spell out the basic procedures to be utilized by the commission in reviewing such proposals, including the holding of public hearings. Section 7 details various factors that must be considered by the commission in reaching its decision. In those states where an agency such as the commission cannot constitutionally exercise the full range of authority conferred in this bill on the proposed commissions, it would be necessary to substitute local legislative bodies for such commissions.

Section 11 provides for review of proposals for the creation of new special districts, approved by the local agency formation commission, by a state agency where the state is engaged in a regulatory or operational program which would be affected by the activities of the proposed special district. No specific programs are mentioned, but special districts engaged in such activities as water supply, flood control and sewerage disposal are examples of districts which might have a significant impact on statewide programs. The essential purpose of this review would be to insure that the proposed special district would not adversely affect the statewide program.

Finally, Section 12 provides for judicial review of state or local decisions disapproving proposals to create a special district, and local agency decisions ordering consolidation, merger, or dissolution of existing special districts.

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act establishing county commissions to review proposals for the creation, consolidation, merger, or dissolution of special districts."

(Be it enacted, etc.)

1        Section 1. Definitions. (a) "Special District" means  
2        any agency or political subdivision of the state  
3        organized for the purpose of performing governmental or  
4        prescribed functions within limited boundaries. It  
5        includes all political subdivisions of the state except  
6        a city, a county, a town, or a school district<sup>1</sup>.

7        (b) "County Officer" means (1) a chief elected county  
8        official or (2) a member of the elected governing body  
9        of a county.

10       (c) "City Officer" means (1) a mayor or (2) member of  
11       a city council or legislative body of a city.

1        Section 2. County Special District Commission. (a) There  
2        is hereby authorized to be created in each county of the  
3        state a County Special District Commission hereafter called  
4        Commission consisting of five members selected as follows:  
5        (1) two representing the county, each of whom shall be a  
6        county officer appointed by the county governing body;  
7        (2) two representing the cities in the county, each of

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<sup>1</sup> Some states may wish to define special districts by reference to the statutes authorizing their creation.

8 whom shall be a city officer appointed by the chief  
9 executive officers of the cities within the county at  
10 a joint meeting; and (3) one representing the general  
11 public, who shall be chairman of the Commission, appointed  
12 by the four other members of the Commission.

13 (b) The term of each member shall be four years and  
14 until the appointment and qualification of his successor,  
15 except that the term of each county officer and each city  
16 officer shall expire upon the termination of his county  
17 or city office. Any city or county member may be removed  
18 by his appointing authority.

18 (c) Vacancies on the Commission shall be filled for  
19 the unexpired term by the appointing authority which  
20 originally appointed the member whose position has become  
21 vacant. Commission members who are full-time city or  
22 county officers shall serve without compensation but shall  
23 be reimbursed the actual amounts for their reasonable and  
24 necessary expenses incurred in attending meetings and in  
25 performing the duties of their office. Commission members  
26 who are not full-time city or county officers shall  
27 receive such compensation as the county governing body  
28 may determine.

29 (d) Prior to establishment of a Commission in a county,  
30 any proposals for the creation of a special district, or  
31 petition for the merger, consolidation, or dissolution of

32 an existing special district shall be submitted to the  
33 clerk of the county governing body as otherwise provided  
34 in the act. Upon receipt of such proposal or petition  
35 the clerk shall immediately notify the county governing  
36 body and the governing bodies of all cities within the  
37 county of such receipt. The county and cities shall then  
38 proceed to establish a Commission.

1 Section 3. Powers and Duties of Commission. The Com-  
2 mission shall have the following powers and duties:

3 (a) To review and approve or disapprove with or with-  
4 out amendment wholly, partially, or conditionally proposals  
5 to create special districts within the county.

6 (b) To review and approve or disapprove petitions for  
7 the dissolution, consolidation, or merger of special  
8 districts within the county.

9 (c) To adopt standards and procedures consistent with  
10 the provisions of this act for the evaluation of proposals  
11 for the creation, dissolution, consolidation, and merger  
12 of special districts.

1 Section 4. Proposals for Creation of Special Districts.

2 (a) Any proposal for the creation of a special district  
3 shall be submitted to the Commission prior to insert here  
4 appropriate reference to legislation authorizing creation  
5 of special districts which would minimize cost and expense  
6 of creating special districts if a Commission decision

7 were to be against creation of the proposed district.  
8 For example, where a referendum is required, action of  
9 the Commission should take place prior to the holding  
10 of such referendum<sup>7</sup> by those parties authorized by law  
11 to initiate proceedings for the creation of a special  
12 district.

13 (b) Upon receiving notice of a proposal to create  
14 a special district the Commission shall direct the  
15 clerk of the county governing body to notify: (1) each  
16 city within   miles of the territory of the pro-  
17 posed district; (2) each special district whose boundaries  
18 are adjacent to the proposed boundaries of the proposed  
19 district and is performing the same type of service that  
20 the proposed district would perform; and (3) the county  
21 governing body of the proposal to create a special  
22 district.

23 (c) At the same time the Commission shall cause to be  
24 published in   newspapers of general circulation in  
25 the county an announcement of its receipt of the afore-  
26 mentioned proposal, and notice of intention to hold a  
27 public hearing on a proposal to create the proposed  
28 district, which hearing shall be held not less than 20  
29 nor more than 40 days from receipt of the notification  
30 of the proposal to create the special district.

1           Section 5. Merger, Consolidation, or Dissolution of  
2           Special Districts. (a) Any city, county, or special  
3           district may, by resolution adopted by its governing  
4           body, petition the Commission requesting the merger,  
5           dissolution, or consolidation of any special district  
6           within the county. Merger or consolidation petitions shall  
7           include such information as will permit the Commission to  
8           evaluate the degree to which the proposed action will  
9           permit more effective and efficient performance of the  
10          service provided by the special district.

11          (b) The residents of any special district may petition  
12          the Commission requesting the merger, dissolution, or  
13          consolidation of any special district in which they reside.  
14          Such petition shall be signed by at least \_\_\_\_ percent of  
15          the residents actually residing within the territory of  
16          the district.

17          (c) Upon receipt of a petition for the merger,  
18          dissolution, or consolidation of a special district, the  
19          Commission shall direct the clerk of the county governing  
20          body to notify: (1) each city within       miles of  
21          the territory of the district specified in the petition;  
22          (2) each special district whose boundaries are adjacent  
23          to the boundaries of the district specified in the petition  
24          and which is performing the same type of service as is the  
25          special district; (3) the county governing body; and

26 (4) the governing body of the district which is the sub-  
27 ject of the petition.

28 (d) At the same time the Commission shall cause to be  
29 published in       newspapers of general circulation in  
30 the county an announcement of its receipt of the afore-  
31 mentioned petition and notice of intention to hold a  
32 public hearing on the petition to dissolve, merge, or  
33 consolidate said special district, which hearing shall be  
34 held not less than  20  nor more than  40  days from  
35 receipt of the petition.

1 Section 6. Hearings. At public hearings held pursuant  
2 to this act, the Commission shall hear any interested  
3 party having made a written request to be heard, and shall  
4 receive a report of the Commission staff on the proposal  
5 before it. The Commission shall have the power to make  
6 and enforce such rules and regulations as shall provide  
7 for orderly and fair hearings on the issues before it.

1 Section 7. Factors to be Considered. (a) Factors to  
2 be considered in the review of a proposal for creation,  
3 consolidation, merger, or dissolution of a special district  
4 shall include but not be limited to:

5 (1) Population; population density; land area and  
6 land use; per capita assessed valuation; topography,  
7 natural boundaries, and drainage basins; proximity to  
8 other populated areas; the likelihood of significant



9 growth in the area, and in adjacent incorporated and unincor-  
10 porated areas, during the next 10 years.

11 (2) Need for organized community services; the present  
12 cost and adequacy of governmental services and controls in  
13 the area; probable future needs for such services and  
14 controls; probable effect of the proposed formation and of  
15 alternative courses of action on the cost and adequacy of  
16 services and controls in the area and adjacent areas.

17 (3) The effect of the proposed action, and of alternative  
18 actions, on adjacent areas, on mutual social and economic  
19 interests and on the local governmental structure of the  
20 county.

