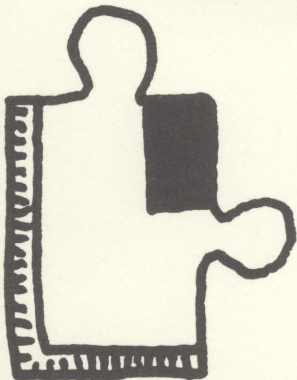
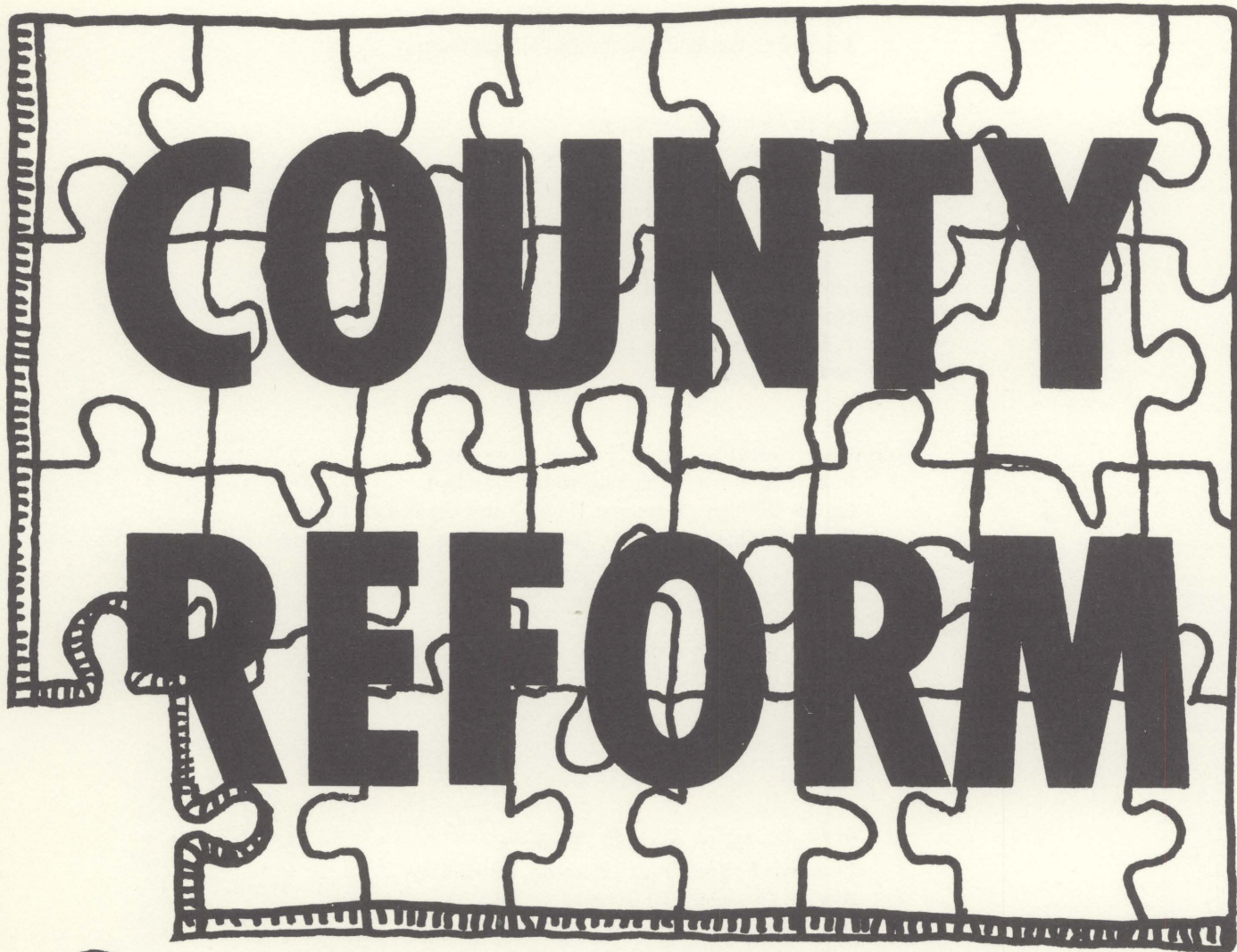


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**Advisory commission on
intergovernmental relations.**

washington, D.C. 20575

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April 1971

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for a more perfect union-

COUNTY REFORM

**ADVISORY COMMISSION ON
INTERGOVERNMENTAL RELATIONS**

WASHINGTON, D.C. 20575

M-61 April 1971

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FOREWORD

County government is one of the oldest democratic institutions. Yet it is so important to modern America, that if it already didn't exist, it would have to be invented. But to meet today's challenges much of county government needs modernizing and streamlining.

A federal system that is a "strong partnership of strong partners" has been a fundamental goal of the Advisory Commission on Intergovernmental Relations since it was established more than a decade ago to monitor the operations of federalism and recommend improvements. Strengthening county government is one means to that end.

The need for strong county government is outlined in the speech by Robert E. Merriam, INTERGOV Chairman, printed in this volume. In the paper, which he presented to an annual conference of the National Association of Counties, Mr. Merriam also describes a package of model State legislation developed over several years by ACIR to give counties the structure and authority to provide the services their citizens need.

This volume includes eight of these draft State laws, which would enable:

- optional forms of county government;
- voluntary transfer of functions between municipalities and counties;
- county performance of urban functions;
- supervision of special districts;
- county subordinate service areas;
- county powers in relation to local planning and zoning actions;
- county consolidation; and
- State assistance for county consolidation.

These model statutes, many of them based on existing State legislation, offer suggested legislative language for putting into effect Commission recommendations for equipping counties to function effectively in the decades ahead.

The National Association of Counties is the organization at the national level representing and serving all of America's county officials. It has created a New County Center whose purpose is to work with officials and other interested groups to improve county government. The Center collects information about where county government is changing, what kind of changes are taking place, and the results of the efforts for change.

As Mr. Merriam points out in his speech, INTERGOV joins with NACO in its endeavor to strengthen county government and publishes this volume to aid the cause of New County-USA.

Wm. R. MacDougall
Executive Director

"NEW COUNTY-U.S.A." AND THE ACIR A PRODUCTIVE PARTNERSHIP FOR PROGRESS

[The following is an adaptation of the remarks of Robert E. Merriam, Chairman of the Advisory Commission on Intergovernmental Relations, before the 35th Annual Conference of the National Association of Counties at Atlanta, Georgia, on July 27, 1970.]

In launching "New County-U.S.A.," the National Association of Counties declared:

. . . As representatives of one of the oldest democratic institutions in the world, we mutually pledge to each other our best efforts to modernize and streamline county government and increase its service to its citizens both alone and in consort with our sister governments at the municipal, state, and national levels. . . .

The Advisory Commission on Intergovernmental Relations joins you in this pledge. Since its establishment over a decade ago, the Commission has adhered to a position that all partners in our federal union must be powerful, resourceful and responsive to the needs of their people, if the system is to be successfully adapted to the pressing needs of this final third of the 20th Century. And this, in practice, has meant a steady concern over the future course of counties.

Over the years, the three county members of the ACIR have been in the forefront of our effort to express this concern in progressive and practical ways.

