

# ACIR State Legislative Program

2.

**Local  
Government  
Modernization**



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Advisory Commission on Intergovernmental Relations  
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# FOREWORD

## ACIR's Legislative Program

The Advisory Commission on Intergovernmental Relations is a permanent, national bipartisan body established by Act of Congress in 1959 to give continuing study to the relationships among local, state, and national levels of government. The Commission does not function as a typical Federal agency, because a majority of Commission members come from state and local government. The Commission functions as an intergovernmental body responsible and responsive to all three levels of government.

It should not be inferred, however, that the Commission is a direct spokesman for any single level or branch of government — whether the Congress, the Federal Executive Branch, or state and local government. Nevertheless, many of the Commission's policy recommendations are paralleled by policies of the organizations of state and local government — including the National League of Cities, U.S. Conference of Mayors, and National Association of Counties — and a substantial number of the Commission's draft legislative proposals are disseminated by the Council of State Governments in its annual volume entitled *Suggested State Legislation*. The National Governors' Conference in its report of the 67th Annual Meeting carries 38 of ACIR's legislative proposals as an appendix entitled *State Responsibilities to Local Governments: Model Legislation from the Advisory Commission on Intergovernmental Relations*.

The Commission recognizes that its contribution to strengthening the federal system will be measured, in part, in terms of its role in fostering 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 consideration of its recommendations for legislative and administrative action by government at all levels, with considerable emphasis upon the strengthening of state and local governments.

ACIR's *State Legislative Program* represents those recommendations of the Commission for state action which have been translated into legislative language for consideration by the state legislatures. Though ACIR has drafted individual bills from time-to-time following the adoption of various policy reports, its suggested state legislation was brought together into a cumulative *State Legislative Program* initially in 1970. This 1975 edition is the first complete updating of the original cumulative program. It contains a number of new bills as well as major rewrites and minor updatings of previously suggested legislation.

**Scope of the Legislative Program.** ACIR's reports, over the years, have dealt with state and local government modernization and finances, as well as a variety of functional activities. Commission recommendations to the states, contained in these reports, have addressed all of these subjects. The suggested legislation contained in the Commission's *State Legislative Program* has been organized into ten booklets (parts) in which the draft bills are grouped logically by subject matter. The groupings for all ten booklets are listed in the summary contents of the full legislative program which follows this foreword. Then, the detailed contents of this booklet, including the title of all bills, are listed with the page numbers where they can be found.

**Process for Developing Suggested Legislation.** Most of the proposals in the *State Legislative Program* are based on existing state statutes and constitutional provisions. Initial drafts were prepared by the ACIR staff or consultants. Individual proposals were reviewed by state officials and others with special knowledge in the subject matter fields involved. The staff, however, takes full responsibility for the final form of these proposals.

## How to Use the Suggested Legislation

The Commission presents its proposals for state legislation in the hope that they will serve as useful references for state legislators, state legislative service agencies, and others interested in strengthening the legislative framework of intergovernmental relations. Additional copies of this booklet and the other booklets in the full *Program* are available upon request. Any of the materials in the *Program* may be reproduced without limitation.

The Commission emphasizes that legislation which fits one state may not fit another. Therefore, the following advice is offered to users of the Commission's suggested state legislation.

**Fit Proposals to Each State.** Many states have standard definitions, administrative procedures acts, standard practices in legislative draftsmanship, and established legislation and constitutional provisions related to new proposals. These differ widely from one state to another, yet they vitally affect the drafting of new proposals for state legislation. No model legislation can possibly reflect the variations which apply in all 50 states. Thus, ACIR strongly recommends that any user of its suggested state legislation seek the advice of legislative draftsmen familiar with the state or states in which such proposals are to be introduced.

**Alternative Provisions and Optional Policies.** Likewise, the Commission recognizes that uniform policies are frequently not appropriate for application nationwide. Accordingly, its adopted recommendations frequently include alternative procedures and optional policies among which the states should make conscious choices as they legislate. Consequently, the suggested legislation which follows includes bracketed language which alerts the users of these materials to the choices which are to be made. In many cases, the bracketed language is also labeled as an alternative or an option. In the case of alternatives, one (or in some cases more than one) should be chosen and the others rejected. In the case of options, the suggested language may be included or deleted without reference to other provisions unless otherwise noted.

Three types of bracketed information [ ] are provided in the suggested legislation. Brackets containing *italicized* information indicate wording that is essential to the legislation, but must be rewritten to conform to each particular state's terminology and legal references. Information in regular type within brackets presents alternative or optional language. The third type of brackets contains blank space and requires the insertion of a date, amount, time span, quantity, or the like, as required by each state to comply with its individual circumstances or recommendations.

**Caution About Excerpting.** Frequently one provision in the suggested legislation may be related to another in the same bill. Thus, any state wishing to en-

act only certain portions of the suggested legislation should check carefully to make sure that essential definitions and related provisions are taken into account in the process of excerpting those portions desired for enactment.

### **ACIR Assistance**

Each item of suggested state legislation in this *Program* is referenced to the ACIR policy report upon which it is based. These reports may be obtained free of charge in most cases, by writing to ACIR, and usually may also be purchased from the U.S. Government Printing Office (especially if multiple copies are required). In those cases where a policy report is out of print, copies may be found in ACIR's numerous depository libraries throughout the nation as well as in many other libraries. In addition, where copies are otherwise unavailable, the ACIR library will arrange to loan a copy.

The ACIR staff, though limited in size, is available upon request to answer questions about the suggested legislation, to help explain it to legislators and others in states where it is under active consideration, and to assist the legislative process in other appropriate ways.

**September 1975**

**Robert E. Merriam  
Chairman**



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## ACKNOWLEDGMENTS

The suggested state legislation in this part of ACIR's *State Legislative Program* is based largely upon existing state statutes. James Tait acted as consultant to the Commission in tailoring these enactments to ACIR policy.

The following persons served diligently on a panel which reviewed each proposal: Richard Carlson, director of research, Council of State Governments; Honorable Charles A. Docter, Maryland House of Delegates; Marcus Halbrook, director, Arkansas Legislative Council; David Johnston, director, Ohio Legislative Service Commission; William J. Pierce, executive director, National Conference of Commissioners for Uniform State Laws; Bonnie Reese, executive secretary, Wisconsin Joint Legislative Council; Honorable Karl Snow, Utah state senator; and Troy R. Westmeyer, director, New York Legislative Commission on Expenditure Review.

The suggested legislation was also circulated in draft form to the following national organizations for their review and comment:

Council of State Governments  
International City Management Association  
National Association of Counties  
National Conference of State Legislatures  
National Governors' Conference  
National League of Cities  
U.S. Conference of Mayors

The Commission acknowledges the financial assistance of the U.S. Department of Housing and Urban Development in updating and publishing this new edition of the *State Legislative Program*.

The Commission is grateful to all who helped to produce this volume, but the Commission alone takes responsibility for the policies expressed herein and any errors of commission or omission in the draftsmanship.

Wayne F. Anderson  
Executive Director





Part II

**LOCAL GOVERNMENT MODERNIZATION**

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# INTRODUCTION

America's local governments face greater challenges today than ever before, with problems and citizen demands emerging and growing at a rate far greater than the legal, structural, and financial capacity to deal with them. Here one sees most dramatically the triple mismatch between fiscal resources and human needs, between political boundaries and population settlement patterns, and between the states' constitutional role as parents of these units and their frequent unwillingness to "grasp the local government nettle."

**Formation, Boundaries, and Dissolution.** Historically, most urban growth has been concentrated on the fringes of cities where there has been vacant land. Many American cities in the 1800s grew in population and area by annexing these new neighborhoods. But by the early 1900s, municipal corruption became a public concern, and state legislatures passed laws to "protect" the people on the fringe by making it easy for them to incorporate into new independent municipalities and by making it very difficult for the large city to annex adjoining territory — at least not without the approval of those being annexed. Here, in these double barreled statutory enactments, were implanted many of the roots of what has come to be called the "urban crisis."

With the formation of new independent municipalities came a shift in municipal powers. When the residents of a particular geographic area vote to incorporate, the resulting municipality acquires the following powers, among others: (a) property taxation — the incorporating residents have their own tax base; (b) land use regulation — the new city can regulate the types of growth and housing it will permit; (c) school district adjustment — many state laws require or permit the readjustment of school district lines with any change in municipal boundaries; and (d) provision of municipal services.

Efficiency and economy in governmental services were not the only considerations involved in this fragmentation of local government structure. Serious consequences also arose from the splintering of the tax base and political decision making.

Aside from fiscal disparities and the growth of exclusionary zoning policies — subjects that are dealt with in subsequent sections of ACIR's *State Legislative Program* — easy incorporation and difficult annexation produced a very complicated pattern of local government structure in urbanized areas of the nation. This pattern is characterized by: (1) existence of many different local governments in a single metropolitan area — the average in the 1970s was about 85 units of general and special purpose local government in each area, including two counties, 13 townships, 21 municipalities, 18 school districts, and 31 special districts and authorities for such purposes as fire protection, water supply, sewers, and housing; (2) smallness in population and geographic size of a great majority of these local governments; (3) multiple layering — the geographic overlapping of separate local governments. Most residents of metropolitan areas are served by a minimum of four governmental units — a county, municipality, school district, and one or more special districts. This diffusion of governmental responsibilities adds to the difficulty of asserting adequate political accountability.

Draft legislative proposals that follow are designed to (a) establish at the state and/or local levels machinery and standards, including "viability" criteria for the review of proposed local government boundary changes and for the resolution

of boundary disputes among local units; (b) establish statutory standards and procedures for the incorporation of new municipalities, the creation of special districts, the annexation by municipalities of adjacent unincorporated territory, and the dissolution or merger of municipalities, special districts, or any combination thereof; and (c) authorize the consolidation of units of general local government, either city-county or county-county, including authorization for state technical and financial assistance to local governments or charter commissions engaged in studying or implementing consolidation proposals.

**Organization and Functions.** Historically, state governments have treated their local governments inconsistently. States have been very strict in some areas where flexibility is needed, but overly permissive in others where a strong hand may be necessary. The states often rigidly specify functions to be carried out by counties while handcuffing them further by requiring uniform tax rates (and consequently rigid service levels) through the entire county area, explicitly determine county and city organization, structure, and stringently guard what cities do and how they raise the money to do it. This rigidity, in part, has led to the creation of special districts to perform individual functions, sometimes supported by a tax levy, more frequently by service charges or benefit assessments.

Furthermore, state courts have varied widely in their interpretation of state constitutional provisions purporting to grant "home rule" powers to local governments. In some cases, these provisions have been liberally construed, but the courts have usually been reluctant to concede that local governments need a relatively free hand to meet sudden, new, or emerging problems.

Over recent years, the Advisory Commission on Intergovernmental Relations, the Committee for Economic Development, and many state and local government study commissions have urged strong state legislative and executive action to introduce more flexibility and provide greater legal capacity to general purpose local governments. In general, these proposals have called for statutory or constitutional actions to:

- clarify the legal powers of general purpose local governments;
- authorize cities and counties to determine their own internal structure, subject only to basic guidelines;
- eliminate state provisions that mandate popular election for various types of county and municipal administrative officials; and
- authorize contracting and other cooperative relationships between and among units of local government.

The draft constitutional and statutory proposals that follow are designed to strengthen local government organization and functional performance. They include: (1) a suggested constitutional amendment providing home rule powers to local government, following the "residual powers" approach whereby local governments may exercise any power not denied or limited by state constitution or statute; (2) authorization of optional forms of municipal government; (3) authorization of the modernization of county government; (4) authorization for local governments to contract with one another for the performance of services and to create interlocal joint enterprises for the discharge of particular functions; and (5) establishment of a process for the allocation of functions among units of local government and the transfer of functions from city to county government or vice-versa by joint administrative action of the governing bodies concerned; (6) authorization for the establishment of neighborhood subunits of

government; (7) provisions for the supervision of special districts by the city or county within whose territory the district is located.

The draft *County Government Modernization Act* authorizes: (a) county performance for urban services; (b) optional forms of county government; (c) consolidation of county offices; (d) county officers on a statutory instead of a constitutional basis; and (e) the establishment of subordinate service areas whereby differential property tax rates may be imposed commensurate with the type and intensity of services provided.

**Areawide Units.** Population settlement patterns, the resulting citizen needs for governmental services, and the physical nature of many of the services themselves inevitably overlap political boundary lines. Transportation, water and sewer utilities, and air pollution monitoring are obvious examples. Consequently, Federal, state, and local officials often have been forced to resort to special districts with boundary lines drawn to fit a particular problem and the specific geographic area to be served.

The result has been both constructive and chaotic — constructive since services that existing cities, counties, and townships were unable or unwilling to render have been provided to the citizens needing and demanding them, but chaotic in that the local government map has grown considerably more complex. There are now 25,000 special districts and authorities. Three-quarters of these overlap municipal or county boundaries; most of them are beyond the authority and control of locally elected general governments, and they are usually out of sight of the public.

At the beginning of the 1970s, a consensus on some general directions that regional cooperation might take began to emerge among local government officials, state municipal leagues, associations of counties, civic groups, and scholars of state and local government. This consensus was to lessen the duplication and fragmentation of local effort while still preserving a maximum role for individual local governments. It was conceded by most that entirely aside from the question of desirability, a general purpose metropolitan government was beyond the realm of feasibility in most parts of the country. Nevertheless, since the *status quo* was becoming increasingly intolerable, something going beyond strictly voluntary, random patterns of cooperation was both necessary and inevitable.

The Advisory Commission on Intergovernmental Relations has formulated six legislative proposals to deal with regional cooperation and coordination. These are: (1) establishment of a statewide pattern of substate regional districts, including the powers and governing body structure for the district organization, its functions in the conduct of planning, research, and technical assistance activities, and the use of such districts by state agencies in the conduct of their respective programs and operations; (2) where such a substate districting system is not in effect, the establishment of an individual regional "umbrella multi-jurisdictional organization" (UMJO) in one or more metropolitan or other regional areas of the state; (3) an interstate compact creating a regional "UMJO" organization for a specified interstate metropolitan area; (4) authorization for the establishment of multipurpose authorities to carry on specified functions over a regional area and with power to impose user charges, issue revenue bonds, and levy taxes to support its activities; (5) provision for the adoption, after study and subsequent popular vote, of home rule charters by regional areas; and (6) authorization for the establishment of regional study commissions to examine problems of interlocal cooperation and coordination in various areas of the state. These regional study commissions would be authorized to consider

any of the options listed above, as well as the local government formation, consolidation, boundary adjustment, and dissolution options provided under suggested state legislation contained earlier in this booklet.

## **2.1**

# **Formation, Boundaries, and Dissolution**

## 2.101 LOCAL GOVERNMENT CREATION, DISSOLUTION, AND BOUNDARY ADJUSTMENTS<sup>1</sup>

Only the states have the power to halt the chaotic spread of special districts and small municipalities within existing and emerging metropolitan areas. States should provide rigorous statutory standards for establishing new municipalities and special districts, changing the boundaries of existing local units, and reducing, where desirable, the number of jurisdictions within metropolitan areas, through merger, consolidation, or dissolution.

States should adopt one of the two principal approaches for exercising surveillance over local government boundary adjustments. The first approach — state review of local actions — has been adopted by Minnesota, which has established a three member state commission, appointed by the governor, to review all incorporation proposals and to approve all proposals to annex unincorporated territory. The following draft legislation provides for state agency review of local boundary changes. The second approach has been adopted by California and involves the establishment of local agency formation commissions (usually consisting of two county officials, two city officials, and one member representing the general public) which have jurisdiction over proposed boundary adjustments within their respective counties. Oregon has adopted a variation of this approach and, in the Portland region, has created a regional body to supervise the boundary adjustments. For states desiring to follow the second approach, certain amendments to the draft bill, discussed later, will be necessary.

If local boundary adjustment powers are placed in the hands of a state agency or state empowered local bodies, the state legislature should establish standards of economic, geographic, and political viability to guide these agencies. Some of the factors to be considered in evaluating the viability of local governments are jurisdictional size large enough to span the forces that create the problems to be met; ability to raise adequate revenues equitably; flexibility to adjust governmental boundaries; organization as general purpose rather than single purpose governments; adequacy of area to permit economies of scale; and accessibility and popular control by the people.

The suggested comprehensive statute vests authority under *Title II* in a state commission or local commission to propose and review petitions for all types of local government boundary adjustments. The legislation is based in part on the model act published in 1965 by the Harvard Student Legislative Research Bureau<sup>2</sup> and in part on the draft legislation proposed in 1973 by the Florida Commission on Local Government,<sup>3</sup> drawn partially in turn from the statutes of Minnesota, Oregon, California, Michigan, Alaska, Washington and Iowa.

*Title III* (Incorporation and Dissolution) and *IV* (Annexation) provide for local initiation under legislative review if *Title II* is not adopted. They are drafted from statutes presently in use in Florida and North Carolina.<sup>4</sup> The North Carolina statute authorizes municipalities to annex immediately pursuant to the standards imposed in *Title IV*.

The provisions relating to local initiative in the difficult areas of government consolidation and merger, contained in the *Local Government Consolidation Act*, should also be considered in conjunction with this bill.

Much has been written about local government formation and boundary adjustment in trying to develop appropriate state-local relationships and relative influences, powers, and responsibilities. Historically, the

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *The Challenge of Local Governmental Reorganization*, Vol. III of *Substate Regionalism and the Federal System*, Report A-44 (February, 1974); and also from Advisory Commission on Intergovernmental Relations, *Governmental Structure, Organization, and Planning in Metropolitan Areas*, Report A-5 (July, 1961); *Alternative Approaches to Governmental Reorganization in Metropolitan Areas*, Report A-11 (June, 1962); *The Problems of Special Districts in American Government*, Report A-22 (Washington, D.C.: U.S. Government Printing Office, May, 1964).

<sup>2</sup>"An Act to Establish Standards and Procedures for Municipal Boundary Adjustment," *Harvard Journal on Legislation*, Vol. 2, No. 2 (June, 1965), pp. 239-277.

<sup>3</sup>Florida Commission on Local Government, *Local Government Formation*, Special Report 73-2 (February, 1973), pp. 29, *et seq.*

<sup>4</sup>Chapters 165 and 171, *Florida Statutes*; Chapter 1029, *North Carolina Laws of 1959*.



states have abdicated their leadership roles in assuring adequate, efficient, and equitable response to citizen demands for local governmental services. Each state must find its own pattern of response consistent with its tradition; however, an affirmative response and direction should be developed in any case. As the ACIR stated in one of its 1974 reports, "The Commission concludes that the time has come for all states to adopt a comprehensive, long range policy with respect to the structure and functions of their local governments. . . . It notes that existing state policies in this pivotal area for the most part have been piecemeal, partial, and outdated."<sup>1</sup>

If a state adopts the *Title II* local version of the boundary commission, *Titles III and IV* should be deleted and the specific standards used in those titles should be reviewed for inclusion in *Title II*. If the state adopts the *Title II* state version of the boundary commission, they may desire to delete *Titles III and IV* and review the specific standards used in those titles for inclusion under the *State Boundary Commission Act*. However, in the second case, other states may desire to authorize local initiation and resolution of local boundary issues, with the state boundary commission setting additional standards or guidelines or acting as an additional method for such adjustments.

The suggested legislation may be adapted for use by those states not wishing to use boundary commissions by deleting *Title II* which establishes either state or local government bodies to review and approve boundary adjustments for local governments as well as consolidations and incorporations. *Titles I, III, and IV* alone would provide a very strong system of local initiative and action.

In *Title I, Section 1* of the suggested legislation states the purpose of the act, and *Section 2* defines the terms and phrases used. It provides in *Section 3* a statement of state policy to preempt existing laws.

*Section 4* requires appropriate state agencies to provide the governor (legislature and commission) with specific data on each county and municipality in the state, which the governor (legislature or commission) shall use to prepare a list identifying each county and municipality with any or all of certain listed characteristics related to jurisdictional adequacy.

*Title II* of the act provides alternative proposals for a boundary commission approach — first, for a state commission with local hearings on local issues, and second for a local commission.

*Section 1* of both alternatives provides for the creation of the boundary adjustment commissions and sets out the manner of appointment of members and commission powers and duties.

*Section 2* of both alternatives deals with formation and boundary adjustment proceedings, delineating those conditions under which such proceedings shall be initiated and what actions the commissions may take with regard to petitions submitted for a formation or boundary adjustment.

*Section 3* of the first alternative (state commission) provides for local boards to rule on individual formation or boundary adjustment petitions and sets out the boards' membership and powers and duties. *Section 4* of the first alternative or *Section 3* of the second alternative (local commissions) requires a local board or local commission to conduct hearings and spells out the actions it must take once a petition has been received.

*Section 5* (*Section 4* in the second alternative) enumerates those standards which must be met for a local board or commission to approve a proposed boundary adjustment, annexation, detachment, municipal or special district incorporation, merger, or dissolution.

*Section 6* (*Section 5* in second alternative) provides that no county boundary shall be a barrier to any type of a formation or boundary adjustment authorized by the act, and provides procedures to handle multicounty cases under the second alternative. It also prohibits action across substate district lines.

*Section 7* (*Section 6* in the second alternative) mandates that all final decisions of a local board and any dismissal of petitions shall be subject to judicial review.

*Title III* provides for local government incorporation and dissolution procedures and standards.

*Section 1* provides the procedures for the incorporation of a municipality or special district.

*Section 2* sets out the procedures for dissolution of an existing municipality or special district. *Section 3* deals with the special situation whereby a municipality or special district may be declared inactive and dissolved.

*Section 4* prescribes the conditions to be met for incorporation of a new municipality or a special dis-

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<sup>1</sup>ACIR, *op cit*, Report A-44, p. 151.

trict, or the dissolution of a municipality or special district.

*Section 5* provides for the allocation of all indebtedness of, and property owned by, a municipality or special district in the case of incorporation or dissolution.

*Section 6* authorizes judicial review of all actions taken, including petitions dismissed, pursuant to this act and restricts the time for requesting such review.

*Title IV* relating to municipal annexation is based almost entirely on the North Carolina statute. *Section 1* vests authority to annex in the governing bodies of municipalities of a specified minimum size. *Section 2* requires the annexing municipality to make plans for extension of services to the area proposed to be annexed, and sets forth the information to be included in the report of the plans.

*Section 3* specifies the character of the area that may be annexed. The area must be adjacent or contiguous to the municipality's boundaries; at least one-eighth of its boundaries must coincide with the municipality's boundaries; and it may not be included within the boundaries of another municipality. Part or all of the area must be developed for urban purposes, which are defined in three alternative ways, reflecting population density, lot size, and land use. The municipality may also include in the area to be annexed certain areas not to be developed for urban purposes, but which constitute necessary land connections between the municipality and areas developed for urban purposes, or between two or more areas developed for urban purposes.

*Section 4* prescribes the procedure of annexation, including notice of intent and notice of public hearing, approval of the report of plans, and passage of the annexation ordinance following the public hearing and revision of the original plans as a result of the hearing. The ordinance must include findings that the area to be annexed meets the requirements of *Section 3*; a statement of the municipality's intent to provide services to the area in accord with the report under *Section 2*; a finding that on the date of the annexation the municipality will have funds or borrowing power to finance extension of utility lines or streets to the area; and the effective date of annexation.

In the period 12-15 months after the effective date of annexation, any property owner in the annexed territory who believes that the municipality has not followed through on its service plans may apply for a writ of mandamus from the court, and the court may grant relief if the municipality has not provided the services or facilities according to plan.

*Section 5* provides for appeal to the courts by property owners within the annexed area who believe they will be injured materially because of failure of the municipality to comply with the act's procedure. The court may affirm the action of the municipality, remand the ordinance to the municipality for further proceedings to overcome procedural irregularities, reduce the area annexed, or amend the plans for services to the annexed area.

*Section 6* provides for recording of the annexation. *Section 7* authorizes municipal expenditures for purposes in connection with preparing for the annexation or providing services to the annexed area. *Section 8* specifies the manner of making population and land estimates for the purposes of the act.

*Title V* provides for separability and effective date clauses.

## Suggested Legislation

# [AN ACT TO PROVIDE PROCEDURES AND STANDARDS FOR COUNTY, MUNICIPAL, AND SPECIAL DISTRICT CREATION, DISSOLUTION, AND BOUNDARY ADJUSTMENTS]<sup>1</sup>

(Be it enacted, etc.)

### Title I

#### DECLARATION OF STATE POLICY, DEFINITIONS, AND DATA

1 SECTION 1. *Purpose.* The purpose of this act is to set forth procedures for forming, dissolving,  
2 and adjusting the boundaries, of local governments in the state. The act sets forth criteria for identi-  
3 fying viable units of local government so as to:

4 (a) allow orderly patterns of urban or regional growth and land use;

5 (b) assure adequate quality and quantity of local public services;

6 (c) ensure fiscal adequacy of units of local government;

7 (d) eliminate or reduce avoidable and undesirable differentials in fiscal capacity among neighbor-  
8 ing local governmental jurisdictions; and

9 (e) promote equity in the financing and delivering of local government services.