21 (b) Any city, county, or special district receiving  
22 notification of hearings to be held by the Commission may:

23 (1) In the case of a petition for creation of a new  
24 district indicate to the Commission its willingness and  
25 ability to provide the service to be undertaken by the pro-  
26 posed district. Such notification shall include references  
27 to appropriate legal authority empowering such city, county,  
28 or special district to assume responsibility for providing  
29 such service within the territory of the proposed district  
30 and shall include appropriate evidence of its financial  
31 ability to provide same. It may also include reasons why it  
32 rather than the proposed district should provide the service.

33 (2) In the case of a petition for the dissolution, con-  
34 solidation, or merger of a special district, submit to the

35 Commission its recommendations concerning such proposals.  
36 If the petition for dissolution, consolidation, or merger is  
37 based upon a city, county, or special district assuming the  
38 function undertaken by the subject special district, the  
39 notification shall include references to appropriate legal  
40 authority empowering such city, county, or special district  
41 to assume responsibility for providing such service within  
42 the territory of the subject district and shall include  
43 appropriate evidence of its financial ability to provide  
44 same. It may also include reasons why it rather than the  
45 subject district should provide the service.

1       Section 8. Multi-County Special Districts. In the  
2 event that the territory of any special district lies in  
3 two or more counties, proposals to create, or petitions to  
4 merge, consolidate or dissolve special districts shall be  
5 forwarded to the Commission in each of the counties affected.  
6 The Commissions shall within 107 days agree upon a date  
7 and place for a joint public hearing and shall proceed  
8 jointly as otherwise directed by this Act, except that all  
9 time spans shall be measured from the date of such agreement.

1       Section 9. Decisions of Commission. (a) Upon conclusion  
2 of the hearing, the Commission may take the matter under  
3 consideration and shall, within 307 days following conclu-  
4 sion of the hearing, present its decision. The Commission  
5 may also adjourn a hearing from time to time, but not to

6 exceed a total of 60 days.

7 (b) If the Commission approves the formation of the pro-  
8 posed district, proceedings for its formation, subject to  
9 Section 11 of the Act, may be continued as otherwise pro-  
10 vided by law. If the Commission approves the proposed  
11 formation with modifications or conditions, further pro-  
12 ceedings for its formation may be continued only in compliance  
13 with such modifications or conditions. If the Commission  
14 disapproves the formation of the proposed special district  
15 no further action may be taken to create the special district  
16 and notice of intention to create such a district may not be  
17 presented to the Commission for at least 2 years after the  
18 date of disapproval.

19 (c) The Commission may order the merger, dissolution, or  
20 consolidation of a special district where the factors speci-  
21 fied in Section 8 indicate such action is appropriate and  
22 finds:

23 (1) That a petitioning city, county, or existing special  
24 district adjacent to the subject district can provide the  
25 service to the residents of the subject district more  
26 effectively and more economically; or

27 (2) Where it finds that there is no longer a need for the  
28 service provided by a subject district.

29 (d) Decisions approving proposals for the merger, con-  
30 solidation, or dissolution of a special district shall provide  
31 for the equitable disposition of the assets of the subject

32 district, for the adequate protection of the legal rights of  
33 employees of the district as specified in cite here statutes  
34 which afford various civil service and tenure protection to  
35 employees of special districts<sup>7</sup>, and for adequate protection  
36 of the legal rights of creditors.

1 Section 10. Administration. (a) The county governing  
2 body<sup>7</sup> shall furnish the Commission with quarters, equipment,  
3 and supplies necessary to perform its duties, and the usual  
4 and necessary operating expenses incurred by the Commission  
5 shall be a charge to the county<sup>7</sup> except that counties are  
6 authorized to enter into agreements with cities within its  
7 borders pursuant to which the expenses of the Commission  
8 will be shared by the parties to the agreement.

9 (b) The Commission may appoint an executive officer who  
10 shall conduct and perform day-to-day business of the Commis-  
11 sion. If the Commission does not appoint an executive  
12 officer, the county administrative officer or clerk<sup>7</sup> shall  
13 act as the executive officer of the Commission.

14 (c) The Commission may appoint and assign staff person-  
15 nel necessary to the performance of its duties and may  
16 employ or contract for professional or consultant services  
17 to carry out its responsibilities specified in this act.  
18 Cities, counties, and existing special districts are  
19 directed to furnish all reasonable assistance and service to  
20 the Commission as it may request in order to fulfill its  
21 responsibilities.

1        Section 11. State Approval of Proposed District.<sup>3/</sup>

2        Where a Commission approves the creation of a special  
3        district undertaking a function or service which affects  
4        a state regulatory or operational program, the Commission  
5        shall immediately notify the Secretary of State who shall  
6        immediately forward the notification to the state agency  
7        responsible for the state program of its action. Such  
8        notification shall include a complete record of the pro-  
9        ceedings before the Commission. The state agency shall,  
10       within 30 days of such notification, either give its  
11       approval of the creation of proposed special districts or  
12       indicate its reasons for initially denying such approval  
13       and schedule a public hearing on the question of the creation  
14       of the district within the county of the proposed district  
15       within 45 days of receipt of notification from the Com-  
16       mission. Within 30 days after the hearing the state  
17       agency shall either approve or disapprove creation of the  
18       proposed district. Decisions of the state agency shall be  
19       based on whether or not the proposed district will further

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3 States may wish to specify those functions for which proposals for creation of special districts must receive state agency approval. Functions in this category should be those for which the state has either supervisory or operator responsibilities. For instance, water resource development--water supply, conservation, and irrigation districts; pollution control--sewerage districts.

20 or hamper the effectiveness of the state regulatory or  
21 operational program.

1 Section 12. Judicial Review. All final determinations  
2 of a Commission or a state agency shall be reviewable  
3 /pursuant to the state administrative procedure act/ /by  
4 a proceeding in the \_\_\_\_\_ court/.

1 Section 13. Effective Date. /Insert effective date./

## LEGISLATIVE APPORTIONMENT PROCEDURE

The actual formulas for apportioning seats in the legislative bodies of a State is a matter of individual State concern, subject to the limitations imposed by the United States Constitution. However, it is essential that State constitutions specifically provide procedures that will insure that the States themselves are in a position to comply with all constitutional requirements for periodic reapportionment of legislative bodies. The suggested constitutional amendment is designated to insure compliance with apportionment provisions of the State constitution.

The suggested amendment deals only with apportionment procedure and does not treat the substantive issues on the basis (population, political subdivision, etc.) of allocating State legislative seats nor questions involved in use of weighted voting, single- or multi-member districts, etc. The amendment directs the legislature to reapportion itself in accordance with constitutional requirements following each decennial census. In the event that the legislature fails to meet its responsibility, a nonjudicial, nonlegislative officer or board is directed to do the reapportioning. In both instances, the highest court of the State is given original jurisdiction to determine the constitutionality of the reapportionment plan.

The language of the suggested amendment is modeled after the provisions of the Oregon constitution, although it should be noted that at least 14 other States have specific constitutional provisions which are designed to insure periodic apportionment of at least one house of their State legislatures. 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 a reapportionment law or failed to reapportion in accordance with the provisions of the State constitution.

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 reapportionment statute complies with the State constitutional formulas. It may be best for a State constitution in defining

"population" in its formula to express that definition in mathematical terms. The following two alternatives might be included at the appropriate place or places:

- (a) The  $\overline{\text{population}}$  of no  $\overline{\text{Senatorial}}$  or  $\overline{\text{Representative}}$  district shall deviate by more than ten (10) percent from the figure obtained by dividing the total  $\overline{\text{population}}$  of the State by the number of  $\overline{\text{Senators}}$  or  $\overline{\text{Representatives}}$ .
- (b)  $\overline{\text{Senatorial}}$  and  $\overline{\text{Representative}}$  districts shall be established with appropriate boundaries so as to permit at least forty-five (45) percent of the total  $\overline{\text{population}}$  of the State to elect fifty  $\overline{50}$  percent of the State  $\overline{\text{Senators}}$  and fifty  $\overline{50}$  percent of the State  $\overline{\text{Representatives}}$ .