The Critical Need for Strong Counties

"Even if county government had not existed in the Anglo-American structure it would have to be invented now." Such was the conclusion of the authoritative second report of New Jersey's County and Municipal Government Study Commission. And this must be the conclusion of more and more policy-makers — at all levels of government — who are grappling with the ever increasing need for an effective governmental mechanism below the State level and above the localities.

For those who ponder this areawide need as it relates to counties, let me underscore a few of the more obvious linkages:

— When we seek effective regional answers to urban service problems, we, in effect, are seeking an effective county government in a majority of cases, since more than half of the Nation's

standard metropolitan areas still are single county in scope.

— When we struggle with the imbalances that characterize recent urban growth and especially the agonizing plight of rural areas suffering from outmigration, economic decline, and costly services, we squarely confront the burdensome agenda now troubling hundreds of our rural counties.

— When we see the helter-skelter consumption of valuable land on the urban periphery and the ineffectiveness of most land use controls and zoning, we see, in many instances, a glaring weakness of many county governments.

— When we criticize the proliferation and the frequent lack of accountability of special districts in both urban and rural areas, we, in effect, are criticizing a shackle that limits all too many counties.

— When we come to grips with the areawide implications of the various environmental programs and proposals requiring our urgent attention, we will see a new role for many counties.

— When we weigh the pros and cons of new towns and rural growth centers, we end up assessing the capabilities of the counties affected, since these jurisdictions have a prime role in coping with many of the governmental needs of such communities and centers.

— Finally, when we strive to reconcile bitter differences between the States and many of their larger municipalities, we strive for an effective intermediary force that can help arbitrate these destructive conflicts — hopefully, the counties.

A fragmented approach to urban servicing needs, many declining rural areas, a chaotic consumption of land, the surreptitious spawning of thousands of special districts, a real inadequacy for environmental programs, and a bitter feud between some States and their large cities — these are but a few of the major topics on federalism's lengthy list of unfinished business. Each of them involves counties — directly and even preeminently. It is no overstatement to claim that our success in surmounting these various challenges to the system

and to our society rests, in no small measure, on how well and how soon "New County-U.S.A." is converted from a first-rate proposal to firm actual practice.

A Half Dozen Goals

What can be done to make "New County-U.S.A." a reality? What must be done to chart a constructive course for the future of county government? In reviewing the needs of contemporary counties, I see six basic goals as essential components of any modernization effort. And INTERGOV has developed a package of draft State legislation to help achieve them.

The first goal is responsiveness – that is, the ability and the authority of the county government and its citizenry to respond to rapidly changing circumstances.

Some counties with rapidly expanding populations are forced to perform more and more municipal-type functions. During this century, many States have granted city residents the power to adopt various forms of local government, giving the local citizenry the discretion to select the form best suited structurally to carry out needed public functions. It is now time for residents of rural and urban counties to be given a similar right.

A second goal is greater functional freedom and authority. Many county officials are well aware of the benefits of functional consolidation. Inter-county and county-municipal cooperative efforts are operating in a wide range of activities, including tax collection, water system maintenance, traffic safety, industrial development, airport development, vocational education, and forest fire control.

This type of arrangement enables counties with small populations to economize in the provision of services and get all of the financial benefits that would be obtained from county consolidation without getting into any of the political or emotional problems which are immediately raised in connection with moving the courthouse.

In a somewhat more ambitious vein, counties and cities should be permitted to effect voluntary transfers of functions between the two levels by concurrent action of their governing bodies. A much bolder approach is to permit counties on their own initiative to provide certain municipal-type services in unincorporated portions of a county or on a county-wide basis.

Finally, county authority to supervise the activities of special districts lying within its boundaries would provide in many areas a much needed opportunity for coordination of special district and county programs.

A third goal closely related to the need for greater functional freedom and discretion is the county's

capacity to handle the financing of certain services in a differentiated fashion.

The power to establish subordinate taxing areas would permit the county governing body to limit part of its tax levy – or impose an added levy – to that part of its territorial jurisdiction in which it desires to provide a particular service. This procedure would leave responsibility for establishing basic policies respecting the provision of services with the county governing body. Political and governmental responsibility would not be fragmented. And in the process, the service provided to only a portion of the jurisdiction would be better coordinated with other governmental services provided by the county.

A fourth element necessary for strong, modern county government is greater professionalism.

Counties that provide intelligent and forward-looking leadership and that obtain trained professional staffs to guide the difficult management tasks ahead will project an attractive image of administrative capability.

The Commission feels that the States can and should offer assistance in this area. State retirement and insurance programs should be available for participation by local governments on an optional basis for employees and officials under certain standards. State government and State university training programs should be extended and personnel services, including testing and certifying applicants, should be available from the State on a fee basis to all local governments.

A fifth objective is county competence in the field of local planning and zoning.

Urban development is influenced heavily by local plans and their related zoning ordinances, subdivision regulations, and capital improvement programs. In metropolitan areas, however, much of this planning is still for individual municipalities rather than effective planning for the entire area. What is missing is coordination of those municipal planning and zoning actions having a "spillover" impact. What is generally avoided is the fact that much local zoning is based on the dictates of fiscal competition rather than a desirable spatial arrangement of land uses. The Commission's draft bill contains a three-fold approach to the problem.

A sixth goal for many counties is consolidation.

I fully appreciate the controversial and politically hazardous nature of this goal. Yet, I would be misleading you if I indicated that the present jurisdictional boundaries of all counties were adequate for the tasks before us. Rural decline and disorderly urban growth are not mindful of county boundaries. One hundred fourteen of our standard metropolitan areas are

multi-county in character and hundreds of rural counties are facing the agonizing assignment of providing public services at more costly rates for dwindling populations. In short, the economic, social, and natural patterns of urban growth – and of rural decline – in many cases extend beyond a superimposed additional areawide level of government. In addition, the States should play a positive role by establishment of incentives for county consolidation.

Greater power, more municipal-type functions, expanded discretionary authority, and greater professionalism – these are the hallmarks of the half dozen ACIR goals I have cited. These are the traits that many counties urgently need.

Roadblocks to Reform

The practical problem of achieving these goals, of acquiring these characteristics – this is at the heart of making “New County-U.S.A.” a nationwide reality. And we know the difficulties involved here. For some years now, we have pushed the packet of draft bills relating to county modernization and our success to date can not be described in glowing terms.

- There is the tendency of some States still to view counties as mere administrative or judicial appendages of the State, fit for mandating but little else.

- There is the hurdle of certain municipal spokesmen who view strong counties as adversaries, rather than as allies.

- There is the perennial tendency of certain Federal and State policy-makers to rely on other areawide bodies to perform regional assignments.

- There is the closely related inclination of people at all levels to fall back on special districts as an easy, pragmatic solution to diverse servicing problems.

- And there is the view of many county officials that the challenges facing us at the substate regional level are just so many headaches to be avoided, not splendid opportunities for putting counties squarely in the middle of today’s dynamic State-local relationships:

A Question of Attitude

But why the hesitation? The consequences of stand-pattism alone should galvanize us to action. Do we want more mandated areawide mechanisms? Do we want more special districts? Do we want a further weakening of general units of government at the local level? Do we want to concede, in effect, that the long 327 year history of counties in America adds up to a final chapter, entitled “Withering Away”?