10 SECTION 2. *Definitions.* The following terms and phrases, when used in this act, shall have  
11 the meaning ascribed to them in this section except where the context clearly indicates a different  
12 meaning.

13 (a) "Boundary adjustment" or "formation proceeding" which terms shall be interchangeable,  
14 means any annexation, detachment, dissolution, incorporation, or consolidation, as defined below.

15 (1) "Annexation" means the alteration of the boundaries of a municipality or special district  
16 to add territory.

17 (2) "Consolidation" means the combining of the government of one or more counties, muni-  
18 cipalities, or special districts with the government of one or more counties, municipalities, or special  
19 districts, or any combination thereof.

20 (3) "Detachment" means the alteration of the boundaries of a municipality or special district  
21 in order to separate territory.

22 (4) "Dissolution" means the dissolving of the corporate status of a municipality or special  
23 district.

24 (5) "Incorporation" means the establishment of a municipality or special district.

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<sup>1</sup>Suggested short title: *Local Government Formation and Boundary Adjustment Act.*

1 [(b) "Commission" means the [state] [local] boundary adjustment commission.]<sup>1</sup>

2 (c) "Community" means the area within and surrounding a municipality or special district, which  
3 forms an economic and socially related region, which shall include, where applicable, a metropolitan  
4 area described as a Standard Metropolitan Statistical Area as defined by the United States Bureau of  
5 the Census; or a substate district as defined pursuant to [statewide substate districting act].

6 (d) "Contiguous" means territory which has extensive, although not always complete, contact,  
7 whether across a body of water or otherwise, with the adjoining jurisdiction proposing to merge or  
8 annex said territory.<sup>2</sup>

9 (e) "Department" means the state department [of community affairs or other appropriate state  
10 agency].

11 [(f) "Local board" means the assigned members of the state commission and local representatives  
12 acting together as a single body in a local hearing.]<sup>3</sup>

13 (g) "Local government" means a county, municipality, [town, township,] or special district.

14 (h) "Newspaper of general circulation" means a newspaper printed in the language most com-  
15 monly spoken in the area within which it circulates, which is readily available for purchase by all  
16 inhabitants in its area of circulation, but does not include a newspaper intended primarily for mem-  
17 bers of a particular professional or occupational group, or a newspaper whose primary function is  
18 to carry legal notices, or a newspaper that is given away primarily to distribute advertising.

19 (i) "Parties affected" means any person owning property or residing either in a municipality or  
20 special district when a formation or boundary adjustment proceeding is proposed or any governmental  
21 unit with jurisdiction over such area.

22 (j) "Qualified voter" means any person registered to vote in accordance with law.

23 (k) "Special district" means a local unit of special government created pursuant to law for the  
24 purposes of performing prescribed, specialized functions within limited boundaries, exclusive of  
25 [school districts and] those units of local special government formed by county or municipal govern-  
26 ments pursuant to their powers, and governed, *ex officio*, by the governing body of such counties or  
27 municipalities.

28 (l) "State aid" means any moneys authorized or appropriated by the [legislature] and allocated for  
29 support of any local government, excluding any moneys paid to any such unit in fulfillment of a  
30 specific contractual obligation between it and the state.

31 (m) "Sufficiency of petition" means the verification of the signatures and addresses of all signers  
32 of a petition with the voting list maintained by the county [supervisor of elections] and certification  
33 that the number of valid signatures represents the required percentage of the total number of qualified

<sup>1</sup>Should be deleted if one of the alternative *Title II*'s is not used.

<sup>2</sup>This definition should be carefully reviewed for consistency with state court decisions.

<sup>3</sup>Should be deleted if the first alternative *Title II* (state boundary commission) is not used.

1 voters in the area affected by a proposal pursuant to this chapter.

2 (n) "Territory" means the area proposed to be consolidated, annexed, detached, dissolved, or in-  
3 corporated.

4 (o) "Used for residential purposes" shall mean any lot or tract of [ ] acres or less in size on  
5 which is constructed a habitable dwelling unit.

6 SECTION 3. *Preemption; Effect on Special Laws.* It is further the purpose of this act to provide  
7 viable general law standards and procedures for forming, dissolving, and adjusting the boundaries,  
8 of local governments in lieu of any procedure or standards now provided by general or special law.  
9 The provisions of this act shall be the exclusive procedure pursuant to general law for forming, dis-  
10 solving, or adjusting the boundaries of local governments in this state. Any provisions of a general or  
11 special law, existing on the effective date of this act, in conflict with the provisions of this act shall not  
12 be effective to the extent of such conflict.<sup>1</sup>

13 SECTION 4. *Data to be Furnished.*

14 (a) On or before [February 1] of each year, the [*appropriate state agencies*] shall report to the  
15 governor [, [*legislature*], and commission], with respect to each county and municipality in the state:

16 (1) total population, as indicated by the last preceding Federal census or other more recent  
17 official state population estimate authorized by state law;

18 (2) total equalized assessed valuation of taxable property, as indicated by the most recent  
19 official state sources of such data;

20 (3) total revenues received by each county and municipality during its most recent fiscal year  
21 for which data are available from:

22 (i) state aid, as defined in subsection (2); and

23 (ii) from all local general revenue sources of each unit, which for this purpose shall com-  
24 prise all receipts exclusive of amounts from borrowing, state aid, Federal government grants-in-aid,  
25 Federal revenue sharing, and any charges and earnings derived from, and used in, the operation of  
26 water supply, electric power, gas supply, transit system, or other proprietary activities.

27 (b) Within [two months] after receipt of the foregoing report from the [*appropriate state agen-*  
28 *cies*], the [governor] [commission] shall publish a list, with supporting data, which identifies each  
29 county and municipality having any or all of the following characteristics.

30 (1) Counties with:

31 (i) a population of fewer than [5,000] persons; and/or

32 (ii) a ratio of total state aid received to total receipts from its own general revenue sources,  
33 as identified in Section (a)(3)(ii), at least 50 percent greater than the corresponding average ratio for all  
34 county governments in the state.

<sup>1</sup>States may wish to enact specific repeals.

1 (i) a population of fewer than [10,000] persons, if located wholly or mainly within a  
2 county whose population was more than 50 percent urban, as reported by the last official census of  
3 population or estimate thereof, or fewer than [500] persons if not located wholly or mainly in such a  
4 county;

5 (ii) a ratio of total state aid to total receipts from its own general revenue sources, as iden-  
6 tified in Section (a)(3)(ii), at least 50 percent greater than the corresponding average ratio for all  
7 municipal governments in the state;

8 (iii) a *per capita* amount of equalized assessed valuation of taxable property which varies  
9 by at least 50 percent from the average *per capita* amount of equalized assessed valuation of the entire  
10 county in which the municipality is located; and/or

11 (iv) a *per capita* amount of personal income which varies by at least 50 percent from the  
12 average *per capita* amount of personal income of the entire county in which the municipality is  
13 located.

[Alternative 1.]

## [Title II

### STATE BOUNDARY ADJUSTMENT COMMISSION

1 SECTION 1. *Commission; Creation, Appointment, Powers and Duties.*

2 (a) *Creation and appointment.*

3 (1) A state boundary adjustment commission is created and, for administrative purposes, is  
4 located in the [*appropriate state agency*]. The commission shall consist of [nine] members appointed  
5 by the governor, subject to confirmation by the [*senate*]. The governor shall designate the presiding  
6 officer from among the members to serve in such capacity at the pleasure of the governor.

7 (2) The first [nine] appointments made under this act shall consist of [four members for  
8 terms of two years and five members for terms of four years]. Each subsequent regular appointment  
9 shall be for a term of [four] years. If, for any reason, a vacancy occurs, the governor, subject to con-  
10 firmation by the [*senate*], shall appoint a new member to fill the unexpired term. Members shall be  
11 eligible for reappointment and shall serve until their successors qualify.

12 (3) Each member of the commission shall receive [compensation and] *per diem*, travel, and  
13 other reasonable expenses for meetings, hearings, and other official business.

14 (4) An affirmative vote by a majority of the commission present and voting is required to take  
15 action.

16 (b) *Powers and duties.* The state boundary commission shall:

17 (1) adopt standards and procedures, consistent with the provisions of this act, for the initia-  
18 tion and evaluation of proposals for the formation of new local governments, for the adjustment of

1 local government boundaries, and for the review of any boundaries used by state or regional agencies  
2 in performing their responsibilities within the state;

3 (2) conduct studies of county, municipal, state agency, and special district formation and  
4 boundary adjustment problems throughout the state [and within [45 days] respond to any request for  
5 review of a consolidation proposal as provided by law];<sup>1</sup>

6 (3) issue orders, when appropriate, requiring local governments to submit, individually or  
7 jointly, a plan for a formation proceeding or boundary adjustment in conformance with guidelines set  
8 forth in such orders;

9 (4) initiate proceedings based on its own studies and findings for formation or boundary  
10 adjustment, and make preliminary rulings on petitions received for boundary adjustment, in accord-  
11 ance with Section 2;

12 (5) establish a local board to rule on a formation or boundary adjustment case, in accordance  
13 with Section 3;

14 (6) subpoena witnesses and documents or other materials as set forth in subsection (d);

15 (7) employ an executive director who shall employ such staff and consultants as may be  
16 authorized by the commission, subject to available fiscal resources; and

17 (8) submit a written report to the governor and [legislature] each fiscal year stating the  
18 number of proceedings initiated, the outcome of the proceedings, expenses incurred, its recommenda-  
19 tions for legislation, and other pertinent information.

20 (c) *Studies.*

21 (1) The commission, in its discretion, may conduct studies relating to the need for, and the  
22 feasibility of, boundary adjustments that will strengthen the capability of local governments to provide  
23 and maintain public services in a fiscally equitable manner. Factors to be studied may include demo-  
24 graphic and land area characteristics; *per capita* assessed valuation; *per capita* tax burden in relation  
25 to *per capita* personal income; need for municipal services; topographic features; cost and adequacy  
26 of governmental services and controls; future needs for such services and controls; and the probable  
27 effect of alternative courses of action on the tax incidence, service quality, local governmental struc-  
28 ture, growth, environmental, development, and other aspects of the community. Agencies and in-  
29 strumentalities of the state shall furnish the commission with any available information and data  
30 which the commission may require for the conduct of its studies.

31 (2) The commission shall, in conjunction with its duty to initiate under Section 2, work with  
32 affected local units of government to establish a plan for future boundary adjustment in each metro-  
33 politan area [substate district] of the state. The plan shall specify the geographic area of probable  
34 expansion of each unit and for any consolidations deemed necessary and for any times of termination of

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<sup>1</sup>See draft bill, *Local Government Consolidation*.

1 special districts deemed necessary.

2 (d) *Subpoena power.* The commission shall have the power to require the attendance of witnesses  
3 before it and to require the production of records and other data for its examination in the manner  
4 prescribed by [appropriate citation].

5 (e) *Information.* The commission or any local board is empowered to call on any state, county,  
6 special district, or municipal agency, department, bureau, or board for any and all information or  
7 assistance which may, in its judgement, be of assistance in administering, or preparing for the ad-  
8 ministration of, this title, and such state, county, special district, or municipal agency, department,  
9 bureau, or board is hereby authorized, directed, and required to furnish such information or assist-  
10 ance.

11 [(f) *Regional delegation.* The commission may delegate any or all of its power and duties within  
12 the boundaries of a [substate district]<sup>1</sup> to the [appropriate regional body].<sup>1</sup> Such delegation shall be  
13 pursuant to agreement entered into between the commission and the [regional body] under such terms  
14 and conditions as mutually agreed; shall be for a fixed period not to exceed [five] years, renewable;  
15 and shall be filed with the [appropriate state agency] in the same manner as an interlocal agreement  
16 under [appropriate citation].]

17 SECTION 2. *Initiation of Proceedings.*

18 (a) When, on the basis of its own studies or on the basis of the data submitted to it pursuant to  
19 Section 1(a), the commission determines that formation proceedings or boundary adjustments are  
20 necessary to carry out the purposes of this act, the commission shall order each unit of local govern-  
21 ment whose boundaries or jurisdiction are affected to show cause, within [ ] months of notification,  
22 why it should not be required to submit a plan for formation or boundary adjustment. The commis-  
23 sion shall conduct a hearing at which representatives of affected local governments and other in-  
24 terested persons may be heard. If, at the conclusion of a hearing, the commission finds that a forma-  
25 tion proceeding or boundary adjustment is necessary, it shall order the appropriate unit or units of  
26 local government to submit, within [ ] months, a plan for formation or boundary adjustments to car-  
27 ry out the purposes of this act. The plan shall include procedures for putting into effect the proposed  
28 formation or boundary adjustment. Upon receipt of a plan, the commission shall consider it in the  
29 same manner as a petition submitted in accordance with subsection (b) of this section, except that a  
30 preliminary ruling under subsection (c) is not required.

31 (b) (1) The commission shall initiate proceedings for formation or boundary adjustments upon  
32 receipt of a petition from the governing body of an affected municipality or special district; the  
33 governing body of the county wherein the territory, or a part of it, is located; [ ] percent of the  
34 registered voters in the territory; or the owners, resident or non-resident, of [ ] percent of the

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<sup>1</sup>See proposed legislation concerning areawide units, contained elsewhere in ACIR's *State Legislative Program*.



1 assessed value of the real property in the territory.

2 (2) A petition or plan must contain a statement of the formation or boundary adjustment  
3 proposed on an accurate map of every county, municipality, special district, and territory involved;  
4 a statement of the reasons for the proposed formation or boundary adjustment; a description of the  
5 character, land use, and facilities of either the territory or, in the case of dissolution, the municipali-  
6 ties or special districts involved; and procedures for putting into effect the proposed formation or  
7 boundary adjustment.

8 (3) The commission may combine petitions or plans which concern the same territory, or  
9 parts of it, or the same municipalities or special districts, if such a combination will not cause an  
10 unreasonable delay in the processing of the petitions or plans and will not substantially prejudice con-  
11 sideration of any proposals made therein.

12 (c) (1) Within a reasonable time after it receives a petition, the commission shall meet and make a  
13 preliminary ruling on whether to dismiss the petition. The commission may rule to dismiss the  
14 petition only if it finds that:

15 (i) the petition does not comply with the provisions of this section or the standards or  
16 procedures of the commission;

17 (ii) the request for formation proceeding or boundary adjustment is frivolous; or

18 (iii) substantially the same proposal has been disapproved by a local board within [two  
19 years] prior to the date the petition is received by the commission and the conditions in the affected  
20 territory have not substantially changed.

21 (2) If the petition is not dismissed, the commission shall notify those governing bodies re-  
22 quired to appoint local representatives under Section 3.

23 **SECTION 3. *Local Formation Board.***

24 (a) *Creation.* If a petition is not dismissed by the commission under Section 2, a local board shall  
25 be established to rule on the formation or boundary adjustment proposed in the petition. The local  
26 board shall consist of [three] members of the commission and [two] or more local representatives ap-  
27 pointed as follows.

28 (1) The governing body of each unit of local government which has jurisdiction within the  
29 territory involved in the proposed formation or boundary adjustment, or will have jurisdiction if the  
30 boundary adjustment is approved, shall appoint a citizen to serve on the local board.

31 (2) If only one governing body is involved, it shall appoint two citizens to serve on the local  
32 board.

33 (b) *Representatives.*

34 (1) A local representative shall be a resident and registered voter of the county, municipality,  
35 or district from which appointed.

1 (2) A local representative shall receive *per diem*, travel, and other reasonable expenses for  
2 meetings, hearings, and other official business.

3 (3) Each commission member and each local representative has one vote, except that if there  
4 are more than two local representatives, each local representative has an equal fraction of a total of two  
5 votes.

6 (4) The presence of two commission members and one local representative constitutes a quor-  
7 um.

8 (c) *Powers and duties.* The local board:

9 (1) shall hold hearings as required in Section 4, approve or disapprove petitions for boundary  
10 adjustment, and make financial allocations pursuant to law;

11 (2) may amend a petition, prior to the day of approval, by altering the shape and size of the  
12 territory;

13 (3) after a hearing is completed pursuant to Section 4 and after due deliberation, shall decide  
14 whether to approve the proposed formation or boundary adjustment and, if the formation or bound-  
15 ary adjustment is approved, what financial allocations, if any, should be made and the date on which  
16 the formation or boundary adjustment and financial allocations shall take effect. That date shall be  
17 not less than [90] days nor more than [one year] from the date on which the local board approves  
18 the formation or boundary adjustment;

19 (4) shall notify the [*appropriate state official*] and the [*appropriate local officials*] of the  
20 counties, municipalities, and special districts affected by its ruling. The ruling shall report the vote of  
21 each member of the local board, an explanation of its decision, and, if a petition or plan is approved,  
22 an accurate map of every county, municipality, special district, and territory involved, the financial  
23 allocations made, the method of adoption, and the effective date of the formation or boundary adjust-  
24 ment.

25 (d) *Adoption.* The decision of the local board shall be final in all cases [except consolidations,  
26 mergers, or incorporations where a referendum is required by law].

27 SECTION 4. *Local Formation Board; Hearings.*

28 (a) The local board shall conduct a hearing within [90] days from the date on which a petition is  
29 received by the commission, but, if two or more petitions are combined under Section 2 (b)(3), the  
30 [90] day period begins on the day of the receipt of the last of the petitions. At least [30] days before  
31 the commencement of the hearing, the commission shall give notice of the time and place to each  
32 governmental entity involved; to each planning body that has jurisdiction in the territory involved;  
33 and to the public.

34 (b) At the hearing, the local board shall receive all information, written or oral, that any person  
35 wishes to present and that is relevant to the resolution of the questions before the local board; and

1 shall seek all information, written or oral, that the local board believes will be useful to the resolution  
2 of the questions before the local board. If the local board so requests, the commission may subpoena  
3 witnesses and documents relevant to these questions pursuant to subsection (d) of Section 1.

4 (c) If the local board amends a petition, the local board shall give notice of the amendment to  
5 each of the parties and the commission. If the notice is given less than [seven days] before the com-  
6 mencement of the hearing, or during the hearing, or after the termination of the hearing, and if any  
7 person informs the local board or the commission, within [seven days] from the date notice is given,  
8 of his desire to present information relevant to the amendment, the local board shall continue the  
9 hearing for a reasonable time or reopen it within a reasonable time to receive that information.

10 SECTION 5. *Standards for Boundary Adjustments.* The local board shall approve a proposed  
11 formation or boundary adjustment only if the proposal is for the type of adjustment that is more  
12 beneficial to the community than are other available alternatives and if the proposal is found to meet  
13 all applicable standards of law. The local board shall make a specific finding of financial allocations  
14 in any case where such allocations are required.

15 SECTION 6. *County and Substate District Boundaries.*

16 (a) County boundaries shall not be a barrier to any type of formation or boundary adjustment  
17 authorized by this act.<sup>1</sup>

18 (b) Any type of formation or boundary adjustment authorized by this act shall not be in more  
19 than one substate district established pursuant to [substate districting act].

20 SECTION 7. *Judicial Reviews.* All final decisions of a local board and any dismissal of petitions  
21 shall be reviewable by *certiorari* pursuant to the provisions of [appropriate citation – state adminis-  
22 trative procedures act]. No appeal may be brought after the effective date of the formation or boundary  
23 adjustment.]

[OR]

[Alternative 2.]

[Title II

## LOCAL BOUNDARY ADJUSTMENT COMMISSION

1 SECTION 1. *Commission; Creation, Appointment, Powers and Duties.*

2 (a) (1) A county boundary adjustment commission [hereafter called commission] is created in each  
3 county of the state.<sup>2</sup> The commission shall consist of [five] members selected as follows:

4 (i) [two] representing the county, each of whom shall be a county officer appointed by  
5 the [county governing body];

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<sup>1</sup>Check your constitution for provisions affecting this section.

<sup>2</sup>A regional alternative on authorizing an optional local commission in certain areas (when needed) could be developed as an alterna-  
tive to this language.

1 (ii) [two] representing the cities in the county, each of whom shall be a city officer ap-  
2 pointed by the [chief executive officers] of the cities within the county at a joint meeting; and  
3 (iii) [one] representing the general public, who shall be chairman of the commission, ap-  
4 pointed by the four other members of the commission.

5 (2) The term of each member shall be [four years] and until the appointment and qualifica-  
6 tion of his successor, except that the term of each county officer and each city officer shall expire  
7 upon the termination of his county or city office. Any city or county member may be removed by his  
8 appointing authority.

9 (3) Vacancies on the commission shall be filled for the unexpired term by the appointing  
10 authority which originally appointed the member whose position has become vacant.

11 (4) Each member of the commission shall receive [compensation and] *per diem*, travel, and  
12 other reasonable expenses for meetings, hearings, and other official business.

13 (5) An affirmative vote by a majority of a quorum is required to take action. A majority of  
14 all members of the commission currently qualified shall constitute a quorum.

15 (b) *Powers and duties.* The commission shall:

16 (1) adopt standards and procedures, consistent with the provisions of this act, for the  
17 initiation and evaluation of proposals for the adjustment of local government boundaries;

18 (2) conduct studies of county, municipal, and special district formation and boundary ad-  
19 justment problems throughout the state, and, within [45 days] respond to any request for review of a  
20 consolidation proposal as provided by law;<sup>1</sup>

21 (3) issue orders, when appropriate, requiring municipalities and special districts to submit,  
22 individually or jointly, a plan for a formation proceeding or boundary adjustment in conformance with  
23 guidelines set forth in such orders;

24 (4) initiate proceedings based on its own studies and findings for formation or boundary ad-  
25 justment, and make preliminary rulings on petitions received for boundary adjustment, in accordance  
26 with Section 2;

27 (5) subpoena witnesses and documents or other materials as set forth in subsection (d);

28 (6) employ an executive director who shall employ such staff and consultants as may be  
29 authorized by the commission, subject to available fiscal resources; and

30 (7) submit a written report to the governor and [legislature] each fiscal year stating the num-  
31 ber of proceedings initiated, the outcome of the proceedings, expenses incurred, its recommendations  
32 for legislation, and other pertinent information.

33 (c) *Studies.*

34 (1) The commission, in its discretion, may conduct studies relating to the need for, and the

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<sup>1</sup>See draft legislation on *Local Government Consolidation*.

1 feasibility of, boundary adjustments that will strengthen the capability of local governments to pro-  
2 vide and maintain public services in a fiscally equitable manner. Factors to be studied may include  
3 demographic and land area characteristics; *per capita* assessed valuation; *per capita* tax burden in  
4 relation to *per capita* personal income; need for municipal services, topographic features; cost and  
5 adequacy of governmental services and controls; future needs for such services and controls; and the  
6 probable effect of alternative courses of action on the tax incidence, service quality, local governmental  
7 structure, growth, environmental, development, and other aspects of the community. Agencies and  
8 instrumentalities of the state shall furnish the commission with any available information and data  
9 which the commission may require for the conduct of its studies.

10 (2) The commission shall, in conjunction with its duty to initiate under Section 2, and with  
11 the local boundary adjustment commissions of all other included counties, work with affected local  
12 units of government to establish a plan for future boundary adjustment in each metropolitan area  
13 [substate district] of the state. The plan shall specify the geographic area of probable expansion of  
14 each unit for any consolidations deemed necessary and for any times of termination of special  
15 districts deemed necessary.

16 (d) *Subpoena power.* The commission shall have the power to require the attendance of witnesses  
17 before it and to require the production of records and other data for its examination in the manner  
18 prescribed by [appropriate citation].

19 (e) *Information.* The commission is empowered to call on any state, county, special district, or  
20 municipal agency, department, bureau, or board for any and all information or assistance which may  
21 in its judgement, be of assistance in administering, or preparing for the administration of, this title;  
22 and such state, county, special district, or municipal agency, department, bureau, or board is  
23 hereby authorized, directed, and required to furnish such information or assistance.

24 SECTION 2. *Initiation of Proceedings.*

25 (a) When, on the basis of its own studies or on the basis of the data submitted to it pursuant to  
26 Section 1(e), the commission determines that formation proceedings or boundary adjustments are  
27 necessary to carry out the purposes of this act, the commission shall order each unit of local govern-  
28 ment whose boundaries or jurisdictions are affected to show cause, within [ ] months of notification,  
29 why it should not be required to submit a plan for formation or boundary adjustment. The commission  
30 shall conduct a hearing at which representatives of affected local governments and other interested  
31 persons may be heard. If, at the conclusion of a hearing, the commission finds that a formation pro-  
32 ceeding or boundary adjustment is necessary, it shall order the appropriate unit or units of local  
33 government to submit, within [ ] months, a plan for formation or boundary adjustments to carry out  
34 the purposes of this act. The plan shall include procedures for putting into effect the proposed forma-  
35 tion or boundary adjustment. Upon receipt of a plan, the commission shall consider it in the same

1 manner as a petition submitted in accordance with subsection (b) of this section, except that a pre-  
2 liminary ruling under subsection (c) is not required.