Section 2 directs 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 the timing of reapportionment 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 first regular legislative session following a decennial census, has not enacted reapportionment legislation. Here again, such a reapportionment 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 reapportion 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.

Suggested Constitutional Amendment

1       Section 1. Apportionment of Senators and Representatives.

2       (a) Senators. Insert provisions for the apportionment of  
3 State Senators.

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

1       Section 2. Reapportionment Duty. The number of Senators  
2 and Representatives shall, not later than July 1st at the first  
3 regular session of the legislature next following the decennial  
4 census conducted by the United States Government, be reapportioned  
5 by the legislature in accordance with Section 1 of this Article.

1       Section 3. Jurisdiction of State Supreme Court. Original  
2 jurisdiction is vested in the State court of last resort, upon  
3 the petition of any qualified voter of the state filed with the  
4 clerk of the Supreme Court within 30 days after enactment of  
5 a reapportionment measure, to review, in whole or part, any  
6 measure so enacted. If the Supreme Court determines that the  
7 measure complies with Section 1 of this Article, it shall dismiss  
8 the petition by written opinion within 30 days after the

9 petition was filed and the legislation enacted shall become  
10 law upon the date of opinion. If the Supreme Court determines  
11 that the measure does not comply with Section 1 of this Article  
12 the measure shall be null and void and the Court shall direct  
13 the named state official the apportionment board to prepare  
14 a reapportionment of the legislature in compliance with Section 1  
15 of this Article and return its reapportionment to the Supreme  
16 Court within 30 days after referral by the Court. The  
17 Supreme Court shall review the reapportionment thus returned  
18 and, if it is found to be in compliance with Section 1 of this  
19 Article, shall cause it to be filed with the Governor within  
20 30 days after the finding and it shall become law upon the  
21 date of filing. If the Supreme Court shall determine that the  
22 draft returned to it by the named state official apportionment  
23 board does not comply with Section 1 of this Article, the  
24 Court shall return it forthwith, accompanied by a written opinion  
25 specifying with particulars wherein the draft fails to comply  
26 with the requirements of Section 1 of this Article. The opinion  
27 shall further direct the named state official apportionment  
28 board to correct the draft in these particulars and in no others  
29 and to file the corrected reapportionment with the Governor  
30 within 30 days after issuance of the order, and it shall become  
31 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 first regular session of the  
4           legislature next following a decennial census by the United  
5           States Government, the named state official apportionment  
6           board shall make a reapportionment of the legislature in  
7           accordance to the provisions of Section 1 of this Article. The  
8           reapportionment so made shall be filed with the Governor on  
9           or before August 1st of such year and shall become law,  
10          subject to Supreme Court review, upon date of filing.

11          Original jurisdiction is vested in the Supreme Court,  
12          upon petition of any qualified voter of the state filed with  
13          the clerk of the Supreme Court within 30 days after any  
14          reapportionment made by the named state official apportion-  
15          ment board has been filed with the Governor to review, in  
16          whole or part, any such reapportionment. If the Court determines  
17          that the reapportionment thus made complies with the provisions  
18          of Section 1 of this Article it shall dismiss the petition by  
19          written opinion within 30 days after the petition was filed  
20          and the reapportionment shall become law upon the date of the  
21          opinion. If the Supreme Court determines that the re-  
22          apportionment does not comply with Section 1 of this Article,

23 said reapportionment shall be null and void and the Supreme  
24 Court shall return it forthwith to the named state official  
25 apportionment board accompanied by a written opinion speci-  
26 fying with particulars wherein the reapportionment fails to  
27 comply with Section 1 of this Article. The opinion shall  
28 further direct the named state official apportionment board  
29 to correct the reapportionment in those particulars and in no  
30 others and file the corrected reapportionment with the Governor  
31 within 30 days after issuance of the order and it shall become  
32 law upon the date of filing.

1 Section 5. Apportionment Board. There is hereby created an  
2 Apportionment Board consisting of named state officials; do  
3 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 candi-  
8 date for Governor received the second largest number of votes  
9 at the last preceding gubernatorial election, and one member  
10 who shall be Chairman of the Apportionment Board, appointed by  
11 the aforementioned members. The Apportionment Board shall  
12 convene prior to July 10th of any year in which the legislature  
13 has failed to comply with its responsibility under Section 2

14 of this Article and reapportion the state legislature in  
15 accordance with the provisions of Section 1 of this Article.  
16 In that event the Apportionment Board shall, on or before  
17 August 1st of such year, reapportion seats in the state  
18 legislature in accordance with the provisions of Section 1  
19 of this Article and file a copy of such reapportionment with  
20 the 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 provisions  
24 of Section 1 of this Article the Apportionment Board shall  
25 convene within 10 days after the decision of the Court and  
26 the Board shall proceed to reapportion seats in the legis-  
27 lature as if no reapportionment action was taken by the legis-  
28 lature.<sup>1</sup> The Secretary of State shall be secretary of the  
29 Board, and in that capacity shall furnish, under its direction,  
30 all necessary technical services.

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1 Some states may wish to include a provision here similar to that in the Michigan Constitution which reads as follows: "If a majority of the Board cannot agree on a plan, each member of the Board, individually or jointly with other members, may submit a proposed plan to the Supreme Court. The Supreme Court shall determine which plan complies most accurately with the constitutional requirement and shall direct that it be adopted by the Board and published as provided in this article."

## GENERAL PUBLIC ASSISTANCE\*

General assistance programs in the states provide public assistance to the needy who do not qualify for assistance under one of the federal public assistance categories for which grants-in-aid are available. Included among the recipients of such assistance may be, to cite several examples: needy, unemployed people who have exhausted or who never qualified for unemployment benefits; needy persons who do not have dependent children; needy people with partial or temporary disability; mothers of dependent children over 18; and needy people who fail to meet all federal and state requirements in the federally aided categorical programs. Payments under the general assistance programs in the 50 states amounted to \$375 million--which is 8 percent--of total public assistance expenditures of 4.9 billion dollars in the fiscal year ending June 30, 1964. However, general assistance is of greater significance than the percentage figure would indicate since it is the type of assistance which provides for all of those in need who do not qualify under any other program. Furthermore, state-local expenditures for general assistance amounted to 17 percent of total state-local public assistance expenditures and local expenditures were one-third of total local public assistance expenditure.

State and local support for the non-federal portion of categorical public assistance and for general assistance shows considerable variation between the two main types of assistance and among the states. In fiscal 1964, federal grants-in-aid provided 60 percent of the expenditures for categorical public assistance. State support for categorical assistance was almost

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\* Included in the Council of State Governments' SUGGESTED STATE LEGISLATION. The suggested legislation is intended for consideration only in those states (approximately two-thirds of the total) where the administration of general assistance is a state-local or local responsibility, not where there is strictly state financing and administration.

80 percent of total non-federal expenditures, whereas the states contributed just less than half of total funds for general assistance. The lowest percentage of state participation in the non-federal share of categorical public assistance was 44 percent, while in general assistance, 15 states made no contribution at all. As a result, general assistance programs can be a heavy charge on individual local governments.

There are disparities in the fiscal effects of differences in unemployment, income, and other social conditions of the needy in different jurisdictions. The burden of these disparities on the welfare budgets of individual localities is already considerably modified because of the extent to which federal and state governments finance the categorical public assistance programs. It is difficult to justify the greater burden on localities under the general assistance program. Benefits redounding from maintaining the welfare of individuals and fostering their rehabilitation spread well beyond the limits of localities in which they happen to reside. Indigents tend to migrate to urban centers in search of employment or to join relatives, and some become applicants for public assistance, perhaps because they know of the existence of welfare programs which will assure them a minimum of assistance. In its report, Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs, the Advisory Commission on Intergovernmental Relations reviewed this problem and recommended that states finance at least one-half of the cost of general assistance welfare programs and adopt state standards for such programs.

The suggested legislation is designed to provide for at least 50 percent matching of general assistance costs by the states and for the establishment of state standards generally in conformance with those for the other public assistance programs. The act provides a statement of basic public policy regarding the provision of general assistance; enumerates the responsibilities of the state welfare agency in establishing the system of general assistance; establishes state matching procedures; and provides for the use of rehabilitation, vocational training and retraining services, and community work training programs. Finally, it provides an appeal and judicial review procedure.