I know my answer to these questions and I think I know yours. So let us surmount this “crisis of confidence.” The counties in at least ten States have done just this. They have proven that it can be done.

Far more than the fate of counties is at stake here. Nothing less than the future of our federal system is involved.

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. During the current century most States have granted residents of municipalities the power to adopt various forms of local government based on the assumption that the individual municipality should have the discretion to determine, within limits, 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 governmental structure. 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. Other rural counties need to provide government services to an area with a declining population despite extreme difficulty 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.

Several States have attempted to resolve the constitutional problem of optional forms of county government in a manner consistent with individual needs. 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. The procedure to be taken in an individual State must 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 changes, if any, should be made in order to insure more effective and responsible local government within the state.

The following 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 (North Carolina, General Statutes, Chapter 153, Article III.)

Section 1 permits any county in the State to adopt any one of the optional forms of county government provided in the act. Section 2 authorizes the "county commissioner" form in which the government is administered by a board of county commissioners. The number of commissioners may vary and they may be elected either for uniform or overlapping terms.

Section 3 authorizes the "manager" form of county government in which the board of county commissioners may appoint a county manager who is the administrative head of the county. He must be appointed with regard to merit only. The board, if it wishes, may confer upon the chairman of the board the powers and duties of a county manager. In this instance, the chairman will be a full-time official. Finally, this section permits the board to designate any other official of the county qualified to perform the duties of county manager.

Section 4 authorizes the “elected county executive” form in which the government is administered by a single county official, elected by the voters of the county. Under this form the board of county commissioners acts as the legislative body of the county.

Section 5 sets forth the procedures for changing the form of government. The board of county commissioners may, upon its own motion, or shall, upon receipt of a petition requesting action signed by a specified percent of the qualified voters, submit the question of the form of county government to referendum vote.

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 Authorized.* Any county in this state may,
2 pursuant to the provisions of this act and any other appropriate provisions of law, adopt any one of
3 the optional forms of county government herein provided.

4 *Section 2. [County Commissioners] Form. (a) [County Commissioners] Form Defined.* [The
5 county commissioners] form of county government shall be that form in which the government is ad-
6 ministered by [a board of county commissioners.]

7 (b) *Modification of Regular Forms.* There may be modification of the [county commissioners]
8 form adopted as hereinafter provided as follows: (1) the number of [commissioners] may vary in
9 number from [three] to [five]; and (2) all [commissioners] may be elected for uniform or overlapping
10 terms not exceeding [four] years.

11 *Section 3. Manager Form. (a) Manager Appointed or Designated.* The [board of county com-
12 missioners] may appoint a county manager who shall be the administrative head of the county govern-
13 ment, and shall be responsible for the administration of all departments of the county government
14 which the [board of county commissioners] has the authority to control. He shall be appointed with
15 regard to merit only, and he need not be a resident of the county at the time of his appointment. In
16 lieu of the appointment of a county manager, the [board] may impose and confer upon the [chairman
17 of the board of county commissioners] the duties and powers of a manager, as hereinafter set forth,
18 and under such circumstances said chairman shall be considered a full-time chairman. Or the [board]
19 may impose and confer such powers and duties upon any other officer or agent of the county who
20 may be sufficiently qualified to perform such duties, and the compensation paid to such officer or
21 agent may be revised or adjusted in order that it may be adequate compensation for all the duties of
22 his office. The term “manager” herein used shall apply to such chairman, officer, or agent in the per-
23 formance of such duties.

1 (b) *Duties of the Manager.* It shall be the duty of the county manager:

2 (1) to see that all the orders, resolutions, and regulations of the [board] are faithfully ex-
3 ecuted;

4 (2) to attend all the meetings of the [board] and recommend such measures for adoption
5 as he may deem expedient;

6 (3) to make reports to the [board] from time to time upon the affairs of the county, and
7 to keep the [board] fully advised as to the financial condition of the county and its future financial
8 needs;

9 (4) to appoint, with the approval of the [board], such subordinate officers, agents, and
10 employees for the general administration of county affairs as considered necessary; and

11 (5) to perform such other duties as may be required of him by the [board].

12 *Section 4. [Elected County Executive].* (a) *[Elected County Executive] Form Defined.* The
13 [elected county executive] form of government shall be that form in which the government is admin-
14 istered by a single county official, elected at large by the qualified voters of the county. The [board of
15 county commissioners] shall act as the legislative body of the county under this form of county govern-
16 ment. The elected county executive shall be responsible for the administration of all departments of
17 the county government. Qualifications for the office of elected county executive shall be the same as
18 those for the [board of county commissioners].

19 (b) *Duties of the [Elected County Executive].* It shall be the duty of the elected county execu-
20 tive:

21 (1) to see that all the orders, resolutions, and regulations of the [board] are faithfully ex-
22 ecuted;

23 (2) to attend all the meetings of the [board] and recommend such measures for adoption
24 as he may deem expedient;

25 (3) to make reports to the [board] from time to time upon the affairs of the county, and
26 to keep the [board] fully advised as to the financial condition of the county and its future financial
27 needs;

28 (4) to appoint, with the approval of the [board], such subordinate officers, agents, and
29 employees for the general administration of county affairs as considered necessary; and

30 (5) to perform such other duties as may be required of him by the [board].

31 *Section 5. Procedure.* The [board of county commissioners] may, upon its own motion, or
32 shall upon receipt of a petition so requesting, signed by at least [] percent of qualified voters with-
33 in the county, submit to referendum vote of all qualified electors within the county the question of
34 whether one of the optional forms of county government shall be established within a county. If a ,
35 majority of those voting on the question favor the adoption of a new form of county government,

1 election of county officers for such optional form of county government shall be held at the next gen-
2 eral election held within the county. If a majority of the voters disapprove, the existing form shall be
3 continued and no new referendum may be held during the next [two] years following the date of such
4 disapproval.

5 *Section 6. Effective Date.* [Insert effective date.]

VOLUNTARY TRANSFER OF FUNCTIONS BETWEEN MUNICIPALITIES AND COUNTIES

The legislative bodies of municipalities and counties located within metropolitan areas should be authorized to take mutual and coordinate action to transfer responsibility for specified governmental services from one unit of government to the other. This suggested legislation authorizes voluntary transfer of functions between municipalities and counties within metropolitan areas to the extent agreed by their governing boards. 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. By concurrent action, the governing boards might have the county assume functions throughout the area, relieving the municipalities of fragmented responsibilities. Conversely, they might agree that the county government should cease to perform certain functions within the boundaries of the municipalities, and the municipalities assume the responsibility on an exclusive basis.

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 area designated as a "standard metropolitan
2 statistical area" by the U.S. Bureau of the Census in the most recent nationwide census of the popula-
3 tion.²

4 (b) "Local service function" as used herein is a local governmental service or group of closely al-
5 lied local governmental services performed by a county or a city for its inhabitants and for which, under
6 constitutional and statutory provisions, and judicial interpretations, the county or city, as distinguished
7 from the state, has primary responsibility for provision and financing. [Without in any way limiting the
8 foregoing, the following are examples of such local service functions: (1) street and sidewalk mainte-
9 nance; (2) trash and garbage collection and disposal; (3) sanitary and health inspection; (4) water supply;

¹Some states may wish to grant such authority statewide, rather than only for metropolitan areas.