3 (b) (1) The commission shall initiate proceedings for boundary adjustments upon receipt of a  
4 petition from the governing body of an affected municipality or special district; the governing body  
5 of the county wherein the territory, or a part of it, is located; [ ] percent of the registered voters in  
6 the territory; or the owners, resident or non-resident, of [ ] percent of the assessed value of the real  
7 property in the territory.

8 (2) A petition or plan must contain a statement of the formation or boundary adjustment  
9 proposed on an accurate map of every county, municipality, special district, and territory involved; a  
10 statement of the reasons for the proposed formation or boundary adjustment; a description of the  
11 character, land use, and facilities of either the territory or, in the case of dissolution, the municipalities  
12 or special districts involved, and procedures for putting into effect the proposed formation or bound-  
13 ary adjustment.

14 (3) The commission may combine petitions or plans which concern the same territory, or parts  
15 of it, or the same municipalities or special districts, if such a combination will not cause an unreason-  
16 able delay in the processing of the petitions or plans and will not substantially prejudice consideration  
17 of any proposals made therein.

18 (c) Within a reasonable time after it receives a petition, the commission shall meet and make a  
19 preliminary ruling on whether to dismiss the petition. The commission may rule to dismiss the petition  
20 only if it finds that:

21 (1) the petition does not comply with the provisions of this section or the standards or pro-  
22 cedures of the commission;

23 (2) the request for formation proceeding or boundary adjustment is frivolous; or

24 (3) substantially the same proposal has been disapproved by the commission within [two years]  
25 prior to the date the petition is received by the commission and the conditions in the affected territory  
26 have not substantially changed.

27 (d) If the petition is not dismissed, the commission:

28 (1) shall hold hearings as required in Section 3, approve or disapprove petitions for boundary  
29 adjustment, and make financial allocations pursuant to law;

30 (2) may amend a petition, prior to the day of approval, by altering the shape and size of the  
31 territory;

32 (3) after a hearing is completed pursuant to Section 3 and after due deliberation, shall decide  
33 whether to approve the proposed formation or boundary adjustment and, if the formation or boundary  
34 adjustment is approved, what financial allocations, if any, should be made and the date on which the  
35 formation or boundary adjustment and financial allocations shall take effect. That date shall be not

1 less than [90] days nor more than [one year] from the date on which the commission approves the for-  
2 mation or boundary adjustment;

3 (4) shall notify the [*appropriate state official*] and the [*appropriate local officials*] of the  
4 counties, municipalities, and special districts affected by its ruling. The ruling shall report the vote of  
5 each member of the local board, an explanation of its decision, and, if a petition or plan is approved,  
6 an accurate map of every county, municipality, special district, and territory involved, the financial  
7 allocations made, the method for adoption, and the effective date of the formation or boundary adjust-  
8 ment.

9 (e) *Adoption*. The decision of the local board shall be final in all cases [except consolidations,  
10 mergers, or incorporations where a referendum is required by law].

11 SECTION 3. *Hearings*.

12 (a) The local commission shall conduct a hearing within [90] days from the date on which a  
13 petition is received by the commission, but, if two or more petitions are combined under Section 2  
14 (b) (3), the [90 day] period begins on the day of the receipt of the last of the petitions. At least [30  
15 days] before the commencement of the hearing, the commission shall give notice of the time and place  
16 to each governmental entity involved; to each planning body that has jurisdiction in the territory  
17 involved; and to the public.

18 (b) At the hearing, the commission shall receive all information, written or oral, that any person  
19 wishes to present and that is relevant to the resolution of the questions before the commission; and  
20 shall seek all information, written or oral, that the commission believes will be useful to the resolution  
21 of the questions before it.

22 (c) If the commission amends a petition, it shall give notice of the amendment to each of the  
23 parties. If the notice is given less than [seven days] before the commencement of the hearing, or during  
24 the hearing, or after the termination of the hearing, and if any person informs the commission, within  
25 [seven days] from the date notice is given, of his or her desire to present information relevant to the  
26 amendment, the commission shall continue the hearing for a reasonable time or reopen it within a  
27 reasonable time to receive that information.

28 SECTION 4. *Standards for Boundary Adjustments*. The commission shall approve a proposed  
29 formation or boundary adjustment only if the proposal is for the type of adjustment that is more  
30 beneficial to the community than are other available alternatives and if the proposal is found to meet  
31 all applicable standards of law. The commission shall make a specific finding of financial allocations  
32 in any case where such allocations are required.

33 SECTION 5. *County and Substate District Boundaries*.

34 (a) County boundaries shall not be a barrier to any type of formation or boundary adjustment

1 authorized by this act.<sup>1</sup> However, in cases where areas in more than one county are involved, the  
2 commissions of all counties involved shall jointly consider such application in which votes shall be  
3 taken separately for each commission participating.

4 (b) Any type of formation or boundary adjustment authorized by this act shall not be in more  
5 than one substate district established pursuant to [*substate districting act*].

6 SECTION 6. *Judicial Review.* All final decisions of a local board and any dismissal of petitions  
7 shall be reviewable by *certiorari* pursuant to the provisions of [*appropriate citation — state adminis-*  
8 *trative procedures act*]. No appeal may be brought after the effective date of the formation or bound-  
9 dary adjustment.]

10

### Title III

11

## LOCAL GOVERNMENT INCORPORATION AND DISSOLUTION

12

### SECTION 1. *Incorporation; Procedures.*

13

14 (a) A charter for incorporation of a municipality or special district shall be adopted only in con-  
15 formance with the standards herein provided.

16 (b) A charter for incorporation of a municipality may be adopted by the methods provided in [*cite*  
17 *existing municipal incorporation statute*].

18 (c) A charter for incorporation of a special district may be adopted by the methods provided in  
19 [*cite existing special district enabling legislation*].

20 [(d) (1) Initiation of procedures for an incorporation may be done either by adoption of a resolu-  
21 tion by the governing body or bodies of an area to be affected — in the case of a proposed munic-  
22 ipality, the county governing body or bodies — or by a petition of [10] percent of the qualified voters  
23 in the area to be affected.

24 (2) If a petition has been filed with the [*clerk*] of the governing bodies concerned, the gov-  
25 erning bodies shall immediately undertake a study of feasibility of the formation proposal and shall,  
26 within six months, either adopt an ordinance under [subsections (b) or (c)] of this section or shall re-  
27 ject the petition specifically stating the facts upon which the rejection is based.

28 (3) The purpose of this subsection is to provide broad citizen involvement in both initiating  
29 and developing their local government; therefore, establishment of appropriate citizen advisory com-  
30 mittees as well as other mechanisms of citizen involvement by the governing bodies of the units affect-  
31 ed is specifically authorized and encouraged.]<sup>2</sup>

32 (e) (1) If a referendum is required, the date of election shall be the next regularly scheduled elec-  
33 tion, or a special election held prior to such election if approved by a majority of the members of the

<sup>1</sup>Check your constitution for provisions affecting this sentence.

<sup>2</sup>If the boundary commission in either *Title II* is used, this subsection should be deleted.



1 governing body of each governmental unit affected, but no sooner than [30] days after approval of  
2 the incorporation proposal under subsection (a).

3 (2) Notice of the election shall be published at least once a week for the [four] successive  
4 weeks immediately prior to the election in a newspaper of general circulation in the area to be affected.  
5 Such notice shall give the time and places for the election and a description of the area to be included  
6 in the municipality with such description to be in metes and bounds and to include a map to clearly  
7 show the area to be covered by the municipality.

8 SECTION 2. *Dissolution Procedures; Active Units.*

9 (a) The charter of any existing municipality or special district may be revoked and the municipal  
10 or special district corporation dissolved by either:

11 (1) an ordinance of the governing body of the municipality approved by a vote of the quali-  
12 fied voters; or

13 (2) a petition of [10] percent of the qualified voters in the municipality approved by a vote of  
14 the qualified voters; or

15 (3) an ordinance of the governing body of a municipality or county in which a special dis-  
16 trict is solely located and which is empowered to perform the same functions, or if located in more  
17 than one, a joint agreement between all county and municipal governing bodies with jurisdiction over  
18 the area involved. The ordinance or joint agreement must provide for the assumption of the services  
19 provided by the special district and its assets, liabilities, and obligations;<sup>1</sup> or

20 (4) a resolution of a special district governing body which provides for the financial alloca-  
21 tions required; or

22 [(5) a special act of the [legislature]].<sup>2</sup>

23 (b) If a vote of the qualified voters is required, the governing body of the municipality or special  
24 district or, if the municipal or special district governing body does not act within [30] days, the  
25 governing body of the county or counties in which the municipality or special district is located shall  
26 set the date of the election which shall be the next regularly scheduled election, or a special election  
27 held prior to such election if approved by a majority of the members of the governing body of each  
28 governmental unit affected, but no sooner than [30] days after passage of the ordinance. Notice of  
29 the election shall be published at least once a week for the [four] successive weeks prior to the elec-  
30 tion in a newspaper of general circulation in the municipality or special district.

31 SECTION 3. *Dissolution Procedures; Inactive Units.*

32 (a) The [secretary of state], by proclamation, shall declare inactive any municipality or special  
33 district in this state upon a report filed by [the department] [boundary commission] which shall show

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<sup>1</sup>See suggested legislation on *Local Government Consolidation*.

<sup>2</sup>In some states this procedure may not be constitutionally available.

1 that such municipality or special district is no longer active based upon a finding:

2 (1) that the municipality has not conducted an election for membership in its legislative  
3 body within the [four] years immediately preceding or as otherwise provided by law; or

4 (2) that the special district has not had appointed or elected a governing body within the  
5 [four] years immediately preceding or as otherwise provided by law or has not operated within the  
6 [two] years immediately preceding; and

7 (3) that a notice of proposed proclamation has been published once a week for [four] weeks  
8 in a newspaper of general circulation within the county wherein territory of the municipality or  
9 special district is located stating the name of said municipality or special district, the law under which  
10 it was organized and operating, a description of the territory included in said municipality or special  
11 district and that any objections to the proposed proclamation or any debts of said municipality or spe-  
12 cial district shall be filed not later than [60] days following the date of last publication with the de-  
13 partment; and

14 (4) that [60] days have elapsed from the last publication date of the notice of proposed proc-  
15 lamation and no sustained objections have been filed.

16 (b) The [state agency] charged with collecting financial information from municipalities and  
17 special districts shall report to the [secretary of state] and the department any municipality or special  
18 district which has failed to file a report within the prescribed time set by law.

19 (c) If any municipality or special district declared inactive pursuant to this section shall owe any  
20 debt at the time of proclamation, any property or assets of such unit or which belonged thereto at the  
21 time of such proclamation shall be subject to legal process for payment of such debt. After the pay-  
22 ment of all the debts of said inactive municipal or special district corporation, any remaining assets shall  
23 escheat and revert to the county wherein located. If, however, it shall be necessary, in order to pay  
24 any such debt, to levy any tax or taxes on the property in the territory or limits of the inactive  
25 municipality or special districts, the same may be assessed and levied by order of the [county govern-  
26 ing body] of the county wherein the same is situated and shall be assessed by the county assessor  
27 of taxes and be collected by the county tax collector. The proceedings in the assessment, collection,  
28 receipt, and disbursements fo such taxes shall be the same as proceedings concerning county taxes as  
29 far as applicable.

30 (d) Any law authorizing or providing the incorporation or relating only to the powers or duties  
31 of any municipality or special district proclaimed inactive hereunder shall [become ineffective as to  
32 such municipality or special district ] and [be reported by the governor to the [presiding officers of  
33 both houses of the legislature]]. [The proclamation of inactive status shall be sufficient notice as re-  
34 quired by law to authorize the [legislature] to repeal any special laws so reported].<sup>1</sup>

<sup>1</sup>Some states may have different provisions constitutionally required to fully dissolve an inactive unit.

1 SECTION 4. *Standards for Incorporation and Dissolution.*

2 (a) The incorporation of a new municipality must meet the following conditions in the area  
3 proposed for incorporation:

4 (1) be compact and contiguous and amenable to separate municipal government;

5 (2) be the best alternative available for delivering general governmental services;

6 (3) have a total population as determined in the latest official state census, special census,  
7 or estimate of population, in the area proposed to be incorporated of at least [1,500] persons in coun-  
8 ties with a population of less than [50,000] and of at least [5,000] population in counties with a  
9 population of more than [50,000];

10 (4) have an average population density of at least [1.5] persons per acre or have extraordinary  
11 conditions requiring the establishment of a municipal corporation with less existing density;

12 (5) have a minimum distance of any part of the area proposed for incorporation from the  
13 boundaries of an existing municipality within the county of at least [two] miles or have an extra-  
14 ordinary natural boundary which requires separate municipal government; and

15 (6) have a proposed municipal charter which:

16 (i) prescribes the form of government and clearly defines the responsibility for legislative  
17 and executive functions; and

18 (ii) does not prohibit the legislative body of the municipality from exercising its powers  
19 to levy any tax authorized by the constitution or general law; and

20 [(7) be consistent with any metropolitan [or substate district] plan for future boundary  
21 adjustment which may have been established by a boundary commission under *Title II*].<sup>1</sup>

22 (b) The creation of a special district must be the best alternative available for delivering the  
23 service and be amenable to separate special district government if such district is to have a governing  
24 body other than a county or municipal governing body [, and must be consistent with any metropoli-  
25 tan [or substate district] plan for future boundary adjustment which may have been established by a  
26 boundary commission under *Title II*].<sup>1</sup>

27 (c) The dissolution of a municipality or special district must meet the following conditions:

28 (1) the county or other municipalities are demonstrably able to provide necessary services to  
29 the municipal or special district area proposed for dissolution;

30 (2) an equitable arrangement is made in relation to bonded indebtedness and vested rights of  
31 employees of the municipality or special district to be dissolved; and

32 [(3) the proposed dissolution is consistent with any metropolitan [or substate district] plan  
33 for future boundary adjustment which may have been established by a boundary commission under  
34 *Title II*].<sup>1</sup>

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<sup>1</sup>Delete this proviso if either *Title II* is not enacted.

1 SECTION 5. *Financial Allocations.*

2 (a) The incorporation of a new municipality in previously unincorporated lands shall provide for  
3 assumption, if any, of the existing governmental indebtedness or property specially benefiting that  
4 area, the fair value of such, and the manner of transfer, if any, and financing.

5 (b) In the dissolution of an existing special district by a county or municipality, or jointly, the  
6 county or municipality shall assume all indebtedness of, and receive title to all property owned by,  
7 the pre-existing special districts. The proposed dissolution ordinance or proposal shall provide for  
8 the determination of the proper allocation of the indebtedness so assumed and the manner in which  
9 said debt shall be retired.

10 (c) The dissolution of a municipal or special district government shall transfer the title to all  
11 property owned by the pre-existing municipal or special district government to the county which shall  
12 also assume all indebtedness of the pre-existing municipality or special district, unless otherwise  
13 provided in the dissolution ordinance or plan. The county is specifically authorized to levy and  
14 collect *ad valorem* taxes in the same manner as other county taxes from the area of the pre-existing  
15 municipality or special district for repayment of any assumed indebtedness through a special purpose  
16 taxing district created for such purposes.

17 SECTION 6. *Judicial Review.* All actions taken, including any dismissal of petitions, pursuant to  
18 this part shall be reviewable by *certiorari* pursuant to the provisions of [*the state administrative*  
19 *procedures act*]. No appeal may be brought after the effective date of an incorporation or dissolution.

**Title IV**

**MUNICIPAL ANNEXATION**

20 SECTION 1. *Authority to Annex.* The governing body of any municipality [having a population  
21 of [ ] or more persons according to the last Federal decennial census] may extend the corporate  
22 limits of such municipality under the procedure set forth in this act.<sup>1</sup>

23 SECTION 2. *Prerequisites to Annexation: Ability to Serve.* A municipality exercising authority  
24 under this act shall make plans for the extension of services to the area proposed to be annexed and  
25 shall, prior to the public hearing provided for in Section 4 of this title, prepare a report setting forth  
26 such plans to provide services to such area. The report shall include:

27 (a) a map or maps of the municipality and adjacent territory to show the following information:

28 (1) the present and proposed boundaries of the municipality;

29 (2) the present streets, major trunk water mains, sewer interceptors and outfalls and other

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<sup>1</sup>This title provides the authority for a municipality to annex by ordinance with an appeal to the courts. The standards provided in this act are developed to provide appropriate protection against unreasonable use of the power.

1 utility lines, and the proposed extension of such streets and utility lines as required in subsection (c)  
2 of this section; and

3 (3) the general land use pattern in the areas to be annexed;

4 (b) a statement showing that the area to be annexed meets the requirements of Section 3 of  
5 this title; and

6 (c) a statement setting forth the plans of the municipality for extending to the area to be annexed  
7 each major municipal service performed within the municipality at the time of annexation. Specifical-  
8 ly, such plans shall:

9 (1) provide for extending police protection, fire protection, garbage collection, and street  
10 maintenance services to the area to be annexed on the date of annexation, on substantially the same  
11 basis and in the same manner as such services are provided within the rest of the municipality prior  
12 to annexation;

13 (2) provide for extension of streets and of major trunk water mains, sewer outfall lines, and  
14 other utility services into the area to be annexed, so that when such streets and utility lines are con-  
15 structed, property owners in the area to be annexed will be able to secure such services, according to  
16 the policies in effect in such municipality for extending such services to individual lots or sub-  
17 divisions;

18 (3) if extension of streets and water, sewer, or other utility lines into the area to be annexed  
19 is necessary, set forth a proposed timetable for construction of such streets and utility lines as soon  
20 as possible following the effective date of annexation. In any event, the plans shall call for contracts  
21 to be let and construction to begin within [12] months following the effective date of annexation;

22 (4) set forth the method under which the municipality plans to finance extension of services  
23 into the area to be annexed.

24 SECTION 3. *Character of Area to be Annexed.*

25 (a) A municipal governing board may extend the municipal corporate limits to include any area:

26 (1) which meets the general standards of subsection (b) of this section; and

27 (2) every part of which meets the requirements of either subsection (c) or subsection (d) of  
28 this section.

29 (b) The total area to be annexed must meet the following standards.

30 (1) It must be adjacent or contiguous to the municipality's boundaries at the time the  
31 annexation proceeding is begun.

32 (2) At least one-eighth of the aggregate external boundaries of the area must coincide with  
33 the municipal boundary.

34 (3) No part of the area shall be included within the boundary of another incorporated  
35 municipality.

1           [(4) The annexation must be consistent with any metropolitan [or substate district] plan  
2 for future boundary adjustment which may have been established by a boundary commission under  
3 *Title II*].<sup>1</sup>

4           (c) Part or all of the area to be annexed must be developed for urban purposes. An area  
5 developed for urban purposes is defined as any area which meets any one of the following standards:

6           (1) has a total resident population equal to at least two persons for each acre of land included  
7 within its boundaries; or

8           (2) has a total resident population equal to at least one person for each acre of land included  
9 within its boundaries, and is subdivided into lots and tracts such that at least [ ] percent of the total  
10 acreage consists of lots and tracts [ ] acres or less in size and such that at least [ ] percent of the  
11 total number of lots and tracts are [ ] acre or less in size; or

12           (3) is so developed that at least [ ] percent of the total number of lots and tracts in the area  
13 at the time of annexation are used for residential, commercial, industrial, institutional, or govern-  
14 mental purposes, and is subdivided into lots and tracts such that at least [ ] percent of the total  
15 acreage, not counting the acreage used at the time of annexation for commercial, industrial, govern-  
16 mental, or institutional purposes, consists of lots and tracts [ ] acres or less in size.

17           (d) In addition to areas developed for urban purposes, a governing board may include in the area  
18 to be annexed any area which does not meet the requirements of subsection (c) of this section if  
19 such area either:

20           (1) lies between the municipal boundary and an area developed for urban purposes so that the  
21 area developed for urban purposes is either not adjacent to the municipal boundary or cannot be  
22 served by the municipality without extending services and/or utility lines through such sparsely  
23 developed area; or

24           (2) is adjacent, on at least [ ] percent of its external boundary, or any combination of the  
25 municipal boundary and the boundary of an area or areas developed for urban purposes as defined  
26 in subsection (c) of this section.

27           The purpose of this subsection is to permit municipal governing boards to extend corporate  
28 limits to include all nearby areas developed for urban purposes; but which constitute necessary land  
29 connections between the municipality and areas developed for urban purposes or between two or  
30 more areas developed for urban purposes.

31           (e) In fixing new municipal boundaries, a municipal governing board shall, whenever practical,  
32 use natural topographic features, such as ridge lines and streams and creeks as boundaries, and if a  
33 street is used as a boundary, include within the municipality land on both sides of the street and  
34 such outside boundary may not extend more than [ ] feet beyond the right-of-way of the street.

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<sup>1</sup>Delete this proviso if either *Title II* is not adopted.

1 SECTION 4. *Procedure of Annexation.*

2 (a) Any municipal governing board desiring to annex territory under the provisions of this act  
3 shall first pass a resolution stating the intent of the municipality to consider annexation. Such  
4 resolution shall describe the boundaries of the area under consideration and fix a date for a public  
5 hearing on the question of annexation, the date for such public hearing to be not less than [ ] days  
6 and not more than [ ] days following passage of the resolution.

7 (b) The notice of public hearing shall:

8 (1) fix the date, hour, and place of the public hearing;

9 (2) describe clearly the boundaries of the area under consideration; and

10 (3) state that the report required in Section 2 of this title will be available at the office of  
11 the municipal official at least [ ] days prior to the date of the public hearing.

12 Such notice will be given by publication in a newspaper having general circulation in the  
13 municipality [ ] a week for at least [ ] successive weeks prior to the date of the hearing. The period  
14 from the date of the first publication to the date of the last publication, both dates inclusive, shall be  
15 not less than [ ] days including Sundays, and the date of the last publication shall not be more than  
16 [ ] days preceding the date of the public hearing. If there be no such newspaper, the municipality  
17 shall post the notice in at least [ ] public places within the municipality and at least [ ] public  
18 places in the area to be annexed for [ ] days prior to the date of the public hearing.

19 (c) At least [ ] days before the date of the public hearing, the governing board shall approve  
20 the report provided for in Section 2 of this title, and shall make it available to the public at the office  
21 of the municipal official. In addition, the municipality may prepare a summary of the full report for  
22 public distribution.

23 (d) At the public hearing, a representative of the municipality shall first make an explanation of  
24 the report required in Section 2 of this title. Following such explanation, all persons resident or owning  
25 property in the territory described in the notice of public hearing, and all residents of the municipality,  
26 shall be given an opportunity to be heard.

27 (e) The municipal governing board shall take into consideration facts presented at the public  
28 hearing and shall have authority to amend the report required by Section 2 of this title, to make  
29 changes in the plans for serving the area proposed to be annexed so long as such changes meet the  
30 requirements of Section 2. At any regular or special meeting held no sooner than [ ] days following  
31 the public hearing and no later than [ ] days following such public hearing, the governing board  
32 shall have authority to adopt an ordinance extending the corporate limits of the municipality to  
33 include all, or such part, of the area described in the notice of public hearing, which meets the  
34 requirements of Section 3 of this title, and which the governing board has concluded should be  
35 annexed. The ordinance shall:

1 (1) contain specific findings showing that the area to be annexed meets the requirements of  
2 Section 3 of this title. The external boundaries of the area to be annexed shall be described by metes  
3 and bounds. In showing the application of Section 3, subsections (c) and (d) to the area, the govern-  
4 ing board may refer to boundaries set forth on a map of the area and incorporate same by reference  
5 as a part of the ordinance;

6 (2) contain a statement of the intent of the municipality to provide services to the area being  
7 annexed as set forth in the report by Section 2 of this title;

8 (3) contain a specific finding that on the effective date of annexation the municipality will  
9 have funds appropriated in sufficient amounts to finance construction of any streets or utility lines,  
10 found necessary in the report required by Section 2 to extend the basic utility system of the munici-  
11 pality into the area to be annexed, or that on the effective date of annexation the municipality will  
12 have authority to issue bonds in an amount sufficient to finance such construction. If authority to  
13 issue such bonds must be secured from the electorate of the municipality prior to the effective date  
14 of annexation, then the effective date of annexation shall be no earlier than the day following the  
15 statement of the successful result of the bond election; and

16 (4) fix the effective date of annexation. The effective date of annexation may be fixed for  
17 any date within 12 months from the date of passage of the ordinance except within the first 30 days.