States wishing to introduce an equalization factor into their matching provisions may wish to consider two approaches presently in use. In New Jersey, graduated state matching is related to the preceding year's general assistance case load and property tax base. For each administering jurisdiction, there is computed the millage tax rate that would be required, when applied to the preceding year's total assessed valuation, to produce revenue amounting to general assistance expenditures for the preceding year. This gives the "preceding year's general assistance millage" and a schedule of graduated matching is related to the millage amounts. For example, if the general assistance millage were not more than 2.4 mills, 50 percent matching could be provided for; if 2.8, the matching could go up to 52 percent; if 3.2, to 54 percent; and so forth. In New York, the additional reimbursement is related only to the number of persons receiving general relief in any jurisdiction. If the number exceeds 1 percent of the total population of the jurisdiction then the locality is reimbursed for the percentage of recipients over 1 percent of the population at 80 percent and for the remainder at 50 percent.\*

An increasing emphasis in public assistance programs is the need for social services to assist recipients in meeting special problems and, to the extent possible, becoming self-supporting. These services in combination with financial support are aimed at the prevention and reduction of dependency. The social services can contribute not only to minimizing or eliminating the need for financial support--more importantly, they can assist welfare recipients to become contributing members of the economy. Because of the importance of rehabilitative services to a successful assistance program, special provisions regarding them are included in the suggested act. To encourage their use and development, provision is made for a higher matching percentage by the state for funds expended to assist existing programs and services in meeting the needs of general assistance recipients or, where necessary, to provide the services and programs.

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\* New Jersey Statutes Annotated, Sections 44:8-128 and 44:8-129; New York Social Welfare Law, Section 154.

Optional sections establishing a hearing board appeal procedure for aggrieved applicants or recipients of general assistance and establishing residence requirements for general assistance are provided. Concern over the legal rights of the poor has led to increasing attention directed toward the protection of those who do not have ready access to private legal counsel and advice. Among the specific issues raised is that of appeal procedures for welfare recipients or applicants. Appeal procedures are provided in the states but they usually consist of hearings by the same agencies which promulgate the basic rules pursuant to law and have general administrative responsibility for the program. The optional section establishes a hearing board administratively located in the welfare department but independent of it for policy purposes. Its organization and procedures are based on standard administrative adjudication agency models using a small claims approach. The specific jurisdiction provided can, of course, be varied. Appeal from rulings by the director of welfare might be allowed only on questions of eligibility for example. Similarly, its findings could be made final or appeal could be allowed to the state supreme court, possibly on issues of law only.

While most states retain residence requirements for public assistance programs, it has been recommended that requirements be shortened or eliminated. In 1959, the Governors' Conference urged Congress to enact a uniform one year ceiling on residence requirements and urged states to ratify an interstate compact waiving residence provisions on a reciprocal basis. At present at least four states provide general assistance without residence requirements and in 10 additional states there are special provisions for making general assistance available to those who don't meet residence requirements. While at least one state has reciprocal agreements with a number of states affecting residence requirements for general assistance, such arrangements are more common in the categorical relief programs with over a dozen states having them. The optional section includes provisions for reciprocal agreements and for granting general assistance in cases of special need to those not meeting residence requirements.

The suggested legislation does not deal with the basic organizational structure for the administration of general

assistance either at the state or local level. Provision for the administration of general assistance exists in all states.\* The emphasis in the suggested legislation is on providing the authority to administer a shared program of general assistance with the state government assuming at least 50 percent of the financial responsibility and exercising supervisory authority to maintain statewide standards. It is intended also to establish as close a correlation as possible with the federally aided categorical public assistance grants so that a reasonably uniform public assistance program including related social services can be administered in the states for all in need.

#### Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act providing for general assistance."

(Be it enacted, etc.)

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

- 2 (1) "Director" "Commissioner" means the director of  
3 public welfare the commissioner of public welfare.
- 4 (2) "Department" means the department of public welfare.
- 5 (3) "General assistance" means cash payments to needy  
6 persons unable to provide themselves with a decent and  
7 healthful standard of living who are not otherwise provided  
8 for under the laws of this state and who are willing to

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\* However, in those states where categorical public assistance is locally administered, the local agency designated to administer general assistance should be the same as the local agency administering other public assistance if the stated objective of the act to "provide an integrated public assistance program for all needy persons" is to be met.

9 work but are unable to secure employment due either to  
10 physical disability or inability to find work. As provided  
11 for in this act, it may include, in place of or in addition  
12 to cash payment, assistance in goods, shelter, fuel, food,  
13 clothing, light, necessary household supplies, medical,  
14 dental, and nursing care, including drugs and medical  
15 supplies, and other necessities of life. It does not  
16 include old-age assistance, aid to the blind, aid to the  
17 permanently and totally disabled, or aid to families with  
18 dependent children.

19 (4) "State aid" means state aid to local governments  
20 for general assistance expenditures as in this act  
21 prescribed and provided for.

22 (5) "Local agency" refers to the identify appropriate  
23 local agency or official with responsibility for administering  
24 general assistance<sup>1</sup>.

25 (6) "Hearing Board" refers to the General Assistance  
26 Public Assistance Hearing Board.

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1 In those states where categorical public assistance is locally administered, this should be the same agency administering other public assistance.

1     Section 2. Public Policy Regarding General Assistance.

2     (a) The objective of this act and other public assistance  
3 acts is to provide an integrated public assistance program  
4 for all needy persons in the state.

5     (b) It is hereby declared to be the policy of this state  
6 that needy persons, unable to provide for themselves and  
7 not otherwise provided for by law, who meet the eligibility  
8 requirements of this act and do not refuse suitable  
9 employment or training for self-support work as provided  
10 for in this act shall, while in this state, be entitled  
11 to receive such grants of general assistance and such  
12 services as may be necessary to enable them to maintain  
13 a decent and healthful standard of living. The furnishing  
14 of such assistance and services is a matter of public  
15 concern and a necessity in promoting the public health and  
16 welfare. Furnishing such assistance and services is a  
17 joint responsibility of state and local governments.

18     (c) A principal objective in providing general assistance  
19 and services shall be to aid those persons who can be so  
20 helped to become self-supporting or to attain self-care.  
21 To achieve this aim, the Department shall establish such  
22 standards of assistance and services as will enable applicants

23 and recipients to maintain a decent and healthful standard  
24 of living and will encourage and aid them in developing  
25 their self-reliance and realizing their capacities for  
26 self-care and self-support. The maintenance of the family  
27 shall be a principal consideration in the administration of  
28 this act and all general assistance policies shall be  
29 formulated and administered so as to further this objective.

1 Section 3. Responsibility to Provide General Assistance.

2 (a) Every identify the appropriate unit of local govern-  
3 ment shall provide general assistance to needy persons  
4 residing within its jurisdiction who meet the need and  
5 residence requirements of this act. General assistance  
6 shall be administered according to law and rules and  
7 regulations promulgated by the Department pursuant to the  
8 provisions of this act.

9 (b) State aid shall be available to identify the  
10 appropriate unit of local government to reimburse part of  
11 general assistance expenditures as provided in Section 9  
12 of this act.

1 Section 4. Duties of the Department. The Department  
2 shall:

3 (1) Supervise the administration of general assistance by

4 local agencies as provided in this act.

5 (2) Promulgate uniform rules and regulations consistent  
6 with law for carrying out and enforcing the provisions of  
7 this act to the end that general assistance may be  
8 administered as uniformly as possible throughout the state  
9 having due regard for varying costs of living in different  
10 parts of the state. Standards and operating procedures  
11 established by the Department pursuant to this act shall  
12 to the extent feasible conform to similar standards and  
13 procedures for other public assistance programs provided for  
14 in cite sections providing for old-age assistance, aid to  
15 the blind, aid to the permanently and totally disabled, and  
16 aid to families with dependent children<sup>7</sup>. Rules and  
17 regulations shall be furnished immediately to all local  
18 agencies. In promulgating rules and regulations, the pro-  
19 visions of the cite the administrative procedures act<sup>7</sup>  
20 shall apply<sup>7</sup>.