²Particular states may find it appropriate and desirable to apply a somewhat different definition from this, tailored to their particular circumstances. For example, a 1961 enactment in Colorado (H.B. 221) defines a metropolitan area as "a contiguous area consisting of one or more counties in their entirety, each of which has a population density of at least 15 persons per square mile."

1 (5) sewage disposal; (6) police protection; (7) fire protection; (8) library services; (9) planning and
2 zoning; (10) . . . , etc.]¹

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

7 (b) The [expression of official action]² transferring such function shall make explicit: (1) the
8 nature of the local service function transferred; (2) the effective date of such transfer; (3) the manner
9 in which affected employees engaged in the performance of the function will be transferred, reassigned
10 or otherwise treated; (4) the manner in which real property, facilities, equipment, or other personal
11 property required in the exercise of the function are to be transferred, sold, or otherwise disposed be-
12 tween the city and the county; (5) the method of financing to be used by the receiving jurisdiction in
13 the exercise of the function received; and (6) other legal, financial, and administrative arrangements
14 necessary to effect the transfer in an orderly and equitable manner.³

15 *Section 3.* (a) Responsibility for a local service function, or a distinct activity or portion there-
16 of, previously exercised by a county located within a metropolitan area may be transferred as herein-
17 after described to a city or cities located within such county.

18 (b) Responsibility for a county government's performance of a local service function within the
19 municipal boundaries of such city or cities may be transferred to such city or cities by concurrent af-
20 firmative action of the governing boards of such county and of such city or cities.

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

23 *Section 4.* [Insert appropriate separability section.]

24 *Section 5.* [Insert effective date.]

¹The list of illustrative functions may vary from state to state. Furthermore, the legislature may prefer to enumerate specifically the functions eligible for transfer.

²Insert appropriate language to describe the form that the official action required in subsection (a) of section 2 would take.

³States 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.

COUNTY PERFORMANCE OF URBAN FUNCTIONS

This act would permit the county, on its own initiative, to perform certain functions and services of a municipal character throughout all or part of its jurisdiction. This involves the emergence of some counties from the status of State administrative units to that of a government performing an array of government activities. The performance of urban functions by the county may be restricted to the unincorporated portions of the county or the county might be given sole and exclusive authority to perform certain activities throughout the entire county including incorporated areas.

The legislation suggested below is written to permit the county to perform certain enumerated functions in the unincorporated portion of the county. It would not be practical to give the county sole and exclusive authority to perform a function in a municipality without providing first for a "charter reorganization" procedure that would allow the arrangement of functions to be ratified by the voters of the areas concerned.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

- 1 *Section 1. Urban Functions Authorized.* Any county [with a population in excess of [one
2 hundred] thousand as determined by the latest U.S. Government census of population, and which
3 has an aggregate population density of at least [one hundred] persons per square mile]¹ may per-
4 form the following functions and services throughout the unincorporated portions of the county:
- 5 (1) domestic water supply and distribution;
6 (2) sanitary and storm sewer collection, treatment, and disposal;
7 (3) airports and air transport facilities;
8 (4) trash and refuse disposal;
9 (5) library facilities and services;

¹ This act could be made applicable only to certain counties by including the bracketed language on population qualifications.

1 (6) park and recreation facilities and services;

2 (7) planning and zoning;

3 (8) []²

4 This enumeration shall not be construed or applied to diminish or restrict any other grant of powers
5 to counties.

6 *Section 2. Assumption of Assets, Rights, and Liabilities.* A county acting under authority of
7 this act may assume, own, possess, and control assets, rights, and liabilities related to functions and
8 services defined in section 1. Local improvement and other special districts wholly within a county,
9 upon decision of the county governing body, may be divested of such assets, rights and liabilities in a
10 manner prescribed by the county governing body. Where a special district encompasses territory in
11 more than one county, adjoining counties may concurrently assume assets, rights, and liabilities as de-
12 scribed in this section. Decisions approving proposals for the merger, consolidation, or dissolution of a
13 special district shall provide for the equitable disposition of the assets of the subject district, for the ade-
14 quate protection of the legal rights of employees of the district as specified in [cite here statutes which
15 afford various civil service and tenure protection to employees of special districts] , and for adequate
16 protection of the legal rights of creditors.

² Some states may wish to include additional functions.

SUPERVISION OF SPECIAL DISTRICTS

More than 21,000 “special districts” existed in the United in 1967, according to the *Census of Governments*; their total expenditures exceeded \$4.4 billion, and their current revenues, mostly from taxes and service and toll charges, exceeded \$3.8 billion.

These data clearly indicate the impact of special districts on 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 frequently are not coordinated. In addition, adequate information concerning special district activities often is 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 often is 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 suggested act is designed to insure that special district activities are related to those of county government and to guarantee the availability to the general public of appropriate information concerning the activity of districts.

Section 1 sets forth the act’s purpose and Section 2, definitions. Section 3 requires approval by the county of land acquisitions by special districts located in the county. If the acquisition is near the boundaries of other jurisdictions, approval of these units is also required. Where the activity engaged in by the district affects a State function, approval by the appropriate State agency is required. 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 county government and, where appropriate, by State agencies of proposed capital improvements by a special district. Such a 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 accounting standards for all special districts and to audit or approve private audits of district accounts.

Section 7 provides the means whereby taxpayers can be informed of all special district property taxes and assessments they pay when they are notified of county and municipal taxes and assessments.

Section 8 directs counties in preparing annual reports to include pertinent information on the activities of special districts operating within their territory.

Section 9 provides for review and approval of 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 county for 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 this act to establish certain minimum proce-
2 dures to insure that the activities of special districts are properly coordinated with those of other govern-
3 mental units within the state. Further, it is essential that special districts as well as other governmental
4 units, take affirmative action to insure that the public is fully aware of the activities of all governmental
5 entities operating within a particular community.

6 *Section 2. Definitions.* As used in this act:

7 (1) "Special district" means [any agency, authority, or political subdivision of the state organized
8 for the purpose of performing governmental or prescribed functions within limited boundaries. It in-
9 cludes all political subdivisions of state except a city, a county, a town, or a school [district].

10 (2) "Governing body" means the body possessing legislative authority in a city, county, or special
11 district.

12 *Section 3. Land acquisitions by Special Districts.* (a) Prior to acquisition of title to any land by a
13 special district authorized by law to acquire land, the district shall submit to the city and/or county in
14 which such land is located a statement indicating its intention to acquire the land. If the land is located
15 within the territorial limits of two or more cities and/or counties, the statement shall be submitted to
16 each of them.

17 (b) The statement shall be in the form of a resolution adopted by the governing body of the dis-
18 trict, indicating the intention of the district to acquire the land, and shall contain a brief but appro-
19 priate identification of the land to be acquired, an indication of the use to which it will be put, and
20 other information the district deems appropriate.

21 (c) Within [30] days after receipt of the statement of intention to acquire land, the governing
22 body of the county and the governing bodies of those located within two miles of the proposed land
23 acquisition, shall by resolution indicate their approval or disapproval of the proposed acquisition; a
24 resolution disapproving the proposed acquisition shall state the reasons therefor.