18 (f) From and after the effective date of the annexation ordinance, the territory and its citizens and  
19 property shall be subject to all debts, laws, ordinances, and regulations in force in such municipality  
20 and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly  
21 annexed territory shall be subject to municipal taxes levied for the fiscal year following the effec-  
22 tive date of annexation. Annexed property which is a part of a sanitary district or other special service  
23 district which has installed water, sewer, or other utilities or improvements, paid for by the residents  
24 of said district, shall not be subject to that part of the municipal taxes levied for debt service for the  
25 first [ ] years after the effective date of annexation. If the effective date of annexation falls between  
26 [January 1 and June 30], the municipality shall, for purposes of levying taxes for the fiscal year  
27 beginning [July 1] following the date of annexation, obtain from the county a record of property in the  
28 area being annexed, which was listed for taxation as of said [January 1].

29 (g) If a municipality is considering the annexation of two or more areas which are all adjacent  
30 to the municipal boundary but are not adjacent to one another, it may undertake simultaneous  
31 proceedings under authority of this act for the annexation of such areas.

32 (h) If, not earlier than one year from the effective date of annexation, and not later than 15  
33 months from the effective date of annexation, any person owning property in the annexed territory  
34 shall believe that the municipality has not followed through on its service plans, adopted under the  
35 provisions of Section 2(c) and Section 6(e), such person may apply for a writ of mandamus under the



1 provisions of [cite appropriate statute]. Relief may be granted by the [court of appropriate  
2 jurisdiction]:

3 (1) if the municipality has not provided the services set forth in its plan submitted under the  
4 provisions of Section 2(c)(1) on substantially the same basis and in the same manner as such services  
5 were provided within the rest of the municipality prior to the effective date of annexation; and

6 (2) if at the same time the writ is sought services set forth in the plan submitted under the  
7 provisions of Section 2(c)(1) are still being provided on substantially the same basis and in the same  
8 manner as on the date of annexation of the municipality.

9 Relief may also be granted by the [court of appropriate jurisdiction]:

10 (i) if the plans submitted under the provisions of Section 2(c)(3) require the construction  
11 of streets or utility services; and

12 (ii) if contracts for such construction have not yet been let. [If a writ is issued, costs  
13 in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to  
14 the municipality.]

15 SECTION 5. *Appeal.*

16 (a) Within 30 days following the passage of an annexation ordinance under authority of this act,  
17 any person owning property in the annexed property who shall believe that he will suffer material  
18 injury, by reason of the failure of the municipal governing board to comply with the procedure set  
19 forth in this act or to meet the requirements set forth in Section 3 of this title as they apply to his  
20 property, may file a petition with [the court of appropriate jurisdiction of the county in which the  
21 municipality is located], seeking review of the action of the governing board.

22 (b) Such petition shall explicitly state what exceptions are taken to the action of the governing  
23 board and what relief the petitioner seeks. Within [ ] days after the petition is filed with the commis-  
24 sion [court], the person seeking review shall serve copies of the petition by registered mail, return  
25 receipt requested, upon the municipality.

26 (c) Within [ ] days after receipt of the copy of the petition for review, or within such additional  
27 time as the [court] may allow, the municipality shall transmit to the reviewing commission [court]:

28 (1) a transcript of the portions of the municipal journal or minute book in which the  
29 procedure for annexation has been set forth; and

30 (2) a copy of the report setting forth the plans for extending services to the annexed area as  
31 required in Section 2 of this title.

32 (d) If two or more petitions for review are submitted to the [court], the [court] may consolidate  
33 all such petitions for review at a single hearing, and the municipality shall be required to submit only  
34 one set of minutes and one report as required in subsection (c) of this section.

35 (e) At any time before or during the review proceeding, any petitioner or petitioners may apply

1 to the reviewing [court] for an order staying the operation of the annexation ordinance pending the  
2 outcome of the review. The [court] may grant or deny the stay in its discretion upon such terms as it  
3 deems proper, and it may permit annexation of any part of the area described in the ordinance  
4 concerning which no question for review has been raised.

5 (f) the [court] shall fix the date for review of annexation proceedings under this act, which  
6 review date shall preferably be within [ ] days following the last day for receiving petitions to the  
7 end that review shall be expeditious and without unnecessary delays. The review shall be conducted  
8 by the [court] without a jury. The [court] may hear oral arguments and receive written briefs, and may  
9 take evidence intended to show either:

- 10 (1) that the statutory procedure was not followed; or
- 11 (2) that the provisions of Section 2 were not met; or
- 12 (3) that the provisions of Section 3 have not been met.

13 (g) The [court] may affirm the action of the governing board without change, or it may:

14 (1) remand the ordinance to the municipal governing board for further proceedings if proce-  
15 dural irregularities are found to have materially prejudiced the substantive rights of any of the  
16 petitioners;

17 (2) remand the ordinance to the municipal governing board for amendment to the boundaries  
18 to conform to the provisions of Section 3 if it finds that the provisions of Section 3 have not been  
19 met; but the [court] cannot remand the ordinance to the municipal governing board with directions  
20 to add area to the municipality, which was not included in the notice of public hearing and not pro-  
21 vided for in plans for service; or

22 (3) remand the report to the municipal governing board for amendment of plans for provid-  
23 ing services to the end that the provisions of Section 2 of this title are satisfied.

24 If any municipality shall fail to take action in accordance with the [court's] instructions upon  
25 remand within [ ] months after receipt of such instructions, the annexation proceeding shall be  
26 deemed null and void.

27 (h) Any party of the review proceedings, including the municipality, may appeal to the  
28 [appellate or supreme court] from the final judgment of the [lower court] under rules of procedures  
29 applicable in other civil cases. The appealing party may apply to the [lower court] for a stay in its  
30 final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending  
31 the outcome of the appeal to the higher court; provided, that the [lower court] may, with the agree-  
32 ment of the municipality, permit annexation to be effective with respect to any part of the area con-  
33 cerning which no appeal is being made and which can be incorporated into the city without regard  
34 to any part of the area concerning which an appeal is being made.

35 (i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of

1 an appeal to the [court] on the effective date of the ordinance, then the ordinance shall be deemed  
2 amended to make the effective date with respect to such area the date of the final judgment of the  
3 [court] or the date the municipal governing board completes action to make the ordinance conform to  
4 the [court's] instructions in the event of remand.

5 SECTION 6. *Annexation Recorded.* Whenever the limits of a municipality are enlarged in  
6 accordance with the provisions of this act, it shall be the duty of the mayor [or other appropriate  
7 official] of the municipality to cause an accurate map of such annexed territory, together with a copy  
8 of the ordinance duly certified, to be recorded in the office of the [county official] of the county or  
9 counties in which such territory is situated and in the office of [the secretary of state or other  
10 appropriate state official].

11 SECTION 7. *Authorized Expenditures.* Municipalities initiating annexation under the provi-  
12 sions of this act are authorized to make expenditures for surveys required to describe the property  
13 under consideration, or for any other purpose necessary to plan for the study and/or annexation of  
14 unincorporated territory adjacent to the municipality. In addition, following final passage of the  
15 annexation ordinance, the annexing municipality shall have the authority to proceed with expendi-  
16 tures for construction of streets, utility lines, and other capital facilities, and for any other purpose  
17 calculated to bring services into the annexed area in a more effective and expeditious manner prior  
18 to the effective date of annexation.

19 SECTION 8. *Population and Land Estimates.*<sup>1</sup> In determining population and degree of land  
20 subdivision for purposes of meeting the requirements of Section 3 of this act, the municipality shall  
21 use methods calculated to provide reasonably accurate results. In determining whether the standards  
22 set forth in Section 3 have been met on appeal to the [court of appropriate jurisdiction] under  
23 Section 5 of this title, the reviewing [court] shall accept the estimates of the municipality:

24 (a) as to population, if the estimate is based on the number of dwelling units in the area,  
25 multiplied by the average family size in such area or in the [townships] of which such area is a part, as  
26 determined by the last preceding Federal decennial census; or if it is based on a new enumeration  
27 carried out under reasonable rules and regulations by the annexing municipality; but the [court]  
28 shall not accept such estimates if petitioners demonstrate that such estimates are in error in the  
29 amount of [ ] percent or more;

30 (b) as to total area, if the estimate is based on an actual survey, or on county tax maps or records,  
31 or on aerial photographs, or on some other reasonably reliable map used for official purposes by a  
32 governmental agency, unless the petitioners on appeal demonstrate that such estimates are in error  
33 in the amount of [ ] percent or more; and

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<sup>1</sup>Some states have appropriate state officials responsible for this type of work; however, others do not develop the details required by this title.

1 (c) as to degree of land subdivision, if the estimates are based on an actual survey, or on county  
2 tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless  
3 the petitioners on appeal show that such estimates are in error in the amount of [ ] percent  
4 or more.

**Title V**

**SEPARABILITY AND EFFECTIVE DATE**

SECTION 11. *Separability.* [Insert separability clause.]

SECTION 12. *Effective Date.* [Insert effective date.]

## 2.102 LOCAL GOVERNMENT CONSOLIDATION<sup>1</sup>

The need for an authoritative areawide decision making unit, and for less fragmentation of local government through existing small units, in most areas of a state is unquestionable. There are many options open to individual governments, but for some areas local government consolidation, or mergers, either city-city, city-county, or county-county, may be the most feasible solution, since all of these approaches build on existing governmental structures.

In approximately 170 urban areas, one county encompasses entirely or contains the vast majority of the population within a Standard Metropolitan Statistical Area. Yet, within that county, there are usually a number of municipal governments and special districts which often provide the same services that the county performs in unincorporated areas. This situation results in fragmentation of governmental authority, in unnecessary service duplication, and in municipal residents being taxed for services they do not receive. In some rural areas, on the other hand, there are sparsely settled counties which lack the fiscal resources necessary to do more than support traditional county services mandated by the state. Governmental consolidation would help alleviate these problems in certain instances and also would establish a government capable of providing areawide services.

City-county consolidation and city-city merger is especially appropriate in those areas where the new government would encompass the majority of an urban population. A consolidated city-county or merged city is likely to produce strengthened executive management and coordination, more effective use of tax money, and a higher level of public services. While no multicounty consolidations have occurred to date, 19 states authorize such restructuring. The newly merged county would have a broader tax base supporting only one government, thus freeing up funds to be used for service delivery. Even more than the city-county, the newly merged county would have the geographic scope to handle regional problems.

A number of states have recently concluded that local options and opportunities provide the best mechanism for initiating this type of change. Alaska, California, Florida, Kansas, Kentucky, New Mexico, and Tennessee have all recently considered variations of this issue. The suggested constitutional amendment is drafted from the revised Florida constitution.

The suggested legislation, authorizing consolidation, draws heavily upon Tennessee's *Metropolitan Government Act* (T.C. Ann. 6-3701) and Florida's *Formation of Local Government's Act* (Chapter 165, *Florida Statutes*). *Section 12-14* dealing with state assistance, are not based on a specific recommendation of the Advisory Commission on Intergovernmental Relations (ACIR) but are in harmony with other proposals of the Commission relating to state-local relationships.

*Section 1* states the findings and purpose. *Section 2* defines the terms used in the act.

*Section 3* authorizes consolidation and merger of cities and counties. *Section 4* provides for creation of a charter commission; *Section 5* prescribes its membership, funding, and rules of organization and procedure.

*Section 6* specifies those provisions the charter shall include.

*Section 7* deals with service districts, delineating general and local services districts and subordinate service areas.

*Section 8* provides for review of the charter commission report by any appropriate state or local boundary commission.

*Section 9* sets out the requirements for a referendum on the charter in the affected county and municipal areas.

*Section 10* provides for the assumption of functions from special districts and the supervision of special districts by the consolidated government. It also provides for merger of such special districts with each other and with any county or municipality in the state and further provides various powers for policy review.

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *The challenge of Local Governmental Reorganization*, Volume III of *Substate Regionalism and the Federal System*, Report A-44 (Washington, D.C., Government Printing Office, February, 1974).

*Section 11* authorizes the state to provide information and technical assistance and financial assistance to the charter commission. *Section 12* provides for transition grants from the state to a consolidated local government. *Section 13* authorizes state appropriations as required in *Sections 11 and 12*. *Section 14* specifies that no consolidated local government shall receive less, in any type of state financial aid, than would have been received by the governments had consolidation not taken place.

*Sections 15 and 16* provide for separability and effective date clauses, respectively.

### Suggested Constitutional Amendment

## [A CONSTITUTIONAL AMENDMENT TO PROVIDE FOR LOCAL GOVERNMENT CONSOLIDATION AND MERGER]

*(Be it enacted, etc.)*

- 1     *Section* [    ]. *Consolidation and Merger.* Consolidation or merger of counties, municipalities, or
- 2     any combination thereof, except as provided herein, shall be as provided by law [subject to a referen-
- 3     dum].

Suggested Legislation

[AN ACT TO PROVIDE FOR THE CONSOLIDATION OR MERGER OF COUNTIES, CITIES, AND SPECIAL DISTRICTS WITH EACH OTHER, AND TO PROVIDE FINANCIAL AND OTHER ASSISTANCE FOR SUCH MERGERS]<sup>1</sup>

(Be it enacted, etc.)

SECTION 1. *Findings and Purposes.*

(a) The [legislature] finds and declares that:

- 1 (1) certain counties of the state contain numerous overlapping governmental jurisdictions;
- 2 (2) the proliferation of local governments and special districts results in duplication of func-
- 3 tions and causes inefficiency;
- 4 (3) the citizens of the state should be free to restructure their local governments to best re-
- 5 flect their needs and desires; and
- 6 (4) the financial and technical assistance of the state is needed to facilitate efforts to merge
- 7 and consolidate county, city, and special district governments.

8 (b) It is the purpose of this act to encourage the restructuring of local government along more

9 efficient, economical, and effective lines by providing procedures for the consolidation and merger of

10 counties, cities, and special districts, with each other in any combination, and to provide state finan-

11 cial assistance to help absorb transitional expenses incurred by the merged or consolidated local gov-

12 ernment.

13 SECTION 2. *Definitions.*

14 (a) "City-county" means the political entity created by the consolidation of the political and cor-

15 porate functions of a county and one or more of the municipalities within the county [and shall have

16 the powers and duties previously held by the county and the municipalites].

17 (b) "Local government" means counties, municipalites, and special districts.

18 (c) "Municipality" means any incorporated city, town, or village.

19 (d) "Special district" means an independent political subdivision of the state, [except school dis-

20 tricts], created pursuant to general or special law for the purpose of performing one or a limited num-

21 ber of functions within prescribed boundaries.

22 (e) "Substate district" means the geographic area within each set of boundaries established pur-

23 suant to [insert state statutory or executive order citation delineating substate districts].

24 SECTION 3. *Authorization.*

25 (a) Any county in the state and one or more of the municipalities in that county may merge and

26 form a city-county. A city-county may exercise all powers and duties assigned by general law to both

<sup>1</sup>Suggested short title: *Local Government Consolidation Act.*

1 cities and counties in the territory merged, in addition to those set forth in the city-county charter.<sup>1</sup>

2 (b) Any two or more adjoining counties, including city-counties, within the same substate district  
3 may consolidate into a single county.

4 (c) Any two or more adjoining municipalities and contiguous unincorporated area within the  
5 same substate district may consolidate into a single city. The governing body of the county having  
6 jurisdiction over any unincorporated area to be included shall act pursuant to this act in the manner  
7 of a governing body of a municipality with respect to such area.

8 SECTION 4. *Initiation Procedures.*

9 [(a)] Establishment of a city-county or consolidation of two or more adjacent counties or munic-  
10 ipalities shall be initiated by the creation of a charter commission by:

11 (1) adoption of a resolution of the governing bodies [majority or extraordinary majority]  
12 of each county or each participating municipality to be involved; or

13 (2) submission of petitions signed by voters in an amount equal to [ ] percent of those voting  
14 in the preceding gubernatorial election in each county or in the unincorporated areas of the county  
15 and in each municipality to be involved. Such petitions shall be certified in the same manner as peti-  
16 tions nominating candidates for the governing body of the municipality or county.

17 [Optional Section.]

18 [(b) A charter commission may also be established by the [legislature].<sup>2</sup> The [legislature] shall name  
19 the county and municipal areas to be included in the commission's work and appropriate or assure  
20 funds adequate to totally support the work of the commission.]

21 SECTION 5. *Charter Commission.*

22 [Alternative 1.]

23 [(a) Upon passage of the resolutions or certification of the petitions provided for in Section 4,  
24 the governing bodies of each county or the county and each participating municipality shall appoint  
25 persons to serve on the charter commission. The number of persons appointed by each county and  
26 each municipality involved shall be proportionate to their share of total population of the area to be  
27 studied; provided that for purposes of determining the proportion of county members where munici-  
28 pal appointments also are to be made, only persons residing in the unincorporated area shall be  
29 included.]<sup>3</sup>

30 [OR]

31 [Alternative 2.]

32 [(a) Upon passage of the resolutions or certification of the petitions provided for in Section 4,

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<sup>1</sup>See Advisory Commission on Intergovernmental Relations suggested constitutional amendment, *Home Rule Powers of Local Government*.

<sup>2</sup>This could be done by a special act with the legislature assuring that sufficient funds will be provided.

<sup>3</sup> Instead of population, states could use other bases, such as expenditures or tax volume.



1 the governing body of each participating county or municipality shall appoint [one] resident as a mem-  
2 ber of the charter commission, except in the case of a city-county consolidation, the participating  
3 county governing body shall appoint members equal to the total number appointed by the participat-  
4 ing municipalities, and in a city-city consolidation which includes an unincorporated territory the  
5 county governing body shall appoint a number which approximates the ratio of the population in the  
6 unincorporated area to the total population of the area studied times the total number appointed by  
7 the participating municipalities.]<sup>1</sup>

8 (b) Members shall serve without pay, but may be reimbursed for travel and other reasonable ex-  
9 penses for meetings, hearings, and other official business.

10 (c) The governing bodies of the county and participating municipalities shall appropriate funds  
11 adequate to support the operation of the charter commission as well as the printing and publication  
12 of its final report.<sup>2</sup> Within the limitation of such appropriations and any privately contributed or  
13 state appropriated funds and services which shall be publicly reported, the commission may appoint  
14 and fix the rate of compensation for consultants and clerical and other personnel.

15 (d) The commission shall adopt [by majority vote] rules for its organization and procedures, pro-  
16 vided that all meetings shall be open to the public, and that at least one public hearing shall be held  
17 during charter preparation.

18 SECTION 6. *Charter.* The charter commission shall prepare and adopt [by majority vote] a pro-  
19 posed charter to be presented to the voters. The charter shall include provision for:

20 (a) disposition of existing bonded indebtedness and other obligations of the consolidating govern-  
21 ments;<sup>3</sup>

22 (b) selection, organization, authority, and responsibilities of the governing body and the chief  
23 executive officer;

24 (c) transfer of city and county personnel and continuation of salary, benefits, pension rights, and  
25 related matters;

26 (d) transfer or other disposition of property and other rights,<sup>4</sup> claims, assets, obligations, and  
27 franchises of the local governments to be consolidated;

28 (e) procedures for the subsequent inclusion of additional municipalities wishing to become part  
29 of the city-county;

30 (f) where appropriate, establishment of a general services district and local services district, the  
31 enlargement of local services districts as provided in Section 7, and the provision of financing for  
32 such districts;

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<sup>1</sup>Instead of population, states could use other bases, such as expenditure or tax volume.

<sup>2</sup>However, if the legislature enacts *Subsection 4 (b)*, this responsibility is to be exercised or shared by it.

<sup>3</sup>Provision should be made in those states where debt limitation may apply to authorize totaling of all ceilings or apportioning debt.

<sup>4</sup>Water or riparian rights, for example.

- 1 (g) creation of subordinate service and taxing areas as provided in Section 7;<sup>1</sup>  
2 (h) procedures for amendment of the charter, which may include provision for periodic establish-  
3 ment of a charter revision commission;  
4 (i) effective date of the charter; and  
5 (j) any other matter deemed necessary by the charter commission.

6 SECTION 7. *Service Districts.*

7 (a) The general services district shall include the whole area of the new government. Any service  
8 or function which is now or in the future assigned by state law to county government shall be per-  
9 formed in the general services district when the new government is a city-county or county-county  
10 consolidation. The charter may specify additional services to be performed in the general services  
11 district.

12 (b) The local services districts shall consist of;

13 (1) each city or county area in the consolidation; and

14 (2) any additional areas specified in the charter. Local services districts within a county may  
15 be non-contiguous. The charter shall specify the services in addition to those provided in the general  
16 services district, to be provided in the local services districts. These services shall be financed from  
17 revenues collected within the local services district or otherwise secured for such services as provided  
18 in the charter.

19 (c) Additional subordinate service areas may be established in accordance with [*insert appropriate*  
20 *state statutory citation*] [the charter] in order to furnish services on a less than governmentwide basis.  
21 Subordinate service areas may be used;

22 (1) to perform a limited number of services in territory outside the boundaries of a local  
23 services district, provided that service areas shall become part of the local services district upon as-  
24 suming responsibility for a specified number or type of services as determined by the charter;

25 (2) to perform other specified services anywhere in the governmental unit; and

26 (3) to perform any service of a special district included under Section 10 of this title.

27 Any service provided within a subordinate service area shall be financed from revenues collected with-  
28 in the area.

29 (d) The charter shall establish a procedure for adding new services to, discontinuing services in,  
30 and transferring services between the general services district, local services districts, and subordinate  
31 service areas.

32 [Optional Section.]

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<sup>1</sup>If there is a separate state statutory authorization for the creation of county subordinate service areas, this provision should be eliminated. See suggested state legislation entitled, *County Modernization*.

1 [SECTION 8. *Boundary Commission Review.*<sup>1</sup> At the same time the charter commission sub-  
2 mits its report to the affected local governing bodies, it shall also submit a copy of the report to the  
3 [state] [local] government boundary commission for consideration. The boundary commission shall re-  
4 view the proposed consolidation and return its comments and recommendations to the charter com-  
5 mission and to the city and county governing bodies within [45] days after receipt of the report. The  
6 charter commission may make any changes it deems desirable, prior to submission of its final report  
7 to the city and county governing bodies.]

8 SECTION 9. *Referendum.*

9 (a) Within [one year] after its creation, the charter commission shall submit to the participating lo-  
10 cal governments its report containing the proposed charter. The report, or a summary thereof, and the  
11 complete text of the charter shall be published at municipal and county expense in a newspaper of  
12 general circulation within the county or counties at least once during two different calendar weeks  
13 within the 30 day period immediately preceding the date of the referendum.

14 (b) Not less than 30 nor more than 120 days after the filing of the charter commission's re-  
15 port, the county governing body(s) shall hold a referendum on the question of consolidating the local  
16 governments included in the report [as approved by the boundary commission]. [If a majority of  
17 those voting in the participating municipalities, taken together, and a majority of those voting in the  
18 remainder of the county approved the consolidation,] [If approved by a majority of those voting  
19 on the question,] the charter shall take effect as provided in the charter.

20 (c) When a proposed charter has been approved by the voters, the [county clerk] shall immediately  
21 file a certified copy of the charter with the [secretary of state]. The approved charter shall then become  
22 the organic act for the consolidated government and shall be a public record open to public inspection  
23 and judicially noticeable by all courts.

24 (d) Authorized provisions of a charter duly adopted by the voters supercede any conflicting or-  
25 dinances or resolutions.

26 SECTION 10. *Assumption of Functions, Merger, and Supervision of Special Districts.*

27 (a) Any government created under this act may, after [60] days notice, at any time assume all  
28 functions, rights, duties, personnel, property, assets, and liabilities of any independent special district  
29 operating entirely within the geographical jurisdiction of the government, which special district shall  
30 thereupon be dissolved.

31 (b)(1) Any county or municipality within this state may at any time assume all functions, rights,  
32 duties, personnel, property, assets, and liabilities of any independent special district operating entirely  
33 within its geographic jurisdiction if it is authorized to exercise such powers itself, and after it has no-

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<sup>1</sup>This section should be omitted in states which do not have a boundary commission. See ACIR suggested legislation, *Local Govern-  
ment Creation, Dissolution, and Boundary Adjustments*, Title II.

1     tified the special districts of its intent to assume responsibility for any or all of the special districts  
2     functions. The government and the special district, upon notification, shall draw up an agreement  
3     providing for the transfer of the functions(s) and any necessary rights, duties, property, assets, and  
4     liabilities. In the event that the county or municipality and the special district shall be unable to con-  
5     clude an agreement within [60] days after the date of notification by the county or municipality,  
6     the [*insert appropriate state agency or boundary commission*] shall draw up the terms of the agree-  
7     ment, which shall be binding on the county or municipality and the special district.

8             (2) If the county or municipality assumes responsibility for all the functions, services, and  
9     duties of a special district, then the special district shall be dissolved, in accordance with the terms of  
10    the above agreement.