21 (3) Establish standards and requirements as to need for  
22 assistance and as to its nature and extent.

23 (4) Establish standards consistent with law for adminis-  
24 tration by local agencies of community work and training  
25 programs for employable general assistance recipients.

26 (5) Allocate moneys appropriated for general assistance

27 to identify the appropriate local governments qualifying  
28 therefor in the manner hereinafter provided.

29 (6) Accept and supervise the disbursement of any funds  
30 that may be provided by the federal government or from other  
31 sources for use in this state for general assistance.

32 (7) Cooperate with other agencies including any agency  
33 of the United States or of another state in all matters  
34 concerning the powers and duties of the Department under  
35 this act.

36 (8) Take measures not inconsistent with the purposes of  
37 this act to assist in meeting special needs of individuals  
38 eligible for assistance to relieve suffering and distress  
39 arising from handicaps and infirmities; to promote their  
40 rehabilitation; to help them if possible to become self-  
41 dependent; to cooperate to the fullest extent with other  
42 public agencies empowered by law to provide vocational  
43 training, rehabilitation, or similar services; and to  
44 provide such supplementary funds, services, and facilities  
45 as may be found necessary for this purpose.

46 (9) Gather and study current information and report at  
47 least annually to the Governor on the nature and need of  
48 general assistance, the amounts expended under the supervision



49 of each local agency, and the work of each local agency and  
50 publish reports for the information of the public.

51 (10) Report at least annually to the Governor the cost  
52 of living in the various counties, cities, and metropolitan  
53 areas as related to standards of assistance and the amounts  
54 expended for assistance, and make this information available  
55 to the public.

56 (11) Enter into reciprocal agreements with other states  
57 to grant general assistance to persons from such states with  
58 less than the required period of residence in this state.

1 Section 4a. Residence Requirements.

2 (a) Any person who resides within this state for a period  
3 of   shall be deemed to meet residence requirements for  
4 general assistance. A person may receive and continue to  
5 receive general assistance for so long as he is and continues  
6 to be a resident of this state.

7 (b) If an applicant for general assistance has resided  
8 in this state for less than the required period and the  
9 local agency finds that the applicant will suffer undue  
10 hardship unless assistance is provided him, the local agency  
11 may, in accordance with rules and regulations of the Depart-  
12 ment, provide general assistance.

13 (c) If an applicant for general assistance has resided  
14 in this state for less than the required period and if  
15 his prior state of residence has entered into a reciprocal  
16 agreement with this state for the provision of general  
17 assistance he shall be entitled to receive general assistance  
18 pursuant to the reciprocal agreement.

1 Section 5. Amount of Assistance.

2 (a) The amount of general assistance granted to any  
3 persons shall be determined in accordance with local budget  
4 standards prepared pursuant to governing Department rules,  
5 due regard being given to the requirements and conditions  
6 existing in each case and to the income and resources avail-  
7 able to such persons from whatever source. Grants shall be  
8 sufficient when added to the income and resources determined  
9 to be available to provide a reasonable subsistence compatible  
10 with health and well-being.

11 (b) Except as hereinafter otherwise prescribed, general  
12 assistance shall be granted in cash; Provided that, in  
13 individual cases where the granting of cash may be deemed  
14 impracticable, general relief may, in accordance with rules  
15 and regulations of the Department, be granted in whole or in  
16 part by order. Medical, dental, and nursing care including  
17 drugs and medical materials and supplies may be granted

18 by order.

1     Section 6. Rehabilitation Services. To aid applicants  
2 for or recipients of general assistance in becoming self-  
3 supporting or in increasing their capacities for self-care,  
4 local agencies shall encourage and assist applicants and  
5 recipients to make maximum use of facilities of public or  
6 private educational, welfare, or other institutions or  
7 agencies providing rehabilitation or vocational treatment,  
8 training, or services. Where such services are not available  
9 or are insufficient, the local agencies may make funds  
10 available to existing agencies for establishing or expanding  
11 such programs and services or, if necessary, may establish  
12 and provide such services; Provided that, the expenditure  
13 of funds therefor shall be subject to the approval and  
14 supervision of the Department. Approved expenditures made  
15 pursuant to this Section shall be considered as reimbursable  
16 general assistance expenditures to be reimbursed as  
17 provided in Section 9.

1     Section 7. Community Work and Training Programs.

2     (a) General assistance recipients may be required to  
3 perform such work and training as may be assigned to them  
4 by the local agencies pursuant to rules, regulations, and  
5 standards promulgated by the Department. The local agencies

6 shall assign those general assistance recipients who in  
7 their judgment are able to perform the work indicated and  
8 benefit from the training.

9 (b) The conditions applicable to work performed by employ-  
10 able recipients of general assistance shall be the same as  
11 those pertaining to recipients of public assistance for  
12 which federal financial participation is available,  
13 except that work required to be performed by recipients  
14 of general assistance may be work for a public or nonprofit  
15 private agency.<sup>2</sup> Any agency for which work is performed  
16 under the provisions of this section shall reimburse the  
17 person performing the work for any additional expenses  
18 reasonably attributable to the work or shall make provision  
19 for meeting the needs for which the expense would be  
20 incurred. The work shall be of a constructive nature for the  
21 conservation of work skills and development of new skills for  
22 individuals under conditions which are designed to assure  
23 protection of their health and welfare.

24 (c) Any person who refuses to report for or to perform  
25 work which has been assigned by a local agency shall there-  
26 upon become ineligible for general assistance.

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2 This option should be viewed in light of constitutional provisions in any given state.

27 (d) Upon submission by any local agency of a plan for a  
28 community work relief and training program to the Department  
29 pursuant to this section and in a manner deemed to be  
30 consistent with the intent of this section, payments for  
31 support to general assistance recipients participating in  
32 such programs shall be considered as a reimbursable general  
33 assistance expenditure.

1 Section 8. Confidentiality of Records. /Use this section  
2 to establish a policy regarding access to general assistance  
3 records consistent with that established for access to  
4 categorical public assistance records.7

1 Section 9. State Aid.

2 (a) Expenditures made by /identify the appropriate local  
3 government7 for general assistance and its administration  
4 pursuant to provisions of this act shall, if approved by the  
5 Department, be subject to reimbursement by the state, in  
6 accordance with the rules and regulations promulgated by the  
7 Department, as follows:

8 (1) Fifty percent of the amount expended for general  
9 assistance.

10 (2) Fifty percent of the amount expended for adminis-  
11 tration of general assistance including expenditures for

12 salaries of employees of a local agency; operation,  
13 maintenance; and service costs; and such other expenditures  
14 such as equipment costs, and rental values as may be  
15 approved by the Department. It shall not include ex-  
16 penditures for capital additions or improvements nor  
17 shall reimbursements be made for the salary of any  
18 employee unless his employment is necessary for the  
19 administration of general assistance.

20 (3) Seventy-five percent of special expenditures  
21 made pursuant to Section 6.

22 (b) Money expended for the cost of administration of  
23 general assistance by any local agency shall not exceed  
24 amounts which have been submitted to and approved by the  
25 Department and the compensation rates of all employees  
26 or persons paid from general assistance funds shall be  
27 subject to review and approval of the Department.

28 (c) Claims for state reimbursements shall be made in  
29 such form and manner and at such times and for such periods  
30 as the Department shall determine.

31 (d) When certified by the Department, state reimburse-  
32 ment shall be paid to identify appropriate local govern-  
33 ments from the state treasury upon the audit and warrant  
34 of the insert the title of appropriate state official

35 out of funds made available therefor.

36 (e) The Department is authorized in its discretion to  
37 make advances to identify the appropriate local governments  
38 in anticipation of the state reimbursement provided for in  
39 this Section.