25 (d) If the special district is performing a function which directly affects a program conducted
26 by the state, upon receiving approval for the acquisition pursuant to subsection (b), it shall transmit
27 a copy of its statement of intention and the approving resolution or resolutions to the [office of local
28 affairs or the secretary of state] who shall immediately refer the material to the [state agency responsible

1 for the administration of the state program involved]. The state agency shall, [30] days from receipt
2 of the material, either approve or disapprove the proposed acquisition. The agency shall approve the
3 proposed acquisition of land unless it finds that the acquisition or proposed use would be inconsistent
4 or in conflict with state policy or an approved state plan for providing governmental services. The
5 state agency's action shall be communicated to the governing body of the district by an order signed
6 by the [head of the state agency], and if the proposed acquisition is disapproved, the order shall
7 state the reasons therefor.

8 (e) Upon receiving approvals required pursuant to this section, a special district may proceed
9 with the acquisition of land as otherwise authorized by law.

10 (f) If any governing body of a city or county or a state agency refuses to give approval to the pro-
11 posed acquisition of land, the special district may challenge the decision by bringing suit in the [county
12 court of general jurisdiction] in which the land is located. The court shall review the material pertinent
13 to the proposed land acquisition and reasons for disapproval of the acquisition and shall render a deci-
14 sion either sustaining or overruling the disapproval. Finding of the agency or local government shall
15 be conclusive as to questions of fact. The court may affirm the decision or remand the matter for
16 further consideration. The court may reverse a denial where it finds that the denial was arbitrary or
17 capricious or characterized by abuse of discretion or clearly and unwarranted exercise of discretion.

18 *Section 4. Capital Improvements by Special Districts.* (a) Any proposal by a special district
19 for the construction of capital improvements shall be submitted, for comment, to the governing bodies
20 of cities and counties within which the proposed improvements would be made, and in the event that
21 the district is performing a function that directly affects a program conducted by the state, to the
22 [office of local affairs or secretary of state] for transmittal to the state agency responsible for the
23 operation of the state program at least [60] days prior to final action of the governing body of the
24 district adopting the proposed capital improvement.

25 (b) Cities, counties, and/or state agencies receiving proposals for special district capital improve-
26 ments shall review such proposals and, within [60] days after receipt thereof, may submit their com-
27 ments thereon to the governing body of the special district. Upon receipt of the comments of all
28 jurisdictions or agencies notified pursuant to this section, or [60] days after the transmittal of the
29 proposed improvement program to such jurisdictions and agencies, the governing body of the district
30 may adopt the proposed capital improvements, with or without modification, as part of the district
31 program as otherwise authorized by law.

32 *Section 5. Reporting the Creation of Special Districts.* (a) The governing body of any existing
33 special district shall, within [30] days after the adoption of this act, notify the [office of local affairs
34 or secretary of state] and the [clerk of the county governing body or bodies] in which it is authorized

1 to operate of its existence. The notification shall include a citation to the statute pursuant to which it
2 was created and a brief description of its activities and service area.

3 (b) The governing body of a newly created special district shall submit, at its first meeting, notifi-
4 cation of its existence as directed in subsection (a), and within one year of such meeting, a brief descrip-
5 tion of its activities and service area.

6 *Section 6. Uniform Special District Accounts.* (a) The [appropriate state agency]¹ shall establish
7 minimum standards of uniformity for the budget and accounts of all special districts operating within this
8 state.

9 (b) The [appropriate state agency] annually shall audit the accounts of all special districts operat-
10 ing within the state, [or may approve annual private audit of the accounts of special districts performed
11 at the expense of the district]. The reports of [private auditors shall be transmitted to the [appropriate
12 state agency] and the reports of private auditors and] audits made by the [appropriate state agency] shall
13 be transmitted to the county or counties within which the special district is authorized to operate.

14 *Section 7. Special District Property Taxes and Special Assessments.* (a) Every special district
15 authorized by law to levy a property tax or a special assessment shall annually inform each county and
16 city within which it operates of the tax and/or special assessment rate levied by the district and the as-
17 sessed valuation of property against which the tax is levied and the basis for the assessment rate.

18 (b) The counties and cities so notified shall provide an itemization of special district property
19 taxes and assessments levied against the property when furnishing tax [bills or receipts] to property
20 owners within their borders.

21 *Section 8. City and County Annual Reports.* The annual report of any county or city issuing
22 a report shall include, in addition to any other information required by law, pertinent information on
23 the activities of all special districts operating wholly or partially within the territory of the city or county.

24 *Section 9. Review of Special District Service Charges.* The [state public service commission] shall
25 review and approve, disapprove, or modify proposed service charges or tolls assessed by special districts
26 within the state authorized to levy such charges or tolls, but the review shall not extend service charges
27 or tolls levied by special districts which are otherwise approved or reviewed by the governing body of a
28 county or a city or a state or federal agency. If the [public service commission] finds that the proposed
29 service charge or toll is unreasonable [or is excessive in relation to the value of the service provided or to
30 be provided], it may disapprove or modify the proposed charge or toll. The [public service commission]
31 is authorized to establish necessary rules and procedures to carry out its responsibilities under this section.

32 *Section 10. Separability.* [Insert separability clause.]

33 *Section 11. Effective Date.* [Insert effective date.]

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.

COUNTY SUBORDINATE SERVICE AREAS

This measure 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.

Where counties do not possess authority to create such areas there are only three alternatives available: the service can be financed from general county revenues which are derived from all residents of the county; the area desiring the service can create a special district; or the residents can do without the service. The first alternative may be inequitable as well as politically unacceptable and the third alternative incompatible with the public interest – thus the demand for 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 section 3 permits the county governing body to set taxes within such areas of a different level than the overall county tax rate in order that only those receiving a particular service pay for it. A constitutional amendment may be necessary in some States to permit use of this device (suggested amendment language is included).

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 provide a means by which counties as units
2 of general local government can effectively provide and finance various governmental services for their
3 residents.

4 *Section 2. Definition.* "Subordinate service area" means an area within a county in which one
5 or more governmental services or additions to countywide services are provided by the county and fi-
6 nanced from revenues secured from within that area.

7 *Section 3. Establishment of Service Areas.* Notwithstanding any provision of law requiring uni-
8 form property tax rates on real or personal property within a county, counties may establish subordi-
9 nate service areas to provide and finance any governmental service or function which they are otherwise
10 authorized to undertake.¹

11 *Section 4. Creation by [County Governing Body].* The [county governing body] may establish
12 a subordinate service area in any portion of the county by adoption of an appropriate resolution. The
13 resolution shall specify the service or services to be provided within the subordinate taxing area and shall
14 specify the territorial boundaries of the area. Adoption of a resolution shall be subject to the publica-
15 tion, hearing, and referendum provisions of law relating to [county governing body].

16 *Section 5. Creation by Petition.* (a) A petition signed by [] percent of the qualified voters
17 within any portion of a county may be submitted to the [county governing body] requesting the
18 establishment of a subordinate county service area to provide any service or services which the county
19 is otherwise authorized by law to provide. The petition shall include the territorial boundaries of the
20 proposed service area and shall specify the types of services to be provided therein.