11            (c) Any county or municipality in this state may exercise policy control over any special district  
12    operating entirely within its boundaries by:

- 13            (1) reviewing and approving any plans, projects, or policies of the special district;
- 14            (2) serving as or appointing the district's governing body; and
- 15            (3) reviewing and approving the district's annual operating budget and capital expenditure  
16    program.

17            (d) When a consolidated city, city-county, or county has been created, no new special district  
18    operating wholly within its boundaries shall be formed unless the governing body of the consolidat-  
19    ed government demonstrates to the [*insert boundary commission or other appropriate state agency*]  
20    that it is unwilling or unable to perform the proposed service.

21            (e) The governing body of any special district may, by resolution, merge with any one or more  
22    other special districts which is authorized to perform the same services. The resolution authorizing  
23    such merger shall provide for the manner of transferring personnel without any loss of their rights,  
24    assets, and obligations, and the effective date of such merger and may provide, if passed jointly  
25    by all special districts involved and approved by the counties [and boundary commission(s)] which  
26    have jurisdiction over the territory involved, for the creation of a new special district which shall  
27    assume the functions, duties, and powers of the special districts so subsumed.

28            SECTION 11. *Aid to Study Commissions.*

29            (a) The [*insert office of community affairs or local government or other appropriate state agency*]  
30    may furnish, upon request, any charter commission or county government study commission created  
31    under this act with information and technical assistance relating to the work of the commission.

32            (b) The [*director of the office of community affairs or local government or other appropriate state*  
33    *agency*] shall reimburse any local government which has participated in a charter commission or a  
34    county government study commission for [ ] percent of the total funds provided by the jurisdiction to  
35    the commission.

1 SECTION 12. *Incentive Grants.* The [director of the office of community affairs or office of local  
2 government or other appropriate state agency] shall make transition grants to a city-county or con-  
3 solidated county or municipality. Transition grants shall be made annually for a period of [five] years,  
4 and shall equal [ ] percent of the combined revenues from real property taxes collected by the consoli-  
5 dated governments or, alternatively, [\$ ] for each resident of the consolidated government.

6 SECTION 13. *Appropriations.* State appropriations are authorized in the amounts required for  
7 this title.

8 SECTION 14. *Continuation of State Financial Assistance.* A city-county, or a consolidated  
9 county or municipality shall not receive less in state grants-in-aid, general support payments,  
10 shared revenues, or tax abatement programs than the total of the amount that would have been re-  
11 ceived by each government if consolidation had not taken place. In addition, for [five] years following  
12 consolidation, the amount of such state financial assistance for the consolidated units shall be com-  
13 puted in two ways:

- 14 (a) by determining the amount the consolidated government should receive, and
- 15 (b) by combining the amounts each previously independent government would have received.

16 The city-county or the consolidated county or municipality shall receive whichever amount is greater.

17 SECTION 15. *Separability.* [Insert separability clause.]

18 SECTION 16. *Effective Date.* [Insert effective date.]

## **2.2 Organization and Functions**

## 2.201 HOME RULE POWERS OF LOCAL GOVERNMENTS<sup>1</sup>

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. 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 themselves for solving local problems and for providing needed governmental services or to establish special districts for those purposes. Under such circumstances, the flow of responsibility to the state or the Federal government, or to special districts, 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 general purpose local governments (cities and counties), have adequate authority to meet their responsibilities.

Powers granted by state legislatures to local governments usually have been narrowly construed by the courts, preventing the localities from assuming their proper responsibilities. In an attempt to overcome this problem some states have conferred on local governments all powers not denied or limited by state law or constitution.

The following suggested constitutional amendment would grant all functional powers to municipalities and counties, or selected units, that are not otherwise specifically denied in the state constitution or by law. In given functional areas, the legislature could preempt an entire field of activity, or portions thereof, from local government or, 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 by any particular unit of local government. While freeing the bonds of local government, the state should, at the same time, exert greater leadership in resolving problems that are interlocal or that affect many localities in the state.

It should also be noted that while the amendment would permit municipalities, 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 local 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 local government should be granted the powers authorized by the amendment.

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *State Constitutional and Statutory Restrictions Upon the Structural, Functional, and Personnel Powers of Local Government*, Report A-12 (Washington, D.C.: U.S. Government Printing Office, October, 1962).

Suggested Constitutional Amendment

[A CONSTITUTIONAL AMENDMENT TO PROVIDE RESIDUAL POWERS  
TO SPECIFIED UNITS OF LOCAL GOVERNMENT]<sup>1</sup>

*(Be it enacted, etc.)*

- 1       (a) [Municipalities and counties] shall have all powers and functions not expressly denied by  
2 this constitution, state law [or charter].
- 3       (b) If a home rule county ordinance conflicts with an ordinance of a municipality, the [municipi-  
4 pal] [county] ordinance shall prevail within its jurisdiction.
- 5       (c) Home rule units may exercise and perform concurrently with the state any power or function  
6 of a home rule unit to the extent that the [*general assembly*] by law does not specifically limit the con-  
7 current exercise or specifically declare the state's exercise to be exclusive.
- 8       (d) Powers and functions of home rule units shall be construed liberally.

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<sup>1</sup>Based on the 1970 Illinois Constitution.



## 2.202 OPTIONAL FORMS OF MUNICIPAL GOVERNMENT<sup>1</sup>

The city charter provides a framework for the powers of local government and has a fundamental influence on the way in which they are exercised. It can serve to facilitate the provision of services and provide a government responsive to the needs of its residents or it can become an impediment, limiting the value and responsiveness of local government.

As the nation becomes increasingly urbanized, flexibility in framing charters is desirable to allow localities to meet changing conditions and demands placed upon them. In its study of local government organization and structure, *State Constitutional and Statutory Restrictions Upon the Structural, Functional, and Personnel Powers of Local Government*, the Advisory Commission on Intergovernmental Relations concluded that if local government is to be made more effective and responsive and if further unnecessary centralization at higher levels is to be avoided, local citizens, within general guidelines and subject to certain necessary limitations particularly in the case of metropolitan areas, must be enabled to select the form of government judged by them to be most appropriate for their particular circumstances. The Commission recommended that optional forms of municipal government be made available. The Commission concluded that a strong executive form of local government should be encouraged and that all classes of municipalities should be empowered to appoint all city officers other than council members and the mayor (if a mayor is provided for). These objectives are reflected in the model legislation. Determinations regarding selection, appointment, terms, and salaries of all officers and employees, except for the governing body, are left to the discretion of the municipality. In some states, of course, where provisions for a number of local offices are already imbedded in the constitution, amendments to remove them from the constitution would be necessary before the full effect of the provisions in the model would be achieved. In a few states, constitutional change may be required to authorize use of optional forms.<sup>2</sup>

The range of choice available in framing local charters currently varies considerably from state-to-state and among types of municipalities within a given state. Over two-thirds of the states have some provision for classification of municipalities by size and for the provision of varying choices of organizational structure depending on the classification. A few states grant virtually all charters by special act of the legislature. In another group of states, all municipalities within a given class must be organized on a similar basis, sometimes with a limited number of options regarding size of council, types of election, and the area from which councilmen will be elected.

In the so-called "optional charter" states, municipalities are given a wider range of choices of charters from among which to choose. The range of choices regarding council size, powers, method of election, and relationship to the executive is too great to address specifically, but a brief summary of the principal issues involved may be helpful.

First, the size, duties, and method of election of a council are often associated with the type of executive provided for in the charter. An appointed executive (e.g., city or county manager) is typically combined with a small (five to 11 member) non-partisan council elected at-large rather than from districts. A variance is for the council to stand for office from residential districts, but be voted on at-large. Such a council is usually charged with policy making only, and not with administrative duties. Council positions are usually considered part-time and compensation is either non-existent or modest.

An elected executive (e.g., mayor or county executive) is typically associated with a larger council elected on a partisan ballot from single member districts. A common variance is to elect some members of the council from single member districts, and some at-large. In the case of a "strong" elected executive, using the term to indicate the degree of administrative control enjoyed by the elected executive, the council is largely

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *State Constitutional and Statutory Restrictions Upon the Structural, Functional, and Personnel Powers of Local Governments*, Report A-12 (October, 1962); and *The Challenge of Local Governmental Reorganization*, Volume III of *Substate Regionalism and the Federal System*, Report A-44 (Washington, D.C.: U.S. Government Printing Office, February, 1974).

<sup>2</sup>In providing for optional forms, the thrust of "home rule" for local government becomes highlighted. See draft amendment for *Home Rule Powers of Local Governments*.

a policymaker. In the case of a “weak” elected executive, the council may be involved in administrative as well as legislative duties, often through a variety of boards and commissions. In larger jurisdictions, the council is apt to be considered full time, and be compensated accordingly. It should be stressed that the above generalizes a range of practices that vary almost endlessly.

Finally, over half of the states have constitutional or statutory provisions empowering localities to frame their own charters within broad procedural and substantive guidelines.

In the suggested state legislation presented here, *Section 1* states the purposes and findings of the act. *Section 2* provides definitions of terms used.

*Section 3* authorizes municipalities to adopt one of two optional forms of municipal government, the council-manager form or the council-elected executive form.

*Section 4* deals with the council-manager form of government and includes an enumeration of the manager’s powers and duties. *Section 5* deals with the council-elected executive form of government and includes an enumeration of the executive’s powers and responsibilities.

*Section 6* authorizes municipalities adopting an optional form of government to abolish or make appointive any municipal office established by statute.

*Section 7* requires the creation of a municipal government study commission should a municipality elect to establish an optional form of municipal government, and provides for its membership, funding, and responsibilities.

*Section 8* mandates the submission of the study commission’s report, containing its findings and proposed plan of municipal government, to the voters for a referendum on the question of adoption of the recommended plan.

*Sections 9 and 10* provide for abandonment of an optional form and state aid for study commissions, respectively, while *Sections 11 and 12* provide for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT TO PROVIDE OPTIONAL FORMS FOR THE GOVERNMENT OF MUNICIPALITIES AND PROCEDURES FOR THE ADOPTION OF SUCH FORMS]<sup>1</sup>

(Be it enacted, etc.)

1 SECTION 1. *Findings and Purposes.*

2 (a) The [legislature] finds and declares that:

3 (a) the present structure of municipal government does not meet the needs of every municipality  
4 in the state;

5 (2) municipal government can be made more responsive to the wishes of the people by allow-  
6 ing structural changes;

7 (3) greater economy, efficiency, and effectiveness in providing governmental services can be  
8 achieved by permitting the modernization of municipal government; and

9 (4) certain municipalities in metropolitan areas have problems which require the skills of a  
10 full-time administrator.

11 (b) It is the purpose of this act to authorize optional forms of municipal government so that the  
12 citizens of each municipality may select the form which best serves their needs and desires.

13 SECTION 2. *Definitions.* As used in this act, "administrative code" means the document ap-  
14 proved by the city council which sets forth the duties, rules, regulations, and systems of management  
15 of the various offices, departments, and agencies of the municipality.

16 SECTION 3. *Optional Forms of Municipal Government.*

17 (a) Any municipality may adopt one of the optional forms of government provided in this act.  
18 Until adoption, each municipality shall operate under the form of government in existence on the ef-  
19 fective date of this act. Any of the options provided below may be adopted by a municipality by fol-  
20 lowing the procedures in this act.

21 (b) Optional forms of municipal government shall be the council-manager form and the council-  
22 elected executive form.

23 (c) An area not heretofore incorporated may adopt any of the optional forms as provided in this  
24 act by requesting, upon petition of [ ] percent of the voters residing in the proposed area, the county  
25 governing body or the [legislature] to create a charter commission under Section 7. Upon creation of  
26 the commission, the county governing body or the [legislature], however the case may be, shall pro-

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<sup>1</sup>Suggested short title: *Optional Forms of Municipal Government Act.*

1 vide support and shall place the proposed charter to referendum as provided in Section 8.

2 SECTION 4. *Council-Manager Form.*<sup>1</sup>

3 (a) Each municipality adopting the council-manager form of government shall have a city coun-  
4 cil, or council, which shall be the governing body of the municipality. The city council shall exercise  
5 all powers provided by laws and constitutional provisions applicable to municipalities, except where  
6 provided otherwise by law.

7 (b) The council-manager form of government shall be that form in which the chief administrative  
8 officer is know as the city manager. The manager shall be appointed for an indefinite period by the  
9 city council solely on the basis of training, experience, and administrative qualifications, and need not  
10 be a resident of the city at the time of his appointment. The manager may be removed by the city  
11 council at any time, provided, however, that after he has served in his position for one year he may  
12 demand written charges and a public hearing on the charges before the city council prior to the effec-  
13 tive date of his removal. Pending the hearing and removal, the city council may suspend him from  
14 office. The city council may designate a properly qualified person to perform the duties of the man-  
15 ager during his absence or disability. The city council shall set the salary of the manager and may pro-  
16 vide for a termination allowance.

17 (c) The manager shall be appointed by the city council as soon as practicable after the adoption  
18 of the council-manager plan.

19 (d) The city manager shall be the administrative head of the municipality and shall have all the  
20 powers and perform all the duties of an administrative nature vested in, or assigned to, the city council  
21 by law or by agreement with any municipality or other subdivision of the state and such additional  
22 powers as may be granted by the council. The manager shall be responsible for the proper administra-  
23 tion of the affairs of the municipality placed in his charge. In addition, the city manager shall:

24 (1) provide for the execution of all ordinances and resolutions of the city council, execute  
25 all contracts entered into by the city council, and provide for the execution of all laws of the state  
26 subject to enforcement by him or by officers who are under his direction and supervision;

27 (2) prepare and submit to the city council for approval an administrative code incorporating  
28 the details of administrative procedure for the operation of the municipality and review such code  
29 and suggest revisions periodically or as requested by the council;

30 (3) furnish the city council with information concerning the operations of municipal depart-  
31 ments, boards, or commissions, necessary for the council to exercise its powers, or as requested by the  
32 council;

33 (4) prepare and submit to the city council an annual budget and a long range capital im-  
34 provement [and expenditure] program, along with a financial plan for raising revenue, covering a

<sup>1</sup>Certain states may prefer to use the term administrator in place of manager.

1 period of not less than the [five] ensuing years, and administer the provisions of the budget adopted  
2 by the city council;

3 (5) keep the city council fully advised as to the financial condition and needs of the municipi-  
4 pality and make such other reports from time-to-time as required by the council or as he deems  
5 necessary;

6 (6) attend all meetings of the city council, take part in discussions, but not vote, and recom-  
7 mend measures for adoption;

8 (7) appoint qualified administrative personnel to assist in the performance of his duties, and  
9 suspend and remove such personnel; and

10 (8) exercise, as determined in the optional plan, the authority of the city council to appoint,  
11 supervise, suspend, and remove municipal personnel whose appointments, suspension, supervision,  
12 or removal were a function of the city council under general law; make nominations and appoint-  
13 ments to additional offices as the city council may determine; and make appointments to advisory  
14 boards and committees in administrative areas as the city manager may create.

15 (e) A municipality adopting the council-manager form shall provide for a chairman of the city  
16 council [mayor] elected by the council from among its members. The chairman shall have all the powers  
17 and duties of a member of the council, and shall serve as city spokesman on policy matters and serve  
18 as ceremonial head.

19 (f) No member of the council shall directly or indirectly, by suggestion or otherwise, attempt to  
20 influence or coerce the city manager in the appointment or removal of any officer or employee, or in  
21 the purchase of supplies, or attempt to exact any promise relative to any appointment from a can-  
22 didate for the manager position. Any city council member who violates this subsection shall forfeit  
23 his office, in accordance with [*insert state statutory citation for removal of elected officials*]. Nothing in  
24 this subsection, however, shall be construed as prohibiting the council while in open session from  
25 fully and freely discussing with, or suggesting to, the manager anything pertaining to municipal af-  
26 fairs or the interests of the municipality.

27 SECTION 5. *Council-Elected Executive Form.*

28 (a) Each municipality adopting the council-elected executive form of government shall have a  
29 city council, or council, which shall be the legislative body of the municipality. The city council shall  
30 exercise all powers provided by laws and constitutional provisions applicable to municipalities, ex-  
31 cept where provided otherwise by law.

32 (b) The council-elected executive form of government shall be that form in which the chief exec-  
33 utive officer is known as the mayor. The first mayor shall be elected at the municipal general election  
34 following the adoption of the council-elected executive form. He shall hold office for a term of [four]  
35 years commencing [*insert appropriate date or time limit*]. Only an elector of the municipality shall be

1 eligible for election as mayor. He shall be nominated and elected by the qualified voters of the municipi-  
2 pality in the manner provided by law for the election of municipal officers. In case the office of  
3 mayor becomes vacant by reason of death, resignation, or removal, the city council shall appoint a  
4 successor for the unexpired term.

5 (c) The salary of the mayor shall be set by the city council, but may not be reduced during his  
6 term except as part of a general salary reduction.

7 (d) The mayor shall be the chief executive of the municipality and shall have all the powers and  
8 perform all the duties of an executive and administrative nature vested in or imposed upon the mu-  
9 nicipality or its council by law or by agreement with any municipality or other subdivision of govern-  
10 ment and such additional powers as are granted by the council. The mayor shall be responsible for the  
11 proper administration of the affairs of the municipality placed in his charge. His responsibilities  
12 shall include, but are not limited to, the following:

13 (1) provide for the execution of all ordinances and resolutions of the city council, execute  
14 all contracts entered into by the city council, and provide for the execution of all laws of the state sub-  
15 ject to enforcement by him or by officers who are under his direction and supervision;

16 (2) prepare and submit to the city council for approval an administrative code incorporating  
17 the details of administrative procedure for the operation of the municipality and review such code  
18 and suggest revisions periodically or at the request of the council;

19 (3) furnish the city council with information concerning the operations of municipal depart-  
20 ments, boards, or commissions, necessary for the council to exercise its powers or as requested by the  
21 council;

22 (4) prepare and submit to the city council an annual budget and a long range capital im-  
23 provement [and expenditure] program, along with a financial plan for raising revenue, covering a  
24 a period of not less than the [five] ensuing years, and administer the provisions of the budget when  
25 adopted by the city council;

26 (5) keep the city council fully advised as to the financial condition and needs of the municipi-  
27 pality and make such other reports from time-to-time as required by the council or as he deems  
28 necessary;

29 (6) attend, at his discretion, meetings of the city council, take part in the discussions, and  
30 recommend measures for adoption;

31 (7) appoint an administrative officer, qualified by education and experience, who shall be re-  
32 sponsible for the orderly and efficient operation and coordination of the various departments,  
33 boards, and commissions of the municipal government, appoint other qualified staff to assist the  
34 mayor in the performance of his duties, and suspend and remove such personnel for cause; and

35 (8) exercise, as determined in the optional plan, the authority of the city council to appoint,

1 supervise, suspend, and remove municipal personnel whose appointment, supervision, suspension,  
2 or removal was a function of the city council under general law; make such nominations and ap-  
3 pointments to additional offices as the city council may determine; and make appointments to such  
4 advisory boards and committees as the mayor, charter, law, or ordinance may create.

5 (e) The mayor may veto any ordinance or resolution adopted by the city council. A veto by the  
6 mayor may apply to all items or to any specific items of an ordinance or resolution appropriating  
7 money. Certification of a veto must be made by the mayor within ten days of the passage of the ordin-  
8 ance or resolution by the city council. The city council may override the veto by two-thirds vote of all  
9 its members. An ordinance or resolution shall become effective upon approval by the mayor, the ex-  
10 piration of ten days after adoption without approval or veto, or the overriding of a veto.

11 (f) The mayor may create, abolish, or combine any municipal department or agency or transfer a  
12 function from one department or agency to another, provided that he shall first submit plans for such  
13 reorganization to the city council. If not disapproved within [60] days, the plans shall become effective.

14 SECTION 6. *Elective Officers Made Optional.*<sup>1</sup> No state law shall be construed as preventing  
15 any municipality from adopting an optional form of government from abolishing or making appoin-  
16 tive any municipal office established by statute, except an elected chief executive or member of the  
17 [city council].

18 SECTION 7. *Municipal Government Study Commission.*

19 (a) Any municipality wishing to establish an optional form of government shall create a muni-  
20 cipal government study commission. The commission shall be formed by a resolution of the city  
21 council or by a petition signed by at least [ ] percent of the number of voters within the municipal-  
22 ity casting ballots at the immediately preceding gubernatorial election. The petition shall be filed with  
23 the [city clerk], who shall certify it in the same manner as petitions nominating candidates for the city  
24 council.

25 (b) A municipal government study commission may also be formed by [joint] resolution of the  
26 [legislature], provided that the [legislature] appropriates funds adequate to support the work of the  
27 commission.

28 (c) Members of the commission shall be appointed within 30 days by the city council and shall  
29 represent a broad cross section of the citizens of the municipality.<sup>2</sup> The council shall fill any vacancies  
30 in the commission membership. Members shall serve without pay, but shall be reimbursed for travel  
31 and other reasonable expenses for meetings, hearings, and other official business.

32 (d) The city council shall appropriate funds adequate to support the operation of the commis-

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<sup>1</sup>See suggested constitutional amendment, *County Officers Placed on a Statutory Basis*.

<sup>2</sup>In municipalities having the council-mayor form, the mayor should make nominations to the city council for appointment to the commission.

1 sion as well as the printing and publication of its report. Within the limitation of such appropria-  
2 tions and any privately contributed funds and services, the commission may appoint and fix the rate  
3 of compensation for consultants and clerical and other personnel.

4 (e) The commission shall adopt rules for its organization and procedure, provided that all meet-  
5 ings shall be open to the public and that at least one public hearing shall be held prior to the com-  
6 mission's final report.

7 (f) The commission shall study the existing structure of municipal government and procedures  
8 for the delivery of local governmental services within the municipality, and compare them with the  
9 other forms authorized by this act. If it determines that establishment of one of the forms would  
10 make the administration of municipal government more efficient and effective or more responsive  
11 and accountable to the people, it shall draw up a detailed plan of municipal government embodying  
12 that form. The plan shall establish procedures for the election or appointment of new officers; provide  
13 for any necessary transfer of powers, records, documents, properties, assets, funds, and liabilities, re-  
14 sulting from the changes in municipal structure; set procedures for the amendment of the plan; and,  
15 where necessary, provide the continuity of existing offices or their change from elective to appointive  
16 status, and the making of interim and temporary appointments.

17 SECTION 8. *Referendum.*

18 (a) Within [one] year after its initial meeting, the commission shall submit to the city council a re-  
19 port containing its findings and the plan of municipal government, if any, to be presented to the vot-  
20 ers. The commission shall be discharged [upon the filing of its final report] [on the day after its final  
21 report is voted on pursuant to a referendum under this section].

22 (b) A referendum on the question of whether to adopt the plan of municipal government shall  
23 be held not less than 30 days nor more than 90 days after the plan is submitted to the city council.  
24 The complete text of the proposed optional plan and final report of the commission, or summary  
25 thereof, shall be published at municipal expense in a newspaper of general circulation within the  
26 municipality at least once during two different calendar weeks, within the 30 day period immediately  
27 preceding the date of the referendum. If a majority of those voting approve the plan, then the optional  
28 form of government shall be instituted in accordance with the terms of the plan.

29 (c) When a proposed optional plan has been approved by the voters, the [city clerk] shall im-  
30 mediately file a certified copy of the plan with the [secretary of state]. The approved plan shall then be-  
31 come the organic act for the government of the municipality and shall be a public record open to pub-  
32 lic inspection and judicially noticeable by all courts.

33 (d) Authorized provisions of an optional plan of municipal government duly adopted by the  
34 voters supersede any conflicting ordinances or resolutions.

35 SECTION 9. *Abandonment of an Optional Form.* Any municipality may abandon an optional



1 form by approving, pursuant to Section 7 and Section 8, an alternate form provided in this act or  
2 in [insert state statutory citation for any other forms of municipal government]. No form may be aban-  
3 doned until [six] years have elapsed after the date of the referendum at which the plan was adopted.

4 [Optional Section.]

5 SECTION 10. *State Assistance and Grants.*<sup>1</sup>

6 (a) The [insert office of community affairs or local government or other appropriate state agen-  
7 cy] may furnish, upon request, any municipal government study commission created under this act  
8 with information and technical assistance relating to the work of the commission.

9 (b) The [director of the office of community affairs or local government or other appropriate state  
10 agency] shall reimburse any local government, which has participated in a municipal government  
11 study commission, [ ] percent of the total funds provided by the jurisdiction to the commission.

12 (c) The [director of the office of community affairs or office of local government or other ap-  
13 propriate state agency] shall reimburse any municipality, which has held a referendum as required in  
14 Section 8, [ ] percent of the total funds spent by such municipality for holding the referendum and  
15 notice thereof.

16 (d) State appropriations are authorized in the amounts required for this section.