1 Section 10. Non-Compliance with Rules of the Department.

2 (a) If any local agency administering general assistance  
3 is, in the determination of the Department, refusing or  
4 failing to comply with the provisions of this act or the  
5 rules of the Department, the Department shall notify the  
6 local agency and identify the appropriate local government  
7 promptly by personal service or by registered or certified  
8 mail, citing the provision or rule which is not being  
9 observed, and give the local agency an opportunity to appear  
10 before it. If five days after receiving such notice the local  
11 agency continues to refuse or fails to comply or fails to  
12 avail itself of the opportunity offered for a hearing before  
13 the Department, or if the local agency refuses or fails to  
14 comply following a hearing, the Department shall, within a  
15 reasonable period of time, instruct the state treasurer  
16 to withhold the payment of any further state aid until the  
17 local agency has established compliance. When the Department

18 finds that the local agency has taken such action as the  
19 Department considers to have established satisfactory  
20 compliance with the act and with its rules, it shall instruct  
21 the state treasurer to resume making payment of state aid.

22 (b) If the Department finds that withholding of state  
23 aid would result in undue hardship for recipients, the  
24 Department may, pursuant to Department rules and regulations,  
25 provide direct general assistance to recipients, including  
26 the equivalent of the local share, and require reimbursement  
27 from the identify the appropriate local government for its  
28 normal share.

1 Section 11. Appeals from Decisions and Orders and Appeals  
2 of Rules and Regulations.

3 (a) Appeal to Department. Any applicant or recipient of  
4 general assistance aggrieved by any order or determination of  
5 the local agency may appeal from such order or determination to  
6 the Department. An appeal may also be taken if an application  
7 for general assistance is not acted upon by the local agency  
8 within a reasonable period of time. Before making such appeal  
9 to the Department, the applicant or recipient shall give  
10 written notice to the local agency. The local agency shall  
11 within 30 days after receipt of notice reconsider its



12 decision. The local agency may adhere to the decision  
13 made or may modify its decision. The applicant may then,  
14 within 30 days after the making of such decision by the local  
15 agency, appeal to the Department as herein provided.

16 The Department shall, upon receipt of an appeal by an  
17 applicant or recipient notify the local agency and review the  
18 case, giving the applicant or recipient an opportunity for a  
19 fair hearing before the Director or his legal representative,  
20 in the county in which the application was originally filed  
21 and the decision of the Director on such appeal shall be  
22 final. All such appeals shall be in accordance with rules  
23 and regulations established by the Department. The Director  
24 may upon his own motion review any decision made by a local  
25 agency. The Director may make such additional investigation  
26 as he deems necessary and shall make such decision as to  
27 granting of assistance and the amount and nature of assistance  
28 to be granted the applicant or recipient as in his opinion is  
29 justified and in conformity with the provisions of the act  
30 and the rules and regulations promulgated under it. All  
31 decisions of the Director shall be binding upon a local  
32 agency and the applicant or recipient and complied with by the  
33 local agency.

34 /(b) Appeal to General Assistance /Public Assistance/  
35 Hearing Board.<sup>3</sup>

36 (1) A general assistance applicant or recipient  
37 aggrieved by a decision of the Director may appeal to  
38 the hearing board as provided in this Section.

39 (2) There is hereby established the General  
40 Assistance /Public Assistance/ Hearing Board which, for  
41 administrative purposes only, shall be in the Department,  
42 but which shall be an independent administrative board.  
43 The board shall consist of a chairman and /four/  
44 members, appointed by the Governor /with the consent of  
45 the state senate/ /with the consent of the state  
46 legislature/. The term of each member of the Hearing  
47 Board shall be /five/ years. The initial appointments  
48 shall be as follows: the chairman for a term of /five/  
49 years; one member for a term of /two/ years; one member

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3 If the Hearing Board appeal procedure were established for all public assistance recipients or applicants, the phrase "public assistance" could be substituted for "general assistance" throughout.

50 for a term of three years; one member for a term of  
51 four years; and one member for a term of five  
52 years. Vacancies on the Board shall be filled for the un-  
53 expired term in the same manner as appointments to full  
54 terms.

55 (3) The Hearing Board shall have jurisdiction to  
56 determine all appeals from determinations of the Director  
57 relative to orders or determinations of the local agencies  
58 regarding individual welfare recipients or applicants.  
59 The Hearing Board may affirm, reverse, or modify any  
60 determination of the Department when acting on an appeal  
61 from orders or determinations of local agencies regarding  
62 individual welfare applicants or recipients.

63 (4) Any applicant or recipient aggrieved by the  
64 disposition of his appeal by the Director may appeal  
65 therefrom to the Hearing Board by filing with such Board  
66 a written notice of appeal and serving on the Department a  
67 certified copy of such notice. In order to be valid and  
68 effective, any such notice shall be filed and served  
69 within thirty days of the disposition from which the  
70 appeal is to be taken.

71 (5) Consistent with this act the Hearing Board

72 shall provide by rule for appearances before it and the  
73 conduct of its proceedings.

74 (6) The Hearing Board may hear and determine all  
75 issues of fact and of law but a determination of a local  
76 agency or the Director shall be affirmed unless contrary  
77 to a preponderance of the evidence.

78 (7) The Hearing Board shall establish by rule a  
79 procedure which, to the greatest extent practicable, shall  
80 be informal. The Board shall take special care to provide  
81 all aggrieved general assistance applicants or recipients,  
82 wherever located within the state, reasonable and  
83 convenient access to the Board and shall sit at such times  
84 and places as may be appropriate to promote such access-  
85 ibility. The majority of the members of the Hearing  
86 Board shall constitute a quorum for the transaction of its  
87 business, except that the Hearing Board may provide by rule  
88 for conducting hearings and taking of evidence by a single  
89 member. A vacancy on the Board shall not impair its powers  
90 nor affect its duties.

91 (8) During the pending of the appeal, if the  
92 Department has awarded general assistance to a recipient,  
93 the general assistance shall be paid to him pending the  
94 determination of the appeal. If the appeal shall be from

95 the order of the Director raising or lowering the amount  
96 paid to a recipient and if the order shall not be sustained  
97 then the recipient shall receive the amount, if any, there-  
98 tofore assigned by the local agency.

99     (9) Use this subsection to provide procedure for  
100 appeal of Hearing Board determinations to state supreme  
101 court.     

102 (b)     (c) Original Proceedings in District Court on Rules  
103 and Regulations of the Department; Appeal to the Supreme Court.

104 A local agency may question the validity of any rule or  
105 regulation of the Department within 90 days of its promulgation  
106 in the     insert the name of the court of original general  
107 jurisdiction for the district within which the Capitol is  
108 located     district court, which shall have power to determine  
109 the validity of such rule or regulation by original proceedings  
110 in the court. Either the Department or the local agency may  
111 appeal from such decision to the Supreme Court in the same  
112 manner as other appeals in civil action.

1 Section 12. Effective Date.     insert effective date.

STATE TECHNICAL SERVICES FOR LOCAL GOVERNMENT \*

State agencies are frequently authorized to provide specific types of technical assistance or services to local governments. In some instances the cost of such services is financed by the state; in others, they are jointly financed; and in still others, they are financed solely by the unit of local government requesting the service. In almost all instances such authority is authorized by individual statute adopted by the legislature.

Areas in which such services are often available to local governments include property assessment, public health services, highway planning and construction, and preparation of community development plans. The initiation of new programs at both state and local levels of government in recent years would seem to dictate that, while existing financing patterns remain undisturbed, state agencies should also have broad authority to provide technical services to local government on a reimbursable basis.

While certain services may not directly affect state interests, costs of providing those services would be reduced were state expertise and equipment available for use by the local government (e.g., laboratory, computer and training services). The suggested act provides general authorization for all state agencies to provide special and technical services on a reimbursable basis to local governments.

However, under an optional provision of the draft, such authority could not be utilized to obtain services from the state which could be readily obtained from private business channels.

Section 1 sets forth briefly the purpose of the Act and Section 3 provides the general authority to state agencies to enter into such arrangements. Section 4 indicates that the cost of financing services will not be charged against the appropriation of the state agency and Section 5 requires that the head of a state agency furnishing such services make an annual report to the Governor and the legislature indicating the scope of the services provided.

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\* Included in Council of State Governments SUGGESTED STATE LEGISLATION.