21 (b) Upon receipt of the petition and verification of the signatures thereon by the [county clerk],
22 the [county governing body] shall, within [30] days following verification, hold a public hearing on
23 the question of whether or not the requested subordinate service area shall be established.

24 (c) Within [30] days following the holding of a public hearing, the [county governing body] by

¹If the service is to be financed wholly or partly from property tax revenues, some states may have to amend consti-
tutional provisions requiring uniform tax rates within a county. See the suggested constitutional amendment that follows
this suggested legislation.

1 resolution, shall approve or disapprove the establishment of the requested subordinate county service
2 area. A resolution approving the creation of the subordinate service area may contain amendments or
3 modifications of the area's boundaries or functions as set forth in the petition.

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

12 *Section 7. Referendum.* (a) Upon receipt of a petition signed by [] percent of the qualified
13 voters within the territory of the proposed service area prior to the effective date of its creation as spec-
14 ified in section 6, the creation shall be held in abeyance pending referendum vote of all qualified electors
15 residing within the boundaries of the proposed service area.

16 (b) The [county governing body] shall make arrangements for the holding of a special election
17 not less than [30] nor more than [60] days after receipt of such petition within the boundaries of the
18 proposed taxing area. The question to be submitted and voted upon by the qualified voters within
19 the territory of the proposed service area shall be phrased substantially as follows:

20 Shall a subordinate service area be established in order to provide – [service
21 or services to be provided] financed by [revenue sources]?

22 If a majority of those voting on the question favor creation of the proposed subordinate service area,
23 the area shall be deemed created upon certification of the vote by the [county board of elections]. The
24 [county board of elections] shall administer the election.

25 *Section 8. Expansion of the Boundaries of a Subordinate Service Area.* The [county governing
26 body], on its own motion or pursuant to petition, may enlarge on any existing subordinate county
27 area pursuant to the procedures specified in sections 4 through 7. Only qualified voters residing in the
28 area to be added shall be eligible to participate in the election, but if []² percent of qualified voters
29 residing in the area to be added shall be eligible to participate therein, all qualified voters residing in
30 the proposed service area shall be eligible.

31 *Section 9. Financing.* Upon adoption of the next annual budget following the creation of a sub-
32 ordinate county service area the [county governing body] shall include in such budget appropriate

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

1 provisions for the operation of the subordinate service area including, as appropriate, a property tax
2 levied only on property within the boundaries of the subordinate taxing area or by levy or a service
3 charge against the users of such services within the area, or by any combination thereof.

4 *Section 10. Separability.* [Insert separability clause.]

5 *Section 11. Effective Date.* [Insert effective date.]

Removal of Constitutional Barriers to Financing County Subordinate Areas

As mentioned earlier, some states may find it necessary to amend constitutional provisions requiring uniform tax rates within a county, if a service is to be financed wholly or partly from property tax revenues. The following amendment is offered for consideration in those states that have uniform tax rate provisions that constitute a barrier to financing county subordinate service areas.

Suggested Constitutional Amendment

*[Title, format, and procedural practices for constitutional
amendment should conform to state practice and requirements.]*

1 Notwithstanding any provision of this constitution requiring uniform tax rates on real or per-
2 sonal property within a county, the legislature may authorize counties to (1) levy annually a tax on
3 property within the boundaries of any county subordinate service area created pursuant to an act of
4 the legislature, which tax may be separate and in addition to the annual tax imposed on a countywide
5 basis, and (2) incur indebtedness on a countywide basis for the purpose of performing functions and
6 providing facilities and services within such a county subordinate service area. Any tax levied or in-
7 debtedness incurred under the authority of this section is subject to such limitations as may be
8 established by the legislature.

COUNTY POWERS IN RELATION TO LOCAL PLANNING AND ZONING ACTIONS

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.

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 three-fold approach to county-municipal planning and zoning relationships in metropolitan areas. Under the act, the county reviews and approves certain planning and zoning actions of existing municipalities between 5,000 and 30,000 population; exercises its planning and zoning authority in all existing municipalities of less than 5,000 population; and exercises its planning and zoning authority in all municipalities incorporated within the county after the passage of the act until the population of the municipalities exceeds 30,000.

It establishes a procedure in 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 with a countywide impact.

Municipalities from 5,000 to 30,000 population must submit certain planning and zoning actions to the county for approval with respect to consistency with countywide planning objectives, including discouragement of exclusive or fiscal zoning practices. Because the county would not be concerned with municipal planning and zoning matters that are wholly local in nature and effect, the proposed legislation does not remove the power to zone or plan from these municipalities.

The draft bill authorizes a county to review the three major regulatory measures of 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 use of real property bordering major county or State highways and parks, of decreasing the front yard set back or minimum lot width of any property abutting any such highways or parks, of connecting any new street into any such highways, of connecting new drainage lines into existing channel lines, and of reducing residential densities to less than three families per acre. These categories include virtually all planning or zoning actions likely to have an effect beyond the corporate limits.

A county may make recommendations to the municipality on a referred proposal. The municipality may not act contrary to the county recommendations, unless it adopts a resolution setting forth its reason for such action and files a resolution with the county planning agency. The county then may 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.

While local desires should not obstruct essential needs of the county, neither should local interests be arbitrarily over-ridden if countywide needs can be satisfied in a manner compatible with the locality's interests.

The suggested legislation also contains provisions to maximize inter-municipal 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.

The draft bill is primarily concerned with review and approval procedure. Many State legislatures, however, may find it desirable to redefine existing statutory powers and duties of county or other areawide planning agencies. The legislature should provide clear direction to the planning agency so that it concerns itself with matters of countywide significance, rather than local concerns that have no areawide repercussions.

Suggested Legislation

*[Title should conform to state requirements. The following is a suggestion:
"An act prescribing the planning and zoning powers and duties of counties¹
in metropolitan areas in relation to municipalities of the county."]*

(Be it enacted, etc.)

1 *Section 1. Purpose.* It is in the public interest that within metropolitan areas certain classes of
2 proposed municipal planning and zoning actions be subject to review and approval by the county plan-
3 ning agency for the county in which such municipality is located; that abutting municipalities be in-
4 formed, in certain instances, of such proposed actions in order to aid in coordinating planning and
5 zoning actions among municipalities; that the planning and zoning authority of certain small munic-
6 palities and newly incorporated municipalities be exercised by the county because of the lack of ade-
7 quate technical and administrative resources in such municipalites to plan effectively for future develop-
8 ment; and that counties exercise such planning and zoning authority by applying such pertinent inter-
9 community and countywide considerations as may be set forth within the [adopted, approved, or
10 filed] county comprehensive plan or development policy document.

11 Where a county has [adopted, approved, or filed] a comprehensive plan or other overall develop-
12 ment policy document, it is the purpose of this act to secure conformity to such plan notwithstanding
13 any contrary municipal policies that may be in conflict with such plan.

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

15 *Section 3. Definitions.* As used herein:

16 (1) "Metropolitan area" is an area designated as a "standard metropolitan statistical area" by

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

1 statistical area” by the U. S. Bureau of the Census.¹

2 (2) “Municipality” shall mean any [city, town, village, or borough], but not a county.