17 SECTION 11. *Separability.* [Insert separability clause.]

18 SECTION 12. *Effective Date.* [Insert effective date.]

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<sup>1</sup>ACIR has taken no specific position on such assistance, but this optional section is consistent with other recommendations of the Commission concerning state responsibility for local government modernization.

## 2.203 COUNTY MODERNIZATION<sup>1</sup>

The variation in social and economic conditions and local traditions across the nation argue against any suggestion of a single ideal structure of local government. In many states, counties are providing several basic services of general local government, such as fire and police protection and water and sewer facilities. Yet, counties are hampered in their service delivery efforts by a lack of statutory authorization for services and a modern governmental structure with administrative (executive) leadership.

In 1973, counties in 13 states (outside of New England) were still unable to make a change from the commission (or plural executive) form of government. While 31 states allow some variety, seven provide only one alternative structure and 13 require a county charter for any modification of governmental form.

The streamlining of county government is also impeded by the number of elective officers mandated by many state constitutions. "Constitutionally protected" officers — such as the sheriff, county clerk, treasurer, auditor, coroner, attorney, assessor, and county judicial officials — present the voter with an overly long ballot, *i.e.*, too many candidates for too many offices, to judge knowledgeably. With authority for formulating and implementing county policy and programs spread among a number of independently elected officers, it is difficult for the public to pinpoint responsibility for county action or inaction. In addition, many of these officials are virtually immune from direction by the county chief administrative officer.

Placing all county officers other than members of the governing body on a statutory rather than constitutional basis is a major way of streamlining county structure and enhancing operational flexibility. With proper state enabling action, each county would be able to ascertain officials who should be retained and the mode of selection that should be used for various positions, thus giving more substance to the home rule doctrine. Other county modernization efforts also would be enhanced by this action. For example, replacing a commission form with a council-elected executive or administrator structure would not greatly increase centralized and coordinated decision making, if a large number of independent elected officials with control over various departments were constitutionally exempted.

In previous years, the Advisory Commission on Intergovernmental Relations has recommended state constitutional and statutory action to permit cooperation among local jurisdictions. *Title III* of the suggested legislation provided here goes one step further by authorizing two or more adjacent counties to consolidate functionally similar county offices either elected or appointed. Consolidation of offices would be especially appropriate when complete merger of the counties is not politically or fiscally feasible.

One basic purpose of local government is to supply its citizens with the services they need to conduct their lives and businesses in peace, health, and safety. All too often, however, county government has not fulfilled this need. Many counties provide only a few mandated functions such as highways, welfare, and courts. Frequently these are available only to residents of unincorporated territory. But today's citizens, in urban and rural areas, are demanding more services from their counties.

While libraries, parks, recreation, fire protection, and solid waste disposal are occupying a larger role in some county budgets, a majority are still not involved significantly in these and other municipal type services. This situation is due partly to the lack of statutory authority to perform urban and regional functions, and partly to reluctance on the part of some counties to take on additional responsibilities. State authorization of county performance of urban functions would remove one major obstacle, and would place the decision squarely on the counties' shoulders.

In order to minimize the need for special districts, counties should be authorized to create subordinate service areas in order to provide and finance one or more governmental services with 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 ser-

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *The Challenge of Local Governmental Reorganization*, Volume III of *Substate Regionalism and the Federal System*, Report A-44 (Washington, D.C.: U.S. Government Printing Office, February, 1974).

vice. 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. In some states, there may be constitutional barriers to financing subordinate service areas which would have to be removed before this device could be used.

In order to fulfill ACIR recommendations concerning the modernization of county government, two suggested constitutional amendments and an omnibus *County Modernization Act* are presented here.

## 2.203.1 COUNTY OFFICERS PLACED ON STATUTORY BASIS

This model constitutional amendment is intended to replace that section of the state constitution which lists elective county officers, and is based on a recommendation calling upon state legislatures to place county officers on a statutory rather than a constitutional basis in *Substate Regionalism and the Federal System*, Volume III.

### Suggested Constitutional Amendment

#### [COUNTY OFFICERS PLACED ON A STATUTORY BASIS]

- 1 The governing body of each county shall be the county council<sup>1</sup> [and chief executive] elected by the
- 2 qualified voters of the county. The [*legislature*] may establish additional county offices, provide a
- 3 method of selection for such officers, and authorize counties to consolidate or abolish offices.

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<sup>1</sup>Different terms for the county governing body may be used in various states, such as "board of chosen freeholders," "board of county legislators," "commissioners' court," "board of supervisors," and "board of county commissioners."

## 2.203.2 COUNTY MODERNIZATION ACT

The following suggested state legislation, coupled with the two suggested constitutional amendments herein — concerning appointment of county officers and differential property tax rates in subordinate service areas — and with the separately suggested constitutional amendment on *Home Rule Powers of Local Government*, provides a strong basis for implementation of a modernized county government. The four main titles of the act provide in specific areas the powers necessary for the citizens of a county, as well as the county officials, to establish a responsive and modernized county government.

*Title I* provides for the legislative findings and purposes of the act, and the definitions to be used throughout the act.

*Title II* provides for two alternatives to the traditional commission form of county government — the council-manager (or administrator) form, and the council-elected executive form. In the process of establishing one of these forms a county may also provide for the appointment rather than election of non-constitutional county officers. If the state also grants residual local government home rule powers to counties, the optional plan called for in the model legislation would enable the county to become a general purpose municipal type government.<sup>1</sup>

While it is desirable for most counties to be able to choose the structure best suited to their conditions and to have the option of retaining or returning to the commission form, counties which comprise the predominant portion of a metropolitan area are in a unique position to undertake regional and urban problem solving. Since the local governance system in such an area is likely to be highly fragmented, the county needs the strong leadership, accountability, and professionalism embodied in a full-time executive officer. The state interest in providing for such leadership outweighs the county interest in retaining the the commission form. Therefore, the model bill requires that each county, at least 60 percent urban, in a metropolitan area adopt either the council-manager or council-elected executive form.

Authorization of optional forms of county government was urged by the Advisory Commission on Intergovernmental Relations in *State Constitutional and Statutory Restrictions Upon the Structural, Functional, and Personnel Power of Local Government* and a mandatory executive officer was proposed in *Substate Regionalism and the Federal System*, Volume II. This title draws upon Minnesota's *Optional Forms of County Government Act* (Laws 1973, Chapter 542) and Utah's *Optional Plans for County Government* (1971, S.B. No. 92).

*Section 1* authorizes counties to adopt one of two optional forms of county government, the council-manager form or the council-elected executive form.

*Section 2* deals with the council-manager form of government and includes an enumeration of the manager's powers and duties. *Section 3* deals with the council-elected executive form of government and includes an enumeration of the executive's powers and responsibilities.

*Section 4* authorizes counties adopting an optional form of government to abolish or make appointive any county office established by statute, except an elected chief executive or members of the county governing (legislative) body.

*Section 5* requires the creation of a county government study commission if a county should elect to establish an optional form of county government, and provides for its membership, funding, and responsibilities.

*Section 6* mandates the submission of the study commission's report, containing its findings and proposed plan of county government, to the voters for a referendum on the question of adoption of the recommended plan.

*Section 7* requires all urban counties, as defined by the United States Office of Management and Budget, to adopt one of the two optional forms of government authorized by this title.

*Section 8* provides for the abandonment of an optional form of government, provided that an alternate

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<sup>1</sup>See the Advisory Commission on Intergovernmental Relations' suggested constitutional amendments, *County Officers Placed on a Statutory Basis and Home Rule Powers of Local Governments*.

form is approved in its place and that certain time constraints have been met.

*Section 9* provides for state grants, as well as assistance, for studies and referendums conducted pursuant to this title.

*Title III* provides for the consolidation of county offices. Montana and Nebraska were the only states to allow consolidation of elective county offices, between or among counties, as of 1973. This bill is based partially upon the Nebraska statute (R.S.N. 22-408). The bracketed language requiring a referendum on the consolidation may be included or deleted according to conditions in a particular state.

*Section 1* of this title authorizes two or more adjoining counties to consolidate functionally similar county offices.

*Section 2* sets out the means by which such consolidation may be initiated and what the agreement shall specify.

*Section 3* (optional) requires that the consolidation question be submitted to the voters.

*Section 4* provides that, where necessary, the consolidation agreement establish the procedures for appointment to the consolidated offices, and, in the case of elections required by such agreement, provides for election procedures.

*Section 5* mandates the same duties and responsibilities for an officer of a consolidated office as specified by law for the same office in a single county.

*Title IV* provides two alternative methods in which a state may authorize its counties to perform any specified urban service in its unincorporated areas upon passage of a county ordinance. The county may also provide urban services to incorporated municipalities under the following circumstances: (1) the particular urban service is being performed by a countywide special district; (2) a municipality requests the county to provide the service; or (3) the citizens vote to have the county supply the service. These conditions are designed to strike a balance between the interests of the municipalities, the need for a provider of areawide services, and the preferences of the citizenry. They give maximum flexibility to general local governmental units to devise solutions to service delivery problems.

*Alternative 1* provides two sections which authorize county provision of one or more urban services in the unincorporated areas of the county, in any municipality of the county, in both incorporated and unincorporated areas of the county where a special district is currently providing the service(s), or throughout the entire county (*Section 1*) and mandates the establishment of measurable standards which set forth the level, quality, scope, cost apportionment, and other factors related to the performance of the service (*Section 2*).

*Alternative 2*, which is adapted from Florida legislation granting "home rule" powers to non-charter counties,<sup>1</sup> provides greater detail in *Section 1* which authorizes counties to provide certain enumerated urban services and to work with the municipalities located in its area. *Section 2* authorizes any county acting under authority of this title to assume, own, possess, and control assets, rights, and liabilities of certain special districts when related to the services the counties assume pursuant to the authority to provide contained in *Section 1*.

*Title V* 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 1* 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.

*Sections 2 through 7* provide the mechanisms for creating such service areas, including initiation by petition of citizens and affected municipalities. A constitutional amendment may be necessary in some states to permit use of this device; suggested amendment language is included following this act.

*Title VI* provides for separability and effective date clauses.

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<sup>1</sup>Chapter 125, Florida Statutes.

## Suggested Legislation

# [AN ACT TO PROVIDE FOR THE MODERNIZED GOVERNMENT OF COUNTIES; PROVIDING OPTIONAL FORMS OF GOVERNMENT, CONSOLIDATION OF COUNTY OFFICERS, AUTHORITY TO PERFORM FULL GOVERNMENTAL SERVICES IN BOTH UNINCORPORATED AND MUNICIPAL AREAS, AND AUTHORITY TO ESTABLISH SUBORDINATE SERVICE AREAS]<sup>1</sup>

(Be it enacted, etc.)

### Title I

#### FINDINGS, PURPOSE, AND DEFINITIONS

1 SECTION 1. *Findings and Purposes.*

2 (a) The [legislature] finds and declares that:

3 (1) the present structure of county government does not meet the needs of every county in  
4 the state;

5 (2) county government can be made more responsive to the wishes of the people by allowing  
6 structural changes;

7 (3) greater economy, efficiency, and effectiveness in providing governmental services can be  
8 achieved by permitting the modernization of county government;

9 (4) many counties in both metropolitan and non-metropolitan areas have problems which re-  
10 quire the skills of a full-time administrator;

11 (5) present statutory restrictions on counties prevent certain vital services from being pro-  
12 vided to unincorporated areas; and

13 (6) the inability of counties to perform such services within municipal boundaries prevents  
14 a county and its constituent municipalities from reassigning functional responsibilities among them-  
15 selves and often results in municipal residents paying for services they do not receive.

16 (b) It is the purpose of this act to provide various means by which counties as units of general  
17 local government can effectively provide and finance various governmental services for their resi-  
18 dents. The act is designed to provide citizens, and county officials, full opportunity to select the form  
19 of government, and services therefrom, which best serves their needs and desires.

20 (c) It is the further purpose of this act to authorize county performance of necessary urban ser-  
21 vices in unincorporated areas, to establish conditions and procedures for county performance of ur-  
22 ban services within municipal boundaries, and to insure that municipal residents do not finance  
23 county services from which they do not benefit.

<sup>1</sup>Suggested short title, *County Modernization Act of 19[ ]*.

1 SECTION 2. *Definitions.* As used in this act:

2 (a) "Administrative code" means the document approved by the [county council]<sup>1</sup> which sets  
3 forth the duties, rules, regulations, and systems of management of the various offices, departments,  
4 and agencies of the county.

5 (b) "Municipality" means any incorporated city, town, or village.

6 (c) "Region" means the geographic area within each set of boundaries established pursuant to  
7 [insert state statutory or executive order citation delineating substate districts].

8 (d) "Special district" means a local unit of special government created pursuant to general or  
9 special law for the purpose of performing specialized functions within limited boundaries.

10 (e) "Subordinate service area" means an area within a county in which one or more governmental  
11 services or additions to countywide services are provided by the county and financed from revenues  
12 secured from within that area.

13 (f) "Urban service" or "service" means any of the following: animal control, code enforcement,  
14 fire protection, industrial development, manpower, parking facilities, parks and recreation, planning,  
15 police protection, public housing, refuse collection, sewer construction, subdivision control, urban  
16 renewal, water supply, and zoning.<sup>2</sup>

## Title II

### OPTIONAL FORMS OF COUNTY GOVERNMENT

1 SECTION 1. *Optional Forms Authorized.*

2 (a) Any county may adopt one of the optional forms of government provided in this act. Until  
3 adoption, each county shall operate under the form of government in existence on the effective date  
4 of this act. Any of the options provided below may be adopted or abandoned by a county by follow-  
5 ing the procedures in this act, except that one of them must be adopted within any urban county  
6 in accordance with Section 7 of this title.

7 (b) Optional forms of county government shall be the council-manager form and the council-  
8 elected executive form.

9 SECTION 2. *Council-Manager Form.*<sup>3</sup>

10 (a) Each county adopting the council-manager form of government shall have a county council, or  
11 council, which shall be the governing body of the county. The county council shall exercise all pow-

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<sup>1</sup>The term "county council" is used throughout this bill to refer to the governing body of the county. Different terms may be used in the various states, such as "board of chosen freeholders," "board of county legislators," "commissioners' court," "board of supervisors," and "board of county commissioners."

<sup>2</sup>Individual states may wish to add to, or delete from, this list of urban services to better reflect the conditions in the state.

<sup>3</sup>Certain states may prefer to use the term administrator in place of manager.



1 ers provided by laws and constitutional provisions applicable to counties, except where provided  
2 otherwise by law.

3 (b) The council-manager form of government shall be that form in which the chief administra-  
4 tive officer is known as the county manager. The manager shall be appointed for an indefinite period  
5 by the county council solely on the basis of training, experience, and administrative qualifications,  
6 and need not be a resident of the county at the time of his appointment. The manager may be re-  
7 moved by the county council at any time; provided, however, that after he has served in his position  
8 for one year, he may demand written charges and a public hearing on the charges before the county  
9 council prior to the effective date of his removal. Pending the hearing and removal, the county coun-  
10 cil may suspend him from office. The county council may designate a properly qualified person to  
11 perform the duties of the manager during his absence or disability. The county council shall set the  
12 salary of the manager and may provide for a termination allowance.

13 (c) The manager shall be appointed by the county council as soon as practicable after the adopt-  
14 ion of the council-manager plan.

15 (d) The county manager shall be the administrative head of the county and shall have all the  
16 powers and perform all the duties of an administrative nature vested in, or assigned, to the county  
17 council by law or by agreement with any municipality or other subdivision of the state and such ad-  
18 ditional powers as may be granted by the council. The manager shall be responsible for the proper  
19 administration of the affairs of the county placed in his charge. In addition, the county manager shall:

20 (1) provide for the execution of all ordinances and resolutions of the county council, execute  
21 all contracts entered into by the county council, and provide for the execution of all laws of the  
22 state subject to enforcement by him or by officers who are under his direction and supervision;

23 (2) prepare and submit to the county council for approval an administrative code incorpor-  
24 ating the details of administrative procedure for the operation of the county and review such code  
25 and suggest revisions periodically or as requested by the council;

26 (3) furnish the county council with information concerning the operations of county depart-  
27 ments, boards, or commissions, necessary for the council to exercise its powers, or as requested by the  
28 council;

29 (4) prepare and submit to the county council an annual budget and a long range capital im-  
30 provement [and expenditure] program, along with a financial plan for raising revenue, covering a  
31 period of not less than the [five] ensuing years, and administer the provisions of the budget adopted  
32 by the county council;

33 (5) keep the county council fully advised as to the financial condition and needs of the  
34 county and make such other reports from time-to-time as required by the council or as he deems neces-  
35 sary;

1 (6) attend all meetings of the county council, take part in discussions, but not vote, and  
2 recommend measures for adoption;

3 (7) appoint qualified administrative personnel to assist in the performance of his duties, and  
4 suspend and remove such personnel; and

5 (8) exercise, as determined in the optional plan, the authority of the county council to  
6 appoint, supervise, suspend, and remove county personnel whose appointment, suspension, super-  
7 vision, or removal were a function of the county council under general law; make nominations and  
8 appointments to additional offices as the county council may determine; and make appointments to  
9 advisory boards and committees in administrative areas as the county manager may create.

10 (e) A county adopting the council-manager form shall provide for a chairman of the county coun-  
11 cil elected by the council from among its members. The chairman shall have all the powers and dut-  
12 ies of a member of the council, and shall serve as county spokesman on policy matters and serve as  
13 ceremonial head.

14 (f) No member of the council shall directly or indirectly, by suggestion or otherwise, attempt  
15 to influence or coerce the county manager in the appointment or removal of any officer or employee,  
16 or in the purchase of supplies, or attempt to exact any promise relative to any appointment from a  
17 candidate for the manager position. Any county council member who violates this subsection shall  
18 forfeit his office, in accordance with *[insert state statutory citation for removal of elected officials]*.  
19 Nothing in this subsection, however, shall be construed as prohibiting the council while in open  
20 session from fully and freely discussing with, or suggesting to, the manager anything pertaining to  
21 county affairs or the interests of the county.

22 SECTION 3. *Council-Elected Executive Form.*

23 (a) Each county adopting the council-elected executive form of government shall have a county  
24 council, or council, which shall be the legislative body of the county. The county council shall ex-  
25 ercise all powers provided by laws and constitutional provisions applicable to counties, except where  
26 provided otherwise by law.

27 (b) The council-elected executive form of government shall be that form in which the chief ex-  
28 ecutive officer is known as the county executive. The first county executive shall be elected at the  
29 county general election following the adoption of the council-elected executive form. He shall hold  
30 office for a term of [four] years commencing *[insert appropriate date or time limit]*. Only an elector of  
31 the county shall be eligible for election as county executive. He shall be nominated and elected by the  
32 qualified voters of the county in the manner provided by law for the election of county officers. In  
33 case the office of county executive becomes vacant by reason of death, resignation, or removal, it shall  
34 be filled with a person appointed by the county council for the unexpired term.

35 (c) The salary of the county executive shall be set by the county council, but may not be reduced

1 during his term except as part of a general salary reduction.

2 (d) The county executive shall be the chief executive of the county and shall have all the powers  
3 and perform all the duties of an executive and administrative nature vested in, or imposed upon, the  
4 county or its council by law or by agreement with any municipality or other subdivision of govern-  
5 ment and such additional powers as are granted by the council. The county executive shall be respon-  
6 sible for the proper administration of the affairs of the county placed in his charge. His responsibil-  
7 ities shall include, but are not limited to, the following:

8 (1) provide for the execution of all ordinances and resolutions of the county council, execute  
9 all contracts entered into by the county council, and provide for the execution of all laws of the state  
10 subject to enforcement by him or by officers who are under his direction and supervision;

11 (2) prepare and submit to the county council for approval an administrative code incorpor-  
12 ating the details of administrative procedure for the operation of the county and review such code  
13 and suggest revisions periodically or at the request of the council;

14 (3) furnish the county council with information concerning the operations of county depart-  
15 ments, boards, or commissions, necessary for the council to exercise its powers or as requested by  
16 the council;

17 (4) prepare and submit to the county council an annual budget and a long range capital im-  
18 provement [and expenditure] program, along with a financial plan for raising revenue, covering  
19 a period of not less than the [five] ensuing years, and administer the provisions of the budget when  
20 adopted by the county council;

21 (5) keep the county council fully advised as to the financial condition and needs of the coun-  
22 ty and make such other reports from time-to-time as required by the council or as he deems necessary;

23 (6) attend, at his discretion, meetings of the county council, take part in the discussions, and  
24 recommend measures for adoption;

25 (7) appoint an administrative officer, qualified by education and experience, who shall be re-  
26 sponsible for the orderly and efficient operation and coordination of the various departments, boards,  
27 and commissions of the county government, appoint other qualified staff to assist the executive  
28 in the performance of his duties, and suspend and remove such personnel for cause; and

29 (8) exercise, as determined in the optional plan, the authority of the county council to ap-  
30 point, supervise, suspend, and remove county personnel whose appointment, supervision, suspen-  
31 sion, or removal was a function of the county council under general law; make such nominations and  
32 appointments to additional offices as the county council may determine; and make appointments to  
33 such advisory boards and committees as the county executive, charter, law, or ordinance may create.

34 (e) The county executive may veto any ordinance or resolution adopted by the county council. A  
35 veto by the executive may apply to all items or to any specific item; of an ordinance or resolution

1 appropriating money. Certification of a veto must be made by the executive within ten days of the  
2 passage of the ordinance or resolution by the county council. The county council may override the  
3 veto by two-thirds vote of all its members. An ordinance or resolution shall become effective upon  
4 approval by the county executive, the expiration of ten days after adoption without approval or veto  
5 or the overriding of a veto.

6 (f) The county executive may create, abolish, or combine any county department or agency or  
7 transfer a function from one department or agency to another, provided that he shall first submit  
8 plans for such reorganization to the county council. If not disapproved within [60] days, the plans  
9 shall become effective.

10 SECTION 4. *Elected Officers Made Optional.*<sup>1</sup> No state law shall be construed as preventing  
11 any county from adopting an optional form of government from abolishing or making appointive  
12 any county office established by statute, except an elected chief executive or members of the [county  
13 governing body].

14 SECTION 5. [County Government Study Commission].

15 (a) Any county wishing to, or required to, establish an optional form of government shall create  
16 a [county government study commission]. The [commission] shall be formed by a resolution of the  
17 county council or by a petition signed by at least [ ] percent of the number of voters within the county  
18 casting ballots at the immediately preceding gubernatorial election. The petition shall be filed with  
19 the [county clerk], who shall certify it in the manner as petitions nominating candidates for the county  
20 council.

21 (b) A [county government study commission] may also be formed by [joint] resolution [special law]  
22 of the [legislature], provided that the [legislature] appropriates funds adequate to support the work of  
23 the [commission].

24 (c) Members of the [commission] shall be appointed within 30 days by the county council and  
25 shall represent a broad cross-section of the citizens of the county.<sup>1</sup> The council shall fill any vacan-  
26 cies in the [commission] membership. Members shall serve without pay, but shall be reimbursed for  
27 travel and other reasonable expenses for meetings, hearings, and other official business.

28 (d) The county council shall appropriate funds adequate to support the operation of the [com-  
29 mission] as well as the printing and publication of its report and the holding of a referendum. Within  
30 the limitation of such appropriations and any privately contributed or state appropriated funds and  
31 services, the [commission] may appoint and fix the rate of compensation for consultants and clerical  
32 and other personnel.

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<sup>1</sup>See suggested constitutional amendment *County Officers Placed on a Statutory Basis*.

<sup>2</sup>In counties having the council-elected executive form, the executive should make nominations to the county council for appointment to the commission.

1 (e) The [commission] shall adopt rules for its organization and procedure, provided that all meet-  
2 ings shall be open to the public and that at least one public hearing shall be held prior to the [com-  
3 mission's] final report.

4 (f) The [commission] shall study the existing structure of county government and procedures for  
5 the delivery of local governmental services within the county, and compare them with the other forms  
6 authorized by this act. If it determines that establishment of one of the forms would make the admini-  
7 stration of county government more efficient and effective or more responsive and accountable to the  
8 people, or if it is required to adopt one of the optional forms, it shall draw up a detailed plan of  
9 county government embodying that form. The plan shall establish procedures for the election or ap-  
10 pointment of new officers; provide for any necessary transfer of powers, records, documents, proper-  
11 ties, assets, funds, and liabilities, resulting from the changes in county structure; set procedures for  
12 the amendment of the plan; and, where necessary, provide for the continuity of existing offices and  
13 officers, the abolition of offices or their change from elective to appointive status, and the making of  
14 interim and temporary appointments.

15 SECTION 6. *Referendum.*

16 (a) Within [one] year after its initial meeting, the [commission] shall submit to the county council a  
17 report containing its findings and the plan of county government, if any, to be presented to the voters.  
18 The [commission] shall be discharged [upon filing of its final report] [on the day after its final report  
19 is voted on pursuant to a referendum under this section].