Suggested Legislation

√Title should conform to state requirements. The following is a suggestion: "An Act authorizing state agencies to provide technical services to local government on a reimbursable basis."√

(Be it enacted, etc.)

1       Section 1. Purpose. It is the purpose of this Act to  
2 authorize state agencies to provide specialized or technical  
3 services to units of local government and to enable units  
4 of local government to avoid unnecessary duplication and  
5 expense in performing necessary governmental services.

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

2       (1) "Unit of local government" means a county, municipi-  
3 pality, city √town, township, metropolitan regional agency,  
4 authority, or a school or other special district√.

5       (2) "Specialized or technical services" means special  
6 statistical and other studies and compilations, √development  
7 projects, demonstration projects√, technical tests and evalu-  
8 ations, technical information, training activities, profes-  
9 sional services, surveys, reports, and any other similar  
10 service functions which the √administrative head√ of any  
11 agency is authorized by law to perform.

1       Section 3. Authority to Provide Service. The √adminis-  
2 trative head√ of any agency of the state is authorized,

3 within his discretion and upon written request from a unit  
4 of local government, to provide specialized or technical  
5 services, upon the payment, by the unit of local govern-  
6 ment making the request, of the cost of such services   ;  
7 Provided that, the services shall not include those that  
8 can be as reasonably or expeditiously obtained through  
9 ordinary business channels  . This authority in no way  
10 reduces the responsibility of any state agency to provide  
11 services otherwise required by law.

1       Section 4. Reimbursement to Appropriation. All moneys  
2 received by any agency of the state in payment for furnishing  
3 specialized or technical services authorized under this Act  
4 shall be deposited to the credit of the appropriation or  
5 appropriations from which the cost of providing the services  
6 has been paid or is to be charged. <sup>1</sup>

1       Section 5. Reports. The   administrative head   of any  
2 agency of the state, providing specialized or technical  
3 services under this Act, shall furnish annually to the  
4 Governor and the   Legislature   a report on the scope of the  
5 services so provided.

1       Section 6. Effective Date.   Insert effective date.  

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1 This section may require adjustment to comply with  
state constitutional requirements.



## UNIFORM TIME LAW\*

The variation in the use of daylight saving time throughout the country has caused significant problems. These problems are particularly acute for industrial and commercial concerns engaged in transportation and communication but involve many others, particularly when individual communities exercise local option in deciding whether or not to go on daylight saving time. The problem exists because of the variation within the standard time zones both in the decisions by states and their subdivisions to use daylight saving time and in the decisions regarding the time to commence and end daylight saving time.

During 1965 thirty-six states have some provision for the observance of daylight saving time, but in only eighteen does it apply throughout the state. In the other eighteen states, a form of local option or limited authorization by the state legislature provides the means for adoption of daylight saving time. Furthermore, daylight saving time begins and ends at different times in different jurisdictions. Sixteen states, all but one of which are among the eighteen states in which daylight saving time applies throughout the state, have a uniform period for its use which begins the last Sunday of April and ends the last Sunday in October. Daylight saving time in the other twenty states, whether on a statewide or local option basis, begins and ends at various times during the calendar year. In only three areas do contiguous states uniformly observe daylight saving time on a statewide basis. These are: (1) California and Nevada; (2) Illinois and Wisconsin; and (3) a group of ten northeastern states comprised of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, and Pennsylvania. Variations can become so complex that in one state with local option there were 23 different combinations of starting and stopping dates for daylight saving time in 1964.

It should also be noted that two states currently observe daylight saving time "in reverse", i.e., they are located in the Central Standard Time zone but portions of the two states (North Dakota and Texas) observe Mountain Standard Time.

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\* Included in the Council of State Governments' SUGGESTED STATE LEGISLATION.

Various solutions to the problem of time confusion in the United States have been proposed. Present federal legislation consists of the Standard Time Act which was enacted in 1918 and has been substantially unchanged since that time. It gives the Interstate Commerce Commission the responsibility of fixing the boundaries between standard time zones in the continental United States but does not refer to daylight saving time. The standard time zones are not mandatory with the states; but the act does declare that in statutes or regulations which specify a time of performance by any federal officer or time within which rights shall accrue, it is intended and understood that the time shall be standard time. Bills have been introduced in Congress to require national time uniformity, including daylight saving time, within nationally established time zones. Such bills have frequently been limited in their mandatory provisions to apply only to interstate travel and federal government business. Bills have also been introduced to require intrastate uniformity, either as to the observance of daylight saving time, its duration, or both.

Another approach, and that which is taken in the suggested legislation, is for the states that wish to observe daylight saving time to require by state legislation its adoption throughout the state, beginning and ending on a uniform basis. The most widely accepted dates for this purpose are the last Sunday of April and the last Sunday of October. If the objective of intrastate uniformity in the observance of daylight saving time and interstate uniformity to the extent that states observe daylight saving time is to be achieved, it is essential that these two dates be specified.

#### Suggested Legislation

  Title should conform to state requirements.  
The following is a suggestion: "An act to provide for uniform time."  

(Be it enacted, etc.)

1     Section 1. Standard of Time.

- 2     (a) The standard of time in this state shall be the  
3     solar time of the       meridian west of Greenwich,  
4     commonly known as       standard time.   Notwithstanding

5 the foregoing, the standard of time in this state, be-  
6 tween 2 o'clock antemeridian on the last Sunday in April  
7 and 2 o'clock antemeridian on the last Sunday in October  
8 of each year, commonly known as daylight saving time, shall  
9 be one hour in advance of that prescribed above.<sup>1</sup>

10 (b) All departments of the state government, and all  
11 counties, cities, towns, and villages shall use the  
12 standard of time prescribed in subsection (a) hereof.

13 (c) All persons operating or maintaining places of  
14 business or engaged in business activity shall use the  
15 standard of time prescribed in subsection (a) hereof.

1 Section 2. Effective Date. Insert effective date.

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1. The bracketed language is designed for those states wishing to use daylight saving time. It should be emphasized that if uniformity is to be achieved, it is essential that the two dates shown be specified. States located in more than one time zone would have to revise this section to identify and refer to the two zones.

FISCAL MEASURES FOR EQUALIZING EDUCATIONAL OPPORTUNITIES FOR  
ECONOMICALLY AND SOCIALLY DEPRIVED CHILDREN

Equality of educational opportunity is of critical importance in a democratic society dedicated to the proposition that all persons should be afforded an opportunity to develop their potentialities to the fullest. It assumes great urgency in a technological society in which employment opportunities are becoming progressively more limited to persons with professional and technical skills.

The children living in the slums of the central cities and in depressed rural areas stand out as the groups of young people most likely to be handicapped by inadequate educational opportunity. In contrast, children residing in the wealthy school districts usually are the beneficiaries of a superior educational environment both in the home and in the school.

In an effort to equalize educational opportunity, most States have adopted foundation type programs in which the amount of State aid for general school purposes received by a local school district is the difference between a fixed dollar amount per pupil estimated to underwrite the cost of a "basic" educational program and the dollar estimate of a reasonable local contribution toward meeting these requirements. This approach, however, can bring about equality of educational opportunity only to the extent that all districts have roughly the same proportion of children who are relatively "cheap" to educate and of those who are relatively expensive to educate, and only if all school districts can compete in the educational market place on even terms for the services of qualified teachers.

To the extent that these requirements do not prevail, the typical foundation program fails to provide equal educational opportunity because a poor district must incur greater instructional costs in order to raise its student body to the general educational level. It should be noted also that because the typical State foundation grant for education is tied to fixed dollar limits, the amount of State aid provided local school districts often fails to keep pace with steadily rising expenditure requirements. This lag forces local school districts to place increasing reliance on their own tax sources in order to finance that portion of the school budget not covered by foundation aid. In this situation the wealthy district is obviously in a better position to maintain high quality education than the poor district.

Because the typical State foundation program is presumed to cover the basic costs of education, it is often assumed that the amount of money spent by a school district in excess of this general level goes for educational "frills." This assumption is highly questionable. It is more logical to assume that the wealthier school districts use their resources to obtain the services of a large number of superior teachers and to provide them with better than average facilities.