3 *Section 4. Municipal Planning and Zoning Actions to be Submitted to the County; Action by*
4 *the County.* (a) Any municipality of less than [30,000] and more than [5,000] population, as deter-
5 mined by the latest official census, located within a metropolitan area and in a county that has an [adopted,
6 approved, or filed] county comprehensive plan or overall development policy document shall give notice
7 to the county of any proposal which, if adopted, would have the result of (1) changing the types of uses
8 permitted on property abutting any federally aided or state highway, parkway, or throughway, or any
9 county road or parkway or federal, state, or county park within the municipality, (2) decreasing the re-
10 quired minimum setback or the minimum frontage or average width of any property abutting any fed-
11 eral or state highway, parkway, or throughway, or any county road or parkway or federal, state, or county
12 park within the municipality, (3) connecting any new street directly into any federal, state, or county
13 highway, parkway, throughway, or road, (4) connecting any new drainage lines directly into any
14 channel lines as established by the county, or (5) reducing permitted residential density to less than
15 [three] families per acre. The notice shall be mailed by the municipality to the county at least [15]
16 days prior to any hearing or other action scheduled in the municipality to consider the proposal.

17 (b) If the county to which referral is made [or an authorized agent of the county] determines
18 that the grant or denial of any proposal referred to in subsection (a) hereof would affect any county
19 policy pursuant to section 5 of this act, it shall report its recommendations thereon to the referring
20 municipal agency, accompanied by a full statement of the reasons for the recommendation. If the
21 county fails to report within [15] days after receiving notice of the hearing, the municipal body having
22 jurisdiction to act may do so without such report.

23 (c) The municipality having jurisdiction shall act in accordance with the recommendations of the
24 county unless the municipality adopts a resolution fully setting forth the reasons for contrary action.
25 The resolution shall be filed with the county within [7] days from the adoption of the resolution. The
26 municipal action shall not become effective until [30] days have elapsed from the date the resolution
27 is filed.

28 (d) Notwithstanding any resolution or action taken pursuant to subsections (b) and (c) hereof,
29 the county within the [30] day period may review the municipal action and reverse its action by resolu-
30 tion of the [county governing body] upon specific findings of fact that the municipal action is not in ac-
31 cordance with the material provisions of the [adopted, approved, or filed] county comprehensive plan or
32 overall development policy document. The comprehensive plan or development policy shall contain

¹ 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.

1 standards as set forth in section 5 of this act.

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

6 (1) by municipalities located within the county as a guide to municipal action that may
7 affect development outside its boundaries;

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

10 (b) County review of municipal planning and zoning actions, as set forth in section 4 hereof, shall
11 be governed by the adoption by the county of specific policies and standards to:

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

14 (2) assure that regulations and actions affecting the location of commercial and industrial
15 development, hospitals, educational, religious, and charitable institutions take into consideration county-
16 wide needs.

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

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

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

21 (3) specifically authorized in the county comprehensive plan or other official development
22 policy document.

23 *Section 6. Municipal Planning and Zoning Actions to be Submitted to Contiguous Municipalities;*

24 *Action by Contiguous Municipalities.* (a) Each municipality in the county shall give notice of any
25 action scheduled in the municipality in connection with: (1) changing the types of uses permitted of
26 any property located within five hundred feet of any contiguous municipality [in the county]; (2) a
27 subdivision plat relating to land within five hundred feet of any contiguous municipality [in the county];
28 or (3) the proposed adoption or amendment of any official map, relating to any land within five hundred
29 feet of any contiguous municipality [in the county], to such municipality. The notice shall be given at
30 least [15] days prior to any action to the clerk of the contiguous municipality affected. The action shall
31 be deemed sufficient notice under this or any other law requiring notice of the action.

32 (b) The municipality to which referral is made [or an authorized agent of the municipality] may
33 file a memorandum of its position. If the municipality fails to report within the period of [15] days
34 after receiving notice of the hearing, the municipality having jurisdiction to act may do so without the
35 report. If the contiguous municipality disapproves the proposal, or recommends changes or modifications

1 thereof, the municipal agency having jurisdiction shall not act contrary to the disapproval or recom-
2 mendation except by a majority vote of all the members thereof and after the adoption of a resolu-
3 tion fully setting forth the reasons for its contrary action. Copies of the resolution shall be filed with
4 the clerk of the contiguous municipality and with the county.

5 *Section 7. County Planning and Zoning Authority in Small Municipalities.* (a) Each county
6 located in a metropolitan area shall exercise planning and zoning authority for:

7 (1) all municipalities within the county having a population of less than [5,000] as deter-
8 mined by the latest official census, but existing plans and planning and zoning ordinances shall remain
9 in effect until altered by the county; and

10 (2) all municipalities hereinafter incorporated within the county until the population of a
11 municipality exceeds [30,000] persons as determined by the latest official census within its territory,
12 but county authority shall continue until the municipality adopts a [resolution] [ordinance] whereby
13 the municipality assumes planning and zoning authority and provides for the exercise thereof in conform-
14 ance with [cite appropriate planning and zoning enabling legislation].

15 County authority shall be exercised in accordance with, and in a manner prescribed by, [cite statute
16 granting authority for counties to exercise planning and zoning authority].

17 (b) If any municipalities referred to in subsection (a) hereof are located in more than one county,
18 the county having the larger population shall exercise planning and zoning authority within those munici-
19 palities.¹

20 *Section 8. County Zoning Regulations Within Municipal Jurisdictions.* The county zoning ordi-
21 nance may regulate territory within the zoning jurisdiction of any municipality whose governing body,
22 by resolution, agrees to such regulation if the county governing body, by resolution, agrees to exercise
23 such authority. The municipal governing body may, upon one year's written notice, withdraw its ap-
24 proval of the county zoning regulations and those regulations shall have no further effect within the
25 municipality's jurisdiction.

26 *Section 9. Separability.* [Insert separability clause.]

27 *Section 10. Effective Date.* [Insert effective date.]

¹When 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.

COUNTY CONSOLIDATION

In many areas, the county, as an existing unit of government with appropriate geographical jurisdiction, can provide the public facilities and services necessary to supplement urban growth. In some instances, the effective performance of functions by counties, particularly those involving large scale urban development, may require a wider area of jurisdiction than a single county.

Where the economic, social, and natural patterns of urban growth extend beyond a single county, consolidating counties may offer a feasible alternative to superimposing an additional areawide level of government. County consolidation might well provide the most workable areawide approach to providing urban services, since it builds on an existing governmental structure.

The following draft legislation would facilitate the consolidation of counties in those States desiring to permit local initiative on consolidation proposals. Section 1 authorizes the governing bodies of two or more counties to enter into an agreement to consolidate their counties. Section 2 permits qualified voters to petition their governing bodies to effect a consolidation agreement. Section 3 requires the consolidation agreement to be submitted to the voters in the counties proposed to be consolidated before the agreement can become effective. Finally, Section 4 transfers all property and debts to the consolidated county, except that bonded debt remains in effect after consolidation as a debt of that portion of the merged unit that is within the limits of the original county.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act Authorizing the Consolidation of Counties."]