20 (b) A referendum on the question of whether to adopt the plan of county government shall be  
21 held not less than 30 days nor more than 90 days after the plan is submitted to the county council.  
22 The complete text of the proposed optional plan and final report of the [commission], or summary  
23 thereof, shall be published at county expense in a newspaper of general circulation within the coun-  
24 ty at least once during two different calendar weeks, within the 30 day period immediately preceding  
25 the date of the referendum. If a majority of those voting approve the plan, then the optional form of  
26 government shall be instituted in accordance with the terms of the plan.

27 (c) When a proposed optional plan has been approved by the voters, the [county clerk] shall im-  
28 mediately file a certified copy of the plan with the [secretary of state]. The approved plan shall then  
29 become the organic act for the government of the county and shall be a public record open to public  
30 inspection and judicially noticeable by all courts.

31 (d) Authorized provisions of an optional plan of county government duly adopted by the voters  
32 supersede any conflicting ordinances or resolutions.

33 SECTION 7. *Urban Counties.*

34 (a) Each county, at least [60 percent] urban, located within a Standard Metropolitan Statistical  
35 Area, designated by the United States Office of Management and Budget, shall, within [18 months]

1 of the effective date of this act, adopt either the council-manager or council-elected executive form of  
2 government.

3 (b) In these counties the [county government study commission] shall draw up two plans of  
4 county government, each embodying one of the optional forms. Both plans shall be submitted to the  
5 voters and the plan receiving the majority of the votes cast between the two shall be instituted. The  
6 county council may allow the [commission] additional time, up to 60 days, to complete the plans, but in  
7 no instance shall a referendum be held less than 30 days nor more than 90 days after the submission  
8 of the [commission's] report to the council.

9 (c) If no optional form is approved by the voters in such a county by the required date, the  
10 [legislature] shall enact one of the optional forms for the county.

11 SECTION 8. *Abandonment of an Optional Form.* Any county may abandon an optional form  
12 by approving, pursuant to Section 5 and Section 6, an alternate form provided in this act or in [insert  
13 state statutory citation for commission form of county government]. No form may be abandoned  
14 until [six] years have elapsed after the date of the referendum at which the plan was adopted, and no  
15 county covered by Section 7 shall adopt any form other than the council-manager or council-elected  
16 executive form.

17 [Optional Section.]

18 [SECTION 9. *State Assistance and Grants.*<sup>1</sup>

19 (a) The [insert office of community affairs or local government or other appropriate state agency]  
20 may furnish, upon request, any [county government study commission] created under this act with  
21 information and technical assistance relating to the work of the [commission].

22 (b) The [director of the office of community affairs or local government or other appropriate state  
23 agency] shall reimburse any local government, which has participated in a [county government study  
24 commission], [ ] percent of the total funds provided by the jurisdiction to the [commission].

25 (c) The [director of the office of community affairs or office of local government or other ap-  
26 propriate state agency] shall reimburse any county, which has held a referendum as required in  
27 Section 6, [ ] percent of the total funds spent by such county for holding the referendum and notice  
28 thereof.

29 (d) State appropriations are authorized in the amounts required for this title.]

### Title III

#### CONSOLIDATION OF COUNTY OFFICES

1 SECTION 1. *Consolidation Authorized.* Any two or more adjoining counties within the same

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<sup>1</sup>ACIR has taken no specific positions on such assistance, but this optional section is consistent with other recommendations of the Commission concerning state responsibility for local government modernization.

1 substate district may consolidate functionally similar county offices, either elected or appointed.

2 SECTION 2. *Consolidation Agreement.*

3 (a) Consolidation of county offices may be initiated by:

4 (1) the [governing bodies] of the affected counties entering into an agreement to consolidate  
5 offices by resolution; or

6 (2) the filing of a petition, signed by at least [ ] percent of the number of voters in each county  
7 casting ballots at the immediately preceding gubernatorial election, requesting the county [governing  
8 body] to enter into a consolidation agreement with the county or counties named in the petition.

9 (b) The consolidation agreement shall specify the office or offices to be consolidated, their duties  
10 and responsibilities, and procedures for the selection and reassignment of personnel, procedures for  
11 the transfer of powers, records, documents, properties, assets, funds, and liabilities, and for the pos-  
12 sible termination of the agreement. The agreement also shall provide for apportionment of the cost  
13 of the consolidated office, based on the equalized taxable valuation or the population, or a combin-  
14 ation thereof, of the counties involved. The agreement may contain other provisions pertaining to the  
15 consolidated office that the participating counties deem necessary or advisable.

16 (c) The consolidation agreement shall be approved by the [governing body] of each county [before  
17 submission to the voters].<sup>1</sup>

18 [Optional Section.]

19 [SECTION 3. *Referendum.* The question of consolidation of offices shall be submitted to the  
20 voters in the affected counties at the next general election or at a special election called for the pur-  
21 pose. If approved by a majority of those voting on the question in each county, the proposed con-  
22 solidation shall become effective in accordance with the terms of the agreement.]

23 SECTION 4. *Selection of Officers for Consolidated Office.*

24 (a) Where necessary, the consolidation agreement shall establish procedures for appointment to  
25 the consolidated office.

26 (b) Where required by the agreement, elections for a consolidated office shall be held in the same  
27 manner as for the same office in a single county, except as otherwise provided in this section. Can-  
28 didates for the consolidated office shall file with the [clerk] of their county of residence, who shall  
29 certify the names of the candidates to the [clerks] of the other affected counties to be placed on the  
30 ballot in those counties. The candidate for consolidated office receiving [the highest number] [a major-  
31 ity] of votes cast in the affected counties, taken together, shall be elected. [If no candidate receives a  
32 majority of votes cast, a run-off election between the two candidates receiving the highest number of  
33 votes shall be held within [30] days].

34 SECTION 5. *Duties.* An officer occupying a consolidated office shall have the same duties and

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<sup>1</sup>The bracketed language and Section 3 should be eliminated in any state which does not wish to require a referendum.

1 responsibilities in each affected county specified by law for the same office in a single county.

## Title IV

### AUTHORIZATION FOR FULL SERVICE COUNTY

[ *Alternative 1.* ]

1 [SECTION 1. *County Performance of Urban Services Authorized.*

2 (a) Any county may provide one or more urban services to the unincorporated areas of the  
3 county upon passage of a county ordinance.

4 (b) A county may provide an urban service to both incorporated and unincorporated areas when  
5 that service is being provided by a special district operating entirely within the geographical boundar-  
6 ies of the county. The county may assume all rights, duties, personnel, property, assets, and lia-  
7 bilities of the special district connected with the provision of the urban service, in accordance with  
8 the following procedures.

9 (1) The county shall notify the special districts of its intent to assume responsibility for any  
10 or all of the special district's urban services. The county and the special district shall then draw up  
11 an agreement providing for the transfer of the service(s) and any necessary rights, duties, property,  
12 assets, and liabilities. In the event that the county and the special district shall be unable to con-  
13 clude an agreement within [60] days after the date of notification by the county, the [insert *appropri-*  
14 *ate state agency*] shall draw up the terms of the agreement, which shall be binding on the county and  
15 the special district, provided that the [insert *state agency*] shall not refuse to allow the county to assume  
16 the urban service(s) it has specified.

17 (2) If the urban services assumed by the county include all of the functions, services, and  
18 duties of a special district, then the special district shall be dissolved, in accordance with the terms  
19 of the agreement above.

20 (c) A county may perform an urban service within a municipality upon the request of the mu-  
21 nicipality's [governing body] as expressed through an ordinance or resolution. The county council  
22 may accept or deny a municipal request to perform an urban service.

23 (d) A county may perform an urban service throughout the county when authorized by referen-  
24 dum. Such referendum may be initiated by:

25 (1) a resolution of the county council;

26 (2) the filing of a petition signed by at least [ ] percent of the number of voters in the county  
27 casting ballots at the immediately preceding gubernatorial election; or

28 (3) a resolution of a municipal [governing body] with the consent of the county council.

29 The resolution or petition shall state the urban service(s) to be provided by the county. The



1 question of county performance of the urban service shall be submitted to the voters at the next gen-  
2 eral election or at a special election called for the purpose. If approved by a majority of those voting  
3 on the question, the county shall provide the urban service.

4 SECTION 2. *Standards for the Performance of Urban Services Within Municipalities.* When a  
5 county provides an urban service within a municipality the county shall establish in a county ordi-  
6 nance, agreed upon by the municipality, measurable standards setting forth the level, quality, scope,  
7 cost apportionment, and other factors relating to the performance of the service. If the county per-  
8 forms an urban service throughout the county as a result of a referendum, such standards shall be  
9 set by the county in consultation with constituent municipalities representing at least [50] percent of  
10 the total municipal population.]

11 [OR]

12 [Alternative 2.]

13 [SECTION 1. *Urban Services Authorized.*

14 (a) The [*legislative and governing body*] of a county shall have the power to carry on county gov-  
15 ernment. To the extent not inconsistent with general or special law, this power shall include, but  
16 shall not be restricted to, the power to:

17 (1) adopt its own rules of procedure, elect its officers, and set the time and place of its  
18 official meetings;

19 (2) provide for the prosecution and defense of legal causes in behalf of the county or state  
20 and retain counsel and set their compensation;

21 (3) provide and maintain county buildings;

22 (4) provide fire protection;

23 (5) provide hospitals, ambulance service, and health and welfare programs;

24 (6) provide parks, preserves, playgrounds, recreation areas, libraries, museums, historical  
25 commissions, and other recreation and cultural facilities and programs;

26 (7) prepare and enforce comprehensive plans for the development of the county;

27 (8) establish, coordinate, and enforce zoning and such business regulations as are neces-  
28 sary for the protection of the public;

29 (9) adopt, by reference or in full, and enforce building, housing, and related technical  
30 codes and regulations;

31 (10) establish and administer programs of housing, slum clearance, community redevelop-  
32 ment, conservation, flood and beach erosion control, air pollution control, and navigation and  
33 drainage, and cooperate with governmental agencies and private enterprises in the development and  
34 operation of such programs;

35 (11) provide and regulate waste and sewage collection and disposal, water supply and con-



1 (23) employ an independent accounting firm to audit any funds, accounts, and financial  
2 records of the county and its agencies and governmental subdivisions; and

3 (24) perform any other acts not inconsistent with law which are in the common interest  
4 of the people of the county, and exercise all powers and privileges not specifically prohibited by law.

5 (b) The county council shall be the governing body of any subordinate service unit created pur-  
6 suant to subsection (a) (17).

7 (c) (1) To the extent not inconsistent with general or special law, the [governing body] of a county  
8 shall have the power to establish, and subsequently merge or abolish those created hereunder, special  
9 districts for any part or all of the county including incorporated areas if the [governing body] of the  
10 incorporated area affected approves such creation by ordinance within which may be provided mu-  
11 nicipal services and facilities from funds derived from service charges, special assessments, or taxes  
12 within such district only. Such ordinance may be subsequently amended by the same procedure as the  
13 original enactment.

14 (2) The [governing body] of such special district may be composed of representatives of both  
15 county government and the government of such participating municipalities.

16 (d) (1) The [governing body] of a municipality or municipalities, by resolution, or the citizens of  
17 a municipality or county, by petition of [ ] percent of the qualified electors of such unit, may identify  
18 a service rendered specially for the benefit of the property or residents in unincorporated areas and  
19 financed from countywide revenues and may petition the county council to develop an appropriate  
20 mechanism to finance such activity which either may be by taxes, special assessments, or service  
21 charges levied solely upon residents or property in the unincorporated area, by the establishment of  
22 a subordinate service unit pursuant to subsection (a) (17) of this section or by remitting the identi-  
23 fied cost of service paid by the taxes levied upon property situated within the municipality or  
24 municipalities to the municipality or municipalities.<sup>1</sup>

25 (2) The county council, within [90] days, shall file a response to such petition which shall  
26 either reflect action to develop appropriate mechanisms or reject said petition and state findings of  
27 fact demonstrating that the service does not specially benefit the property or residents of the unin-  
28 corporated areas.

29 (e) (1) No enumeration of powers herein shall be deemed exclusive or restrictive, but shall be  
30 deemed to incorporate all implied powers necessary or incident to carrying out such enumerated  
31 powers, including, specifically, authority to employ personnel, expend funds, enter into contract-  
32 ural obligations, and purchase or lease and sell or exchange real or personal property.

33 (2) The provisions of this section shall be liberally construed in order to effectively carry out

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<sup>1</sup>See suggested legislation in Title V on Subordinate Service Areas and the suggested constitutional amendment that follows this suggested legislation.

1 the purpose of this section and to secure for the counties the broad exercise of home rule powers  
2 authorized by this act.

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

[End of two alternatives.]

## Title V

### SUBORDINATE SERVICE AREAS

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

5 SECTION 2. *Creation by County Council.* The county council may establish a subordinate ser-  
6 vice area in any portion of the county by adoption of an appropriate resolution [ordinance]. The reso-  
7 lution [ordinance] shall specify the service or services to be provided within the subordinate taxing  
8 area and shall specify the territorial boundaries of the area. Adoption of a resolution [ordinance] shall  
9 be subject to the publication, hearing, [and referendum] provisions of law relating to the county coun-  
10 cil.

11 SECTION 3. *Creation by Petition.*

12 (a) (1) A petition signed by [ ] percent of the qualified voters within any portion of a county may  
13 be submitted to the county council requesting the establishment of a subordinate county service area  
14 to provide any service or services which the county is otherwise authorized by law to provide. The  
15 petition shall include the territorial boundaries of the proposed service area and shall specify the

<sup>1</sup>If the service is to be financed wholly or partly from property tax revenues, some states may have to amend constitutional pro-  
visions requiring uniform tax rates within a county. See the suggested constitutional amendment that follows this suggested legis-  
lation.

1 types of services to be provided therein.

2 (2) Upon receipt of the petition and verification of the signatures thereon by the [county  
3 clerk], the county council shall, within [30] days following verification, hold a public hearing on the  
4 question of whether or not the requested subordinate service area shall be established.

5 (3) Within [30] days following the holding of a public hearing, the county council, by resolu-  
6 tion [ordinance] shall approve or disapprove the establishment of the requested subordinate county  
7 service area. A resolution [ordinance] approving the creation of the subordinate service area may  
8 contain amendments or modifications of the area's boundaries or functions as set forth in the pe-  
9 tion.

10 [Optional Subsection.]

11 [(b) (1) The [governing body] of a municipality or municipalities, by resolution, or the citizens of  
12 a municipality or county, by petition of [ ] percent of the qualified electors of such unit, may identify  
13 a service rendered specially for the benefit of the property or residents in unincorporated areas and  
14 financed from countywide revenues and may petition the county council to develop an appropriate  
15 mechanism to finance such activity which either may be by taxes, special assessments, or service char-  
16 ges levied solely upon residents or property in the unincorporated area, by the establishment of a  
17 subordinate service area pursuant to this act, or by remitting the identified cost of service paid by  
18 the taxes levied upon property situated within the municipality or municipalities to the municipality  
19 or municipalities.

20 (2) The county council within [90] days shall file a response to such petition which shall  
21 either reflect action to develop appropriate mechanisms or reject said petition and state findings of  
22 fact demonstrating that the service does not specially benefit the property or residents of the un-  
23 incorporated areas.]<sup>1</sup>

24 SECTION 4. *Publication and Effective Date.* Upon passage of a resolution [ordinance] authori-  
25 zing the creation of a subordinate county service area, the county council shall cause to be pub-  
26 lished [once] in [ ] newspapers of general circulation a concise summary of the resolution [ordinance].  
27 The summary shall include a description of the territory to be included within the area, the type of  
28 service or services to be undertaken in the area, a statement of the means by which the service or  
29 services will be financed, and a designation of the county agency or officer who will be responsible for  
30 supervising the provision of the service or services. The service area shall be deemed established [30]  
31 days after publication or at such later date as may be specified in the resolution [ordinance].

32 [Optional Section.]

33 [SECTION 5. *Referendum.*

34 (a) Upon receipt of a petition signed by [ ] percent of the qualified voters within the territory of

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<sup>1</sup>See also *Alternative 2* under *Title IV* of this act.

1 the proposed service area prior to the effective date of its creation as specified in Section 4, the crea-  
2 tion shall be held in abeyance pending referendum vote of all qualified electors residing within the  
3 boundaries of the proposed service area.

4 (b) The county council shall make arrangements for the holding of a special election not less  
5 than [30] days nor more than [60] days after receipt of such petition within the boundaries of the pro-  
6 posed taxing area. If a majority of those voting on the question favor creation of the proposed subor-  
7 dinate service area, the area shall be deemed created upon certification of the vote by the [county  
8 board of elections].]

9 SECTION 6. *Expansion of the Boundaries of a Subordinate Service Area.* The county council,  
10 on its own motion or pursuant to petition, may enlarge any existing subordinate county area pur-  
11 suant to the procedures specified in Sections 2 through 5. All qualified voters residing in the proposed  
12 new service area, including the existing, shall be eligible to vote in any election relating to such ex-  
13 pansion.

14 SECTION 7. *Financing.* Upon adoption of the next annual budget following the creation of a  
15 subordinate county service area, the county council shall include in such budget appropriate provi-  
16 sions for the operation of the subordinate service area including, as appropriate, a property tax  
17 levied only on property within the boundaries of the subordinate taxing area or by levy of a service  
18 charge against the users of such services within the area, or by any combination thereof.

## Title VI

### SEPARABILITY AND EFFECTIVE DATE

1 SECTION 1. *Separability.* [Insert separability clause.]

2 SECTION 2. *Effective Date.* [Insert effective date.]

## 2.203.3 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

#### [FINANCING COUNTY SUBORDINATE AREAS]

*(Be it enacted, etc.)*

- 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:
- 3 (a) levy annually a tax on property within the boundaries of any county subordinate service
- 4 area created pursuant to an act of the [legislature], which tax may be separate and in addition to the
- 5 annual tax imposed on a countywide basis; and
- 6 (b) incur indebtedness on a countywide basis for the purpose of performing functions and
- 7 providing facilities and services within such a county subordinate service area.
- 8 Any tax levied or indebtedness incurred under the authority of this section is subject to such
- 9 limitations as may be established by the [legislature].

## 2.204 INTERLOCAL CONTRACTING AND JOINT ENTERPRISE<sup>1</sup>

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 such functions as education, fire protection, and public sanitation. Many of these districts are of great utility and doubtless will continue to be important. However, their creation usually requires special action from state authorities, and may result in the withdrawal of control over the function from the political subdivisions formerly responsible for it. In these circumstances, there may be a large number of situations in which joint or cooperative rendering of one or more services by existing political subdivisions is called for.

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

Because local governments and subdivisions have responsibility for the administration of certain state functions, and because the state in turn bears certain responsibilities for its subdivisions, some degree of control over interlocal agreements is both necessary and desirable. The suggested act provides this control by specifying the basic contents of such agreements and by requiring review by the attorney general where an agreement includes as a party a state agency or a public agency of another state of the United States. Provision is also made for approval of other state officials in certain cases.

It is believed that legislation of this type will be most useful if drawn so as to apply to 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.

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 Georgia<sup>2</sup> act, enacted in 1963, authorizes state aid where political subdivisions establish joint undertakings. A New Jersey<sup>3</sup> act, enacted in 1973, authorizes direct state

<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *State Constitutional and Statutory Restrictions Upon Structural, Functional, and Personnel Powers of Local Governments*, Report A-12 (October, 1962), and *The Challenge of Local Governmental Reorganization*, Volume III of *Substate Regionalism and the Federal System*, Report A-44 (Washington, D.C.: U.S. Government Printing Office, February, 1974).

<sup>2</sup>Section 1, Act. No. 303, *Georgia Laws 1963*, p. 354.

<sup>3</sup>Chapter 208, 195th Legislature, New Jersey, 1973, p. 356; also see *New Jersey Statutes Annotated* 40:8A-1 and 40:48B-2.1.



financial aid not only for joint program operation but also for feasibility studies involved in developing a joint undertaking. The New Jersey act, in addition, provides a state appeal for certain land use decisions affecting joint enterprises as a possible additional state incentive and assistance. These are several examples of how other states might actively encourage joint urban development efforts by two or more of their political subdivisions.

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 brackets, 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 bracketed language would accomplish this limitation if desired.

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 at interest for legal purposes and places the state more in the position of guarantor. This compact status means that the obligation is enforceable against the state if necessary, so the 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 2d 184 (1939), Cert. Den. 308 U.S. 609; *Roberts Tobacco Co. v. Michigan Department of Revenue*, 322 Mich. 519, 34 NW 2d 54 (1948); *Russell v. American Association*, 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 many 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.

*Section 1* states the purpose of the act and *Section 2* provides definitions of the terms used.

*Section 3* authorizes interlocal contracts for the provision of any service, activity, or undertaking authorized by law between two or more public agencies, subject to approval by the governing bodies of each party

to the contract.

*Section 4* authorizes interlocal agreements for joint or cooperative action between any two or more public agencies, subject to authorization by ordinance, resolution, or other action by the governing bodies of the public agencies and approval by the attorney general. It also specifies what must be contained in the agreement.

*Section 5* requires that any such authorized agreement be filed with the keeper of local public records and the secretary of state and, in the case that one or more of the public agencies are of another state or the Federal government, defines it as an interstate compact and gives the state, as a party to the agreement, authority to recoup damages or liability.

*Section 6* mandates that any agreement dealing with the provision of services or facilities under statutory or constitutional control of a state officer or agency be subject to approval by such officer or agency, in addition to approval by the attorney general.

*Section 7* provides for appropriation of funds and provision of personnel and services to the administrative or legal entity created to operate the undertaking by any of the public agencies party to the agreement.

*Section 8* empowers the state and any of its agencies to furnish assistance to any public agencies providing for joint administration of any program of services, benefits, administration, or other undertaking and delineates what types of assistance may be provided.

*Sections 9 and 10* provide for state grants for feasibility studies and implementation, respectively, of interlocal contracts, agreements, or transfers of function, subject to certain provisions.

*Section 11* authorizes an appeal process at the state level similar to the one used in New Jersey, in the case of denial or lack of action by the governing body of a county or municipality in which a joint or consolidated program has applied for location and erection of sewage treatment or solid waste disposal facilities.

*Sections 12 and 13* provide for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT TO PROVIDE FOR INTERLOCAL CONTRACTING AND JOINT ENTERPRISE WITH STATE ASSISTANCE THEREFOR]<sup>1</sup>

(Be it enacted, etc.)

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

6 SECTION 2. *Definitions.* For the purpose of this act:

7 (a) "Public agency" means any political subdivision [*insert enumeration, if desired*] of this state;  
8 any agency of the state government or of the United States; and any political subdivision of another  
9 state.

10 (b) "State" means a state of the United States and the District of Columbia.

11 SECTION 3. *Interlocal Contracts.* Any one or more public agencies may contract with any one  
12 or more other public agencies to perform any governmental service, activity, or undertaking which  
13 [[each public agency] or [any of the public agencies]] entering into the contract is authorized by law  
14 to perform, provided that such contract shall be authorized by the governing body of each party to  
15 the contract. Such contract shall set forth fully the purpose, powers, rights, objectives, and respon-  
16 sibilities of the contracting parties.<sup>2</sup>

17 SECTION 4. *Interlocal Agreements.*

18 (a) Any power or powers, privileges, or authority exercised or capable of exercise by a public  
19 agency of this state may be exercised and enjoyed jointly with any other public agency of this state  
20 [having the power or powers, privilege, or authority] and jointly with any public agency of any other  
21 state or of the United States to the extent that laws of such other state or of the United States permit  
22 such joint exercise or enjoyment. Any agency of the state government when acting jointly with any  
23 public agency may exercise and enjoy all of the powers, privileges, and authority conferred by this  
24 act upon a public agency.

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<sup>1</sup>Suggested short title: *Interlocal Cooperation Act.*

<sup>2</sup>Interlocal contracts for services raise some problems different than those raised by interlocal agreements for joint enterprises. Existing law governing contracts by local governments should be examined to relate this authorization to them, if necessary. Additional provisions may be needed or desirable in this section. Provisions similar to those in *Section 4(f)*, the filing provisions of *Section 5*, and the additional approval in *Section 6* could be considered in this connection.

1 (b) Any two or more public agencies may enter into agreements with one another for joint or co-  
2 operative action pursuant to the provisions of this act. Appropriate action by ordinance, resolution,  
3 or otherwise pursuant to law of the governing bodies of these participating public agencies shall be  
4 necessary before any such agreement may enter into force.

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

6 (1) its duration;

7 (2) the precise organization, composition, and nature of any separate legal or administrative  
8 entity created thereby, together with the powers delegated thereto, which is hereby authorized to be  
9 created with its governing body composed solely of local elected officials *ex officio* unless otherwise  
10 provided by law;

11 (3) its purpose or purposes;

12 (4) the manner of financing the joint or cooperative undertaking, of establishing and main-  
13 taining a budget therefor, and of accounting and keeping records thereof;

14 (5) the permissible method or methods to be employed in accomplishing the partial or com-  
15 plete termination of the agreement and for disposing of property upon such partial or complete term-  
16 ination; and

17 (6) any other necessary and proper matters.