The proliferation of special State and Federal aid programs is also working to the advantage of school districts with untapped tax resources because these programs are usually the straight matching type that do not take into account differences in fiscal capacity or achievement levels. The wealthier States and local districts, for example, have been able to reap most of the benefits bestowed by the National Defense Education Act (in contrast to the 1965 enactment) because they were in the best position to match Federal dollars. From the standpoint of equalizing educational opportunity, the net effect of these special developments is to aggravate a bad situation.

Whereas under most programs the combination of State aid and varying local resources typically produces higher public expenditure in the high income district, equal educational opportunity requires precisely the reverse. This can be realized only if State aid formulas are explicitly designed to include in their measure of need the higher cost of educating students from underprivileged environments. Thus, with respect to both general grants and special educational aids, the States can work in the direction of equal educational opportunity by structuring these programs so as to take into account, in addition to the traditional need and ability factors, the greater costs incurred in educating the economically and socially deprived children.

Draft legislation designed to realize these objectives will be included in subsequent editions.

ENDORSEMENT OF STATE LEGISLATIVE AND POLICY RECOMMENDATIONS OF THE  
ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

	Organizations Taking Formal Action in Support of ACIR Recommendations					
Draft Bills Implementing ACIR Recommendations	:	National Governors' Conference :	National Legislative Conference :	Nat'l. Assoc. of Counties :	National League of Cities :	U.S. Conf. of Mayors

I. Taxation and Finance

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1. Property Taxation						
A. Property Tax Survey						
Commission .....	---	X	X	X	X	X
B. Property Tax Organization and Administration ..						
C. Property Tax Assessment Standards and Equalization .....	---	X	X	X	X	X
D. Property Tax Review and Appeal Procedure .....	---	X	X	X	X	X
2. Collection of Local Non-property Taxes by the State ..	---	---	X	X	X	X
3. Interlocal Coordination of Nonproperty Taxes .....	---	---	X	X	X	X
4. County Subordinate Service Areas .....	---	---	X	X	---	---
5. Cooperative Tax Administration Agreements .....	---	---	X	X	X	X
6. Exchange of Tax Records and Information .....	---	X	X	---	---	X

See explanation of symbols at end of table.

ENDORSEMENT OF STATE LEGISLATIVE AND POLICY RECOMMENDATIONS OF THE ACIR, Continued

Draft Bills Implementing ACIR Recommendations	: Organizations Taking Formal Action in Support of ACIR Recommendations				
	: Governors' : Conference :	: National : Legislative : Conference :	: Nat'l. Assoc. : of : Counties :	: National : League of : Cities :	: U.S. Conf. : of Mayors :
7. State Assistance to Local Debt Management .....	X	---	X	X	---
8. Local Industrial Development Bond Financing .....	---	---	---	X	X
9. Investment of Idle Funds ...	X	X	X	X	X
10. Financial and Technical Assistance to Local Govern- ments .....	X	---	X	X	X
11. State Constitutional and Statutory Restrictions on Local Property Taxing and Borrowing Powers					
A. Repeal of Constitutional Restrictions on Local Taxing and Borrowing Powers .....	---	---	---	---	---
B. Authorization for Local Property Tax Levies .....	---	---	---	---	---
C. Authorization for Local Government Borrowing .....	---	---	---	---	---
12. Real Estate Transfer Tax ...	X	---	X	X	X

See explanation of symbols at end of table.

ENDORSEMENT OF STATE LEGISLATIVE AND POLICY RECOMMENDATIONS OF THE ACIR, Continued

Draft Bills Implementing ACIR Recommendations	:Organizations Taking Formal Action in Support of ACIR Recommendations				
	:Governors' :Conference :	:Legislative :Conference :	:Nat'l. Assoc. : of : Counties :	: National : League of : Cities :	: U. S. : Conference : of Mayors :
<b>II. <u>Urban Problems</u></b>					
1. Metropolitan Study Commissions .....	X	X	X	X	X
2. Extraterritorial Planning, Zoning, and Subdivision Regulation ..	---	---	---	X	X
3. Metropolitan Functional Authorities .....	X	X	X	X	X
4. Assertion of Legisla- tive Authority .....	---	---	---	---	---
5. Municipal Incorpora- tions .....	X	X	X	X	X
6. Securing and Preserving "Open Space" .....	X	X	---	X	X
7. Control of Urban Water Supply and Sewerage Systems					
A. Urban Water Supply and Sewerage Systems .....	---	---	X	X	X
B. Water Well Construc- tion and Pump Installation .....	---	---	---	---	---
C. Individual Sewage Disposal Systems ...	---	---	---	---	---

See explanation of symbols at end of table.



ENDORSEMENT OF STATE LEGISLATIVE AND POLICY RECOMMENDATIONS OF THE ACIR, Continued

Draft Bills Implementing ACIR Recommendations	: Organizations Taking Formal Action in Support of ACIR Recommendations				
	: Governors' : Conference :	: National : Legislative : Conference :	: Nat'l. Assoc. : of : Counties :	: National : League of : Cities :	: U.S. Conf. : of Mayors :
8. Mass Transportation in Metropolitan Areas .....	X	X	X	X	---
9. Channelization of Federal Grant Programs for Urban De- velopment .....	---	---	X	---	---
10. Metropolitan Area Planning Commissions .....	X	X	X	X	X
11. County Powers in Relation to Local Planning and Zoning Powers .....	---	---	---	X	---
12. Uniform Relocation Assist- ance .....	---	---	---	---	X
13. Areawide Vocational Educa- tion Program in Metropolitan Areas .....	---	---	---	X	---
14. Adoption of Codes by Reference	---	---	X	X	---
15. Regional Councils of Public Officials .....	---	---	---	---	---
16. Urban Renewal and Public Housing .....	---	---	X	---	---

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See explanation of symbols at end of table.

ENDORSEMENT OF STATE LEGISLATIVE AND POLICY RECOMMENDATIONS OF THE ACIR, Continued

	Organizations Taking Formal Action in Support of ACIR Recommendations				
Draft Bills Implementing ACIR Recommendations	Governors' Conference	National Legislative Conference	Nat'l. Assoc. of Counties	National League of Cities	U.S. Conf. of Mayors

III. Other Intergovernmental

Problems

1. Office of Local Affairs ....	X	X	---	X	X
2. State Assistance for Inter- local Cooperation .....	---	---	---	---	---
3. State Water Resources Plan- ning and Coordination	---	X	X	X	X
4. State and Local Government Retirement Systems .....	---	X	X	X	X
5. Local Government Residual Powers .....	X	---	X	---	X
6. Barriers to Intergovern- mental Cooperation .....	---	---	---	---	---
7. Optional Forms of County Government .....	---	---	---	---	---
8. Interlocal Cooperation	X	X	X	X	X
9. Voluntary Transfer of Functions between Municipali- ties and Counties .....	X	X	X	X	X
10. Supervision of Special District Activities .....	---	---	X	X	X

See explanation of symbols at end of table.

ENDORSEMENT OF STATE LEGISLATIVE AND POLICY RECOMMENDATIONS OF THE ACIR, Continued

Draft Bills Implementing ACIR Recommendations	:Organizations Taking Formal Action in Support of ACIR Recommendations				
	: : Governors' : Conference :	: National : Legislative : Conference :	: Nat'l. Assoc. : of : Counties :	: National : League of : Cities :	: U. S. : Conference : of Mayors :
11. Creation and Consolidation or Dissolution of Special Districts .....	---	---	X	X	X
12. Legislative Apportionment Procedure .....	---	---	X	X	---
13. General Public Assistance ..	---	---	X	X	---
14. State Technical Services for Local Government .....	---	---	---	---	---
15. Uniform Time Law .....	---	---	---	---	---
16. Fiscal Measures for Equaliz- ing Educational Opportunities for Economically and Socially Deprived Children .....	---	---	---	---	---

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X - Endorsed.

--- Either not specifically considered or rejected.

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ON INTERGOVERNMENTAL RELATIONS<sup>1</sup>

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1. Single copies of reports may be obtained without charge from the Advisory Commission on Intergovernmental Relations, Washington, D. C., 20575. Multiple copies of items marked with asterisk (\*) may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C., 20402.

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1965. 141p., offset.

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