1 *Section 1. Consolidation Authorized.* Any two or more adjoining counties may consolidate into
2 a single county. The [governing bodies] of the counties to be consolidated may enter into an agree-
3 ment to consolidate their respective counties, setting forth such facts as: (1) the names of the counties;
4 (2) the name under which it is proposed to consolidate, which name must be distinguishable from the
5 name of any other county in the state, other than the consolidating counties; (3) the property, real and
6 personal, belonging to each county, and its fair value; (4) the indebtedness, bonded and otherwise of
7 each county; (5) the proposed name and location of the county seat; (6) the proposed form of organi-
8 zation and government; (7) the terms for apportioning tax rates to service the existing bonded indebted-
9 ness of the respective counties; and (8) other terms of the agreement.

10 *Section 2. Petition.* The qualified voters of any county may file a petition, signed by at least
11 [10] percent of the qualified voters, with the [governing body] requesting the [governing body] to
12 effect a consolidation agreement with the county (or counties) named in the petition.

13 *Section 3. Referendum.* The question of consolidation shall be submitted to the voters in the
14 counties proposed to be consolidated. If approved by a majority of those voting on the question in
15 each county, the proposed consolidation shall become effective according to the terms of the con-
16 solidation agreement.

1 *Section 4. Effects of Consolidation.* All the rights, privileges and franchises of each of the
2 counties and all property, real and personal, and all debts due on whatever amounts, belonging to
3 and of the counties, are transferred to and vested in the consolidated county: Provided, that all
4 bonded debt of each county remains in effect after consolidation as a debt of that portion of the
5 consolidated county within the limits of the former county that incurred the debt.

STATE ASSISTANCE FOR COUNTY CONSOLIDATION*

The following draft legislation permits a State to assume a positive role in actively encouraging two or more counties to consolidate, merge or combine. Section 1 authorizes any State department or agency to furnish and make available technical and financial assistance, or any other incentives, to county governments seeking such action.

A transition annual grant from the State to the resulting new county is authorized in Section 2. The legislation permits the State to provide financial help up to a maximum of five years and up to 20 percent of the real property tax collections of the combining units for the fiscal year preceding the merger. An alternative Section 2 is included, that would provide for State assumption of the outstanding debt of the combining units.

Section 3 is designed to allow a State guarantee to employees of merging units of employment rights with county or State government at levels of remuneration, responsibility and civil service status commensurate with those prevailing prior to the merger. Section 4 provides a state guarantee to employees of merging units against any loss of retirement or pension rights as a result of the merger.

Section 5 provides a separability clause and section 6 the effective date of the bill.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion:
“An act providing state assistance for county consolidation.”]

(Be it enacted, etc.)

1 *Section 1. General Authority.* The state and all departments, boards, bureaus, commissions
2 and other agencies thereof are hereby authorized and empowered, within the limitations of the
3 Constitution and the provisions of this act, to furnish and make available services, assistance funds,
4 property, and other incentives to two or more counties in connection with the consolidation,
5 combining, merger by the two or more counties.

6 *Section 2. Transition Grants.* Within the limitations imposed by this part, the [insert the head
7 of appropriate state agency, such as the state department of local affairs, or other appropriate agency]
8 is empowered and directed to certify to the State Treasurer for payment to a county, a transition
9 grant to facilitate a merger, consolidation, or combination of two or more counties. Such payment
10 is to be made to the surviving or consolidated unit. The purpose of the grant is to encourage the

*This measure is not based on a specific ACIR recommendation, but is in harmony with other Commission proposals relating to improving State-local relationships.

1 restructuring of local government along more economical and effective lines and to help absorb
2 non-occurring expenses incurred by the merging or combining counties in bringing about the
3 reorganization and subject to the following conditions in limitations:

4 (a) Transition grants may be made annually, up to a maximum of five years.

5 (b) The payment in any one year may not exceed [20] percent of the combined collection
6 from real property taxes by the counties involved in the merger.

7 (c) Transition grants may not be provided for the absorption of the jurisdiction or functions
8 of special units of local government by a county.

9 (d) No transition grant may exceed a total amount of [\$1 million] during the life of the
10 grant.

11 [*Section 2. Assumption of Local Debt.** Upon certification by the [head of appropriate
12 state agency] that a merger, consolidation, or combination of two or more counties has been
13 accomplished and that such action is expected to result in future savings in governmental costs or
14 improvements in the amount and quality of governmental services of such magnitude as to warrant
15 the assumption by the state of all or specified part of the outstanding debt of the merging, consoli-
16 dating, or combining units, the State Treasurer is empowered as directed to exchange the general
17 obligations of the State for the portion of the outstanding instrument of local indebtedness
18 certified as necessary by the [head of appropriate state agency], subject to the following
19 limitations:

20 (a) No more than [\$25 million] of county debt may be assumed pursuant to this part in any
21 one fiscal year;

22 (b) Assumption of debt of a single county may not exceed the total collections from taxes on
23 real property by that county for the preceding fiscal year; and

24 (c) No more than [\$3 million] of county debt may be assumed from any one county under
25 the authority of this act.]

26 *Section 3. Adjustment in Functional Grant.* To encourage county consolidation, heads of
27 state departments and agencies are authorized to revise cost-sharing arrangements with consolidated
28 counties whereby the state share of the cost of aided county programs is increased by []
29 percent. Such revision may take place only if a finding is made by such agency or department heads
30 and agreed to by the [head of appropriate state agency] that commensurate economy in total

*This Section, dealing with state assumption of local debt, is an alternative to the transition grant approach provided in Section 2.

1 state-local costs or a commensurate improvement in the quality of the governmental services
2 affected will result from such consolidation, combination, or merger. The state and its foresaid
3 agencies are hereby authorized to execute such contracts, plans or other documents as may be
4 necessary to affectuate the purposes herein.

5 *Section 4. Protection of Civil Service and Retirement Rights, of Employees of Merging Units.*

6 (a) The [head of appropriate state agency] and the [head of the civil service agency] are
7 authorized and directed to assure, through the issuances of appropriate regulations that employees
8 of the counties merging, combining, or consolidating, pursuant to the provisions of this act receive
9 new employment status privileges and rights not less favorable than those formally enjoyed and that
10 if positions of comparable responsibility, status, and remuneration are found not to be available
11 with the surviving or new county, such employee or employees shall be provided comparable civil
12 service status in the state service and made eligible for immediate employment by any and all
13 agencies and instrumentalities of the state in positions of comparable responsibility, remuneration
14 and status.

15 (b) The [head of appropriate state agency] and the [head of the state employees retirement
16 system] are authorized and directed to assure that employees of counties merging, combining, or
17 consolidating, pursuant to provisions of this act, do not suffer loss of pension or retirement rights
18 as a result of such merger, combination, or consolidation. The surviving or resulting county shall
19 provide retirement rights to those employees retained at least as favorable to such employees as
20 those provided in the immediately preceding employment. Those employees for whom comparable
21 employment cannot be found as described in subsection (a) above, shall be accorded immediately
22 vested rights to the state retirement system, such rights to be commensurated with those accumulated
23 in the retirement system of the preceding county employer. The [head of appropriate state agency]
24 shall reimburse the state employee retirement fund for the additional cost accruing to the state for
25 the action specified herein or in accordance with regulations issued pursuant to this subsection. [The
26 costs of such reimbursement shall be subtracted from the transition grants made pursuant to this
27 act to surviving or resulting counties.]

28 *Section 5. Separability Clause.* [insert separability clause]

29 *Section 6. Effective Date.* [insert effective date]