18 (d) In the event that the agreement does not establish a separate legal entity to conduct the joint  
19 or cooperative undertaking, the agreement shall, in addition to all items except (2) enumerated in sub-  
20 section (c) hereof, contain the following:

21 (1) provision for an administrator or a joint board responsible for administering the joint or  
22 cooperative undertaking. In the case of a joint board, the public agencies party to the agreement shall  
23 be represented; and

24 (2) the manner of acquiring, holding, and disposing of real and personal property used in  
25 the joint or cooperative undertaking.

26 (e) No agreement made pursuant to this act shall relieve any public agency of any obligation or  
27 responsibility imposed upon it by law except that, to the extent of actual and timely performance  
28 thereof by a joint board or other legal or administrative entity created by an agreement made here-  
29 under, said performances may be offered in satisfaction of the obligation or responsibility.

30 (f) Every agreement made hereunder that includes as a party thereto an officer or agency of this  
31 state or a public agency of another state or of the United States shall, prior to and as a condition  
32 precedent to its becoming effective, be submitted to the [attorney general] who shall determine whether  
33 the agreement is in proper form and compatible with the laws of this state. The [attorney general]  
34 shall approve any agreement submitted to him hereunder unless he finds that it does not meet the  
35 conditions set forth herein and shall detail in writing addressed to the governing bodies of the public

1 agencies concerned the specific respects in which the proposed agreement fails to meet the require-  
2 ments of law. Failure to disapprove an agreement submitted hereunder within [ ] days of its sub-  
3 mission shall constitute approval thereof.

4 SECTION 5. *Filing, Status, and Actions.* Prior to its entry into force, an agreement made purs-  
5 suant to this act shall be filed with [*the keeper of local public records in each participating jurisdic-*  
6 *tion*] and with the [*secretary of state*]. In the event that an agreement entered into pursuant to this act  
7 is between or among one or more public agencies of this state and one or more public agencies of an-  
8 other state or of the United States, said agreement shall have the status of an interstate compact, but  
9 in any case or controversy involving performance or interpretation thereof, or liability thereunder, the  
10 public agencies party thereto shall be real parties in interest and the state may maintain an action to  
11 recoup or otherwise make itself whole for any damages or liability which it may incur by reason of  
12 being joined as a party therein. Such action shall be maintainable against any public agency or agen-  
13 cies whose default, failure of performance, or other conduct caused or contributed to the incurring of  
14 damage or liability by the state.

15 SECTION 6. *Additional Approval in Certain Cases.* In the event that an agreement made pur-  
16 suant to this act shall deal in whole or in part with the provision of services or facilities with regard to  
17 which an officer or agency of the state government has constitutional or statutory powers of control,  
18 the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or  
19 agency having such power of control and shall be approved or disapproved by him or it as to all mat-  
20 ters within his or its jurisdiction in the same manner and subject to the same requirements governing  
21 the action of the [*attorney general*] pursuant to Section 4(f) of this act. This requirement of submission  
22 and approval shall be in addition to and not in substitution for the requirement of submission to and  
23 approval by the [*attorney general*].

24 SECTION 7. *Appropriations, Furnishing of Property, Personnel, and Service.* Any public agency  
25 entering into an agreement pursuant to this act may appropriate funds and may sell, lease, give, or  
26 otherwise supply the administrative joint board or other legal or administrative entity created to op-  
27 erate the joint or cooperative undertaking by providing such personnel or services therefor as may be  
28 within its legal power to furnish.<sup>1</sup>

29 SECTION 8. *State Assistance.* The state and all departments, boards, bureaus, commissions, and  
30 other agencies thereof are hereby authorized and empowered, within the limitations of the constitu-  
31 tion, to furnish and make available services, assistance, funds, property, and other incentives to any  
32 two or more counties, municipal corporations, public corporations, and other subdivisions of this  
33 state, or any combination thereof, in connection with any program of services, benefits, administra-  
34 tion, or other undertaking in which the state or any of its above named agencies participates by

<sup>1</sup>Some states have constitutional provisions which may present barriers to this in interstate areas.

1 furnishing supervision, services, property, administration of funds, where such counties, municipal  
2 corporations, public corporations, or other subdivisions are thereby able and willing to provide for  
3 the consolidation, combining, merger, or joint administration of such program or any part or function  
4 thereof, by the two or more units, so as to effectuate efficiency, economy or simplification in the ad-  
5 ministration or financing thereof. In providing such assistance a public agency of this state is spe-  
6 cifically authorized, in addition to the above, to:

- 7 (a) assume a greater share of, or the entire cost of, such participating program where funds are  
8 available and such is deemed feasible;
- 9 (b) establish and maintain area offices for such combined, consolidated, or merged undertaking;
- 10 (c) convene meetings of municipal, county, or other local officials to discuss ways of cooperating  
11 and providing more efficient and effective services;
- 12 (d) grant additional priority to such participating programs in the allocation of funds and assis-  
13 tance; and
- 14 (e) make available, if authorized, or recommend grants for studies of the feasibility of consoli-  
15 dated, merged, or other joint programs.

16 SECTION 9. *State Grants for Study.* The [*department of community affairs or other appropriate*  
17 *state agency*] is authorized to provide grants [subject to appropriations therefor] [not to exceed [\$ ]  
18 *per annum*] for the purpose of conducting studies to consider the feasibility of an interlocal contract,  
19 agreement, or transfer under which a governmental function or service now performed or capable of  
20 being performed singly by the requesting parties would be performed by contract or transfer by one  
21 party for another or jointly. Grants may be made upon the following conditions being met:

- 22 (a) two or more municipalities, other units of local government, or any combination thereof,  
23 having jointly requested such a study by appropriate resolution;
- 24 (b) there is a strong indication that such a study will provide a proposal which will be im-  
25 plemented;
- 26 (c) the function or service is presently [*under study by a state agency pursuant to the Transfer of*  
27 *Functions Act (see Section 4 of Alternative 1) or*] within the particular service or functional areas of con-  
28 centration established for the year by the [*department*] pursuant to a rule;
- 29 (d) the results of the study will be generally useful for application throughout the state and will  
30 not be merely repetitive of work done elsewhere; and
- 31 (e) the study proposal has been approved by the state executive department(s) which exercises  
32 jurisdiction over the performance of the services or function to be provided under the proposed pro-  
33 gram.

34 SECTION 10. *State Grants for Implementation.*

- 35 (a) The [*department of community affairs or other appropriate agency*] is authorized to provide

1 grants to implement any interlocal contract, agreement, or transfer of function upon application by  
2 a local governmental unit, provided that:

3 (1) a feasibility study has been conducted by the [[*department*] or [*a third party approved by the*  
4 *department*]], with an approved plan of operations constituting the final element;

5 (2) all units of local government involved have adopted the necessary effectuating ordinan-  
6 ces or resolutions as may be required;

7 (3) the state or regional agencies, if any, with jurisdiction over the subject matter and area  
8 have approved;

9 (4) no neighboring local unit will be adversely affected, to a disproportionate degree as deter-  
10 mined by the [*department*], by the joint program; and

11 (5) no neighboring local unit which might benefit and who has adopted a resolution desiring  
12 inclusion within [30 days] after notification of the beginning of the feasibility study has been ex-  
13 cluded unless such inclusion would so reduce benefits to others so as to make the program economi-  
14 cally infeasible in the determination of the [*department*].

15 (b) The grants shall be for terms not to exceed [four years], subject to availability of state appro-  
16 priations, and shall not exceed the greater of:

17 (1) an amount equal to all extraordinary administrative and operating costs, which shall be  
18 those non-capital costs incurred by a local unit for service or improved service provided through the  
19 joint agreement, contract, or transfer in excess of the operating and administrative costs which it  
20 would have incurred for the provision of its existing service had such joint agreement, contract, or  
21 transfer not been implemented; or

22 (2) an amount equal to 10 percent of the total operating and administrative costs and, if  
23 there is no Federal or other state assistance available, capital costs incurred by the local unit as a result  
24 of implementation of the joint program.

25 SECTION 11. *State Appeal in Certain Cases.* If the governing body of a county or municipality  
26 in which a joint or consolidated program has applied for the location and erection of sewage treatment  
27 or solid waste disposal facilities denies permission therefor or fails to take final action upon the ap-  
28 plication within [60] days of its filing, the head of the joint or consolidated program may, at any time  
29 within [30] days following the date of such refusal or the date of expiration of said period of [60] days,  
30 apply to the [*appropriate state agency*], which is hereby authorized, after hearing the head of the joint  
31 program and the county or municipality affected, to grant, notwithstanding the aforesaid denial or  
32 failure to act of the governing body, the application for the erection of the sewage treatment or dispo-  
33 sal or solid waste treatment or disposal facilities upon being satisfied that the topographical and other  
34 physical conditions existing in the local units comprising the joint program are such as to make the  
35 erection of such facilities within their own boundaries impracticable as an improvement for the benefit

1 of the whole applying joint program.

2 SECTION 12. *Separability.* [Insert separability clause.]

3 SECTION 13. *Effective Date.* [Insert effective date.]



## 2.205 TRANSFER OF FUNCTIONS BETWEEN MUNICIPALITIES AND COUNTIES<sup>1</sup>

Intergovernmental service agreements at the local level are composed of the following three elements in ascending order of governmental organization and shifting of responsibility: interlocal contracting, interlocal agreements for joint action, and interlocal transfer of functions. All three are considered in the two bills on interlocal agreements and transfers of function. In its recent multivolume work on *Substate Regionalism and the Federal System*, the Commission recommends on page 20 in Volume IV, *Governmental Functions and Processes: Local and Areawide*, a jointly developed state-local assignment of functions policy and process. The recommendations call for additional state effort in this area, but also recognize that: "established local and regional institutions could still voluntarily assign or reassign functions to one or another local levels of government through the use of existing or expanded interlocal contracting or transfer and consolidation procedures." The following constitutional amendment and bill, coupled with the bill on interlocal contracts and agreements, are designed not only to provide additional state effort but also to enable local units of government in their joint efforts to best meet the service demands of their citizens.

The proposed constitutional amendment provides authority for local governmental units to initiate and complete voluntary transfers, and also provides authority to the state legislature to develop a systematic statutory approach to the assignment of functions. Then the following suggested state legislation provides a comprehensive state approach both to voluntary and mandated transfers of functions.

States should enact legislation authorizing the legislative bodies of municipalities and counties located within metropolitan areas to take mutual and coordinate action to transfer responsibility for specific governmental services from one unit of government to the other. Specifically, it is proposed that the states enact a statute authorizing voluntary transfer of functions between municipalities and counties within metropolitan areas to the extent agreed by the governing boards of these respective types of units. If desired, the statute could spell out the functions authorized for such voluntary transfer or provide exceptions not in order and eligible for transfer 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 statute would enable the board of county commissioners and the mayors and councils of municipalities collectively, to assess, 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 or sewage disposal 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.

Two alternative bills are suggested; the first one embodies a firm state rule as preferred by ACIR, while the second is voluntary among local units.

*Section 1* of the first alternative bill suggested states the purpose of the act and *Section 2* provides definitions of the terms used.

*Section 3* sets out the means by which the transfer of a function or power from one or more governmental units to another may occur. The procedure to be followed if a transfer is terminated is also included.

*Section 4* mandates the appropriate state agency to conduct a continuing study of the various governmental activities conducted and services provided by local governments in the state, considering Federal-state-local relationships and other enumerated criteria.

*Section 5* authorizes the state and any of its departments, boards, or other agencies to provide services, assistance, funds, property, or other incentives, as enumerated, to any two or more units of local govern-

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *The Challenge of Local Governmental Reorganization*, Volume III of *Substate Regionalism and the Federal System*, Report A-44 (February, 1974), and *Governmental Functions and Processes: Local and Areawide*, Volume IV of *Substate Regionalism and the Federal System*, Report A-45 (Washington, D.C.: U.S. Government Printing Office, February, 1974).

ment effecting a transfer of a function or power. Grants for the study or implementation of a transfer are authorized if certain enumerated conditions are met. In the special case of a consolidated program for sewage treatment or solid waste facilities, the appropriate state agency may approve the application despite refusal or failure to act by the governing body of the county or municipality in which the facility will be located.

*Sections 6 and 7* provide for separability and effective date clauses, respectively.

*Section 1* of the second alternative bill suggested provides definitions of terms used in the act.

*Section 2* authorizes two or more political subdivisions to enter into an agreement for the transfer of the responsibility for a function to any one of the subdivisions or some combination thereof. *Section 3* sets out what must be included in the agreement.

*Section 4* provides for revocation proceedings that may be initiated by a political subdivision which has transferred a function in the event it feels the function is not being provided as specified in the agreement.

*Section 5* authorizes the appropriate state agency to provide technical and financial assistance, including grants-in-aid, to political subdivisions for the study or implementation of a functional transfer.

*Sections 6 and 7* provide for separability and effective date clauses, respectively.

### Suggested Constitutional Amendment

#### [TRANSFER OF POWERS]

*(Be it enacted, etc.)*

- 1 By law, ordinance, or resolution of the governing bodies of each of the governments affected, any
- 2 function or power of a county, municipality, or special district may be transferred to, or contracted to
- 3 be performed by another county, municipality, or special district as provided by law.<sup>1</sup>

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<sup>1</sup>This provision can apply fully only to the extent that all units have equal authority to perform public functions, as under home rule applicable to all general governments. Otherwise the transfer is limited by the express powers of the receiving unit contained in draft amendment on *Home Rule Powers of Local Government*. Thus, a broad home rule provision as is needed.

## Suggested Legislation

[*Alternative 1.*]

### [AN ACT PROVIDING FOR TRANSFERS OF FUNCTIONS BETWEEN UNITS OF LOCAL GOVERNMENT AND STATE ASSISTANCE THEREFOR]

(*Be it enacted, etc.*)

1 SECTION 1. *Purpose.* It is the purpose of this act to authorize and permit units of local general  
2 government in this state to more efficiently and effectively serve the needs of their constituents by  
3 providing:

4 (a) full authority for both general and special purpose units to transfer any function or power  
5 assigned or authorized the unit to a general local government and authority for general local govern-  
6 ments to accept and carry out any function or power so transferred, including those transferred from  
7 special purpose districts;

8 (b) continuing study on the part of the state of various functions, or parts thereof, and any rec-  
9 ommendations for functional reassignments or transfers; and

10 (c) state assistance, both financial and technical, for local governments desiring to participate  
11 in voluntary transfers or required to transfer by state law.

12 SECTION 2. *Definitions.* As used in this act:

13 (a) "[*Department*]" means the [*appropriate state agency*].

14 (b) "Function" or "power" means any service or exercise of governmental power which may be  
15 authorized, by constitution or law, to a unit of local government.

16 (c) "Service function" as used herein is a local governmental service or group of closely allied  
17 local governmental services performed by a unit of local government for its inhabitants and for which,  
18 under constitutional and statutory provisions and judicial interpretations, the unit, as distinguished  
19 from the state, has primary responsibility for provision and financing. [Without in any way limiting  
20 the foregoing, the following are examples of such local service functions:

- 21 (1) street and sidewalk maintenance;
- 22 (2) trash and garbage collection and disposal;
- 23 (3) sanitary and health inspection;
- 24 (4) water supply;
- 25 (5) sewage disposal;
- 26 (6) police protection;
- 27 (7) fire protection;

- 1 (8) library services;
- 2 (9) planning and zoning;
- 3 (10) *etc.*, if it is desired to list functions subject to transfer.]

4 (d) "Unit of local government" means any county or municipality [town or township] in this  
5 state and, only for the purposes of transferring a function to a county or municipality, any special  
6 purpose government established by law.

7 SECTION 3. *Transfers of Functions; Authority and Methods.*

8 (a) Whenever the governing bodies of any two or more units of local government in this state  
9 shall determine, by the passage of identical resolutions, that duplication exists in the operations,  
10 procedures, or functions of offices or agencies of such units, or portions thereof, or that such oper-  
11 ations, procedures, or functions can be more efficiently and effectively exercised or provided as a con-  
12 solidated activity performed by a single intergovernmental office or agency or by a single office or  
13 agency of one of the participating units of local government, such governing bodies are hereby au-  
14 thorized to consolidate any or all of the operations, procedures, or functions performed or carried on  
15 by such offices or agencies or transfer any power or responsibility by the passage of identical resolu-  
16 tions [ordinances] setting out the time, form, and manner of consolidation and designating the surviv-  
17 ing office or agency or, in the case of a governmental power and responsibility, the unit assigned to  
18 assume and perform such power and responsibility.

19 [Optional Subsection.]

20 (b) Whenever a petition, signed by not less than [10] percent of the qualified electors of any two  
21 or more units of local government in this state, shall be filed with the governing bodies of such units  
22 requesting that a proposition for the consolidation of specified operations, procedures, and functions  
23 of designated offices or agencies of such units or transfer of any power or responsibility be submitted  
24 to the electors thereof, the governing bodies shall submit such proposition at an election called and  
25 held for such purpose in the manner provided by [*appropriate state law*].]

26 [Optional Subsection.]

27 (c) The elimination of an elective office by consolidation under the provisions of this act shall  
28 be subject to the approval of a majority of the electors of the political or taxing subdivisions served by  
29 such office, voting at an election called and held for such purpose, in the manner provided by [*appro-*  
30 *priate state elections law*].]

31 (d) In the event that any consolidation agreement or transfer between units of local government  
32 made pursuant to this act shall affect functions or services over which an officer or agency of the  
33 state government has constitutional or statutory powers of control, the consolidation agreement or  
34 transfer shall, as a condition precedent to its entry into force, be submitted to the state officer or  
35 agency having such power of control and shall be approved or disapproved by him or it as to all mat-

1 ters within his or its jurisdiction.

2 (e) Except when otherwise specifically provided by the resolutions [or ordinances] for the consoli-  
3 dation of offices or agencies or the transfer of a power or function under the provisions of this act,  
4 the consolidated office or agency or the unit assuming the transferred power or responsibility shall  
5 be the successor in every way to the powers, duties, functions, and obligation now or hereafter granted  
6 to, or imposed by law upon, the offices or agencies so consolidated.

7 (f) Any political or taxing subdivision of this state entering into an agreement with any other  
8 such political or taxing subdivision pursuant to this act may appropriate funds and may sell, lease,  
9 give, or otherwise supply to any surviving office or agency designated by an agreement made here-  
10 under such personnel or services therefor as may be within its legal power to furnish.

11 (g) A consolidation agreement or a transfer of power and responsibility, made pursuant to  
12 this act, shall operate to relieve the unit so transferring of any obligation or responsibility  
13 respecting the transferred function imposed upon it by law.

14 [Alternative 1.]

15 [(h) The consolidation agreement or transfer may only be terminated upon a finding that the ex-  
16 tent of actual and timely performance thereof by a joint board or other legal or administrative entity  
17 created pursuant to an agreement made hereunder, or if a power and responsibility is transferred by  
18 the unit assuming such power, does not meet the standards provided in the agreement or transfer. A  
19 finding by the unit of local government requesting termination shall be reviewable by the state agency  
20 having responsibility for such function or power at the state level, by an impartial third party as  
21 provided in the agreement or transfer, or by a court of competent jurisdiction prior to the termination  
22 becoming effective.]

23 [Alternative 2.]

24 [(h) When a political subdivision which has transferred a function is of the opinion that the func-  
25 tion is not being performed as specified in the agreement, it may institute revocation proceedings. The  
26 political subdivision shall notify the designated arbitration body of the manner in which the perfor-  
27 mance of the function has not met agreed upon standards. If the arbitration body determines the  
28 complaint to be valid, it may allow the political subdivision or substate district organization per-  
29 forming the function up to [six months] to meet the prescribed standards. If the arbitration body finds,  
30 at the original determination or at the end of the allotted time period, that the political subdivision or  
31 substate district organization cannot or will not perform the function as agreed, it shall arrange for  
32 transfer of the function back to the original political subdivision.]

33 SECTION 4. *Special Studies.*

34 (a) The [department] shall, in consultation with the appropriate state and local agencies, conduct  
35 a continuing study of various governmental activities being conducted and services being provided by

1 local government in this state.

2 (b) The study of any function or activity shall consider the appropriate relationships of Federal-  
3 state-local activity in the area and shall further consider the following criteria:

4 (1) the geographic and legal adequacy of the local governmental response;

5 (2) the degree of economic and social impact beyond the boundary of the local governmental  
6 unit involved in the activity or function;

7 (3) the degree of citizen access and control necessary for appropriate governmental response;

8 (4) the management and technical capability of the local governmental units involved in the  
9 function or activity; and

10 (5) the degree of economic efficiency and fiscal equity involved in the function or activity and  
11 any proposals for change.

12 (c) When a specific study of an activity or function is undertaken by the [department], it shall no-  
13 tify the legislative committees and state agencies with jurisdiction over the subject matter, representa-  
14 tives of the state organizations of various local governmental units concerned, and any other person  
15 who has filed a request for such notification. The [department] shall further establish an advisory  
16 committee to review the study outline and any results or recommendations developing from such  
17 study.

18 (d) the governor, or [legislature] through its presiding officer(s) [or appropriate committees], may re-  
19 quest the [department] to study a specific activity or power which may be proposed for mandating  
20 state assignment and transfer. In such case, the study shall further identify any extraordinary costs  
21 associated with such transfer, any additional or expanded coverage, and any savings, and shall pro-  
22 vide a method for financing both the cost of transfer, if any, and the continued operation.

23 (e) On or before [February 1] of each year, the [department] shall report to the governor and the  
24 presiding officer(s) of [both houses of the legislature] concerning the status of the continuing study  
25 and any specific studies undertaken pursuant to this section.

26 (f) The [department] is empowered to call on any state, county, special district, or municipal agen-  
27 cy, department, bureau, or board for any and all information or assistance which may, in its judg-  
28 ment, be of assistance administering, or preparing for the administration of, this act, and such state,  
29 county, special district, or municipal agency, department, bureau, or board is hereby authorized, di-  
30 rected, and required to furnish such information or assistance.

31 **SECTION 5. State Assistance.**

32 (a) The state and all departments, boards, bureaus, commissions, and other agencies thereof are  
33 hereby authorized and empowered, within the limitations of the constitution, to furnish and make  
34 available services, assistance, funds, property, and other incentives to any two or more units of local  
35 government, in any combination thereof, in connection with any program of services, benefits, ad-

1 ministration, or other undertaking in which the state or any of its above named agencies participates  
2 by furnishing supervision, services, property, or administration of funds, where such units of local  
3 government are thereby able and willing to provide for the consolidation or for the transferral of the  
4 power and responsibility to a single jurisdiction of such program or any part or function thereof, by  
5 the two or more units, so as to effectuate efficiency, economy, or simplification in the administration  
6 or financing thereof. In providing such assistance, a public agency of this state is specifically author-  
7 ized, in addition to the above, to:

8 (1) assume a greater share of, or the entire cost of, such participating program where funds  
9 are available and such is deemed feasible;

10 (2) establish and maintain area offices for such combined, consolidated, or merged undertak-  
11 ing;

12 (3) convene meetings of municipal, county, or other local officials to discuss ways of co-  
13 operating and providing more efficient and effective services;

14 (4) grant additional priority to such participating programs in the allocation of funds and as-  
15 sistance; and

16 (5) make available, if authorized, or recommend grants for studies into the feasibility of  
17 consolidated, merged, or other joint programs.

18 (b) The *[department]* *[or other appropriate state agency]* is authorized to provide grants for the  
19 purpose of conducting studies to consider the feasibility of a consolidation agreement or transfer un-  
20 der which a governmental function or service now performed or capable of being performed singly by  
21 the requesting parties would be consolidated or transferred. Grants may be made upon the following  
22 conditions being met:

23 (1) two or more units of local government, in any combination thereof, having jointly re-  
24 quested such a study by appropriate resolution;

25 (2) there is a strong indication that such a study will provide a proposal which will be im-  
26 plemented;

27 (3) the function or service is presently under study pursuant to Section 4 or is presently  
28 within the particular service or functional areas of concentration established for the year by the  
29 *[department]* pursuant to a rule;

30 (4) the results of the study will not be merely repetitive of work done elsewhere; and

31 (5) the study proposal has been approved by the state executive department(s) which exer-  
32 cises jurisdiction over the performance of the services or function to be provided under the proposed  
33 program.

34 (c) The *[department of community affairs]* is authorized to provide grants to implement any con-  
35 solidation agreement or transfer of function upon application by a local governmental unit, provided

1 that:

2 (1) a feasibility study has been conducted by the [department] or [a third party approved by  
3 the [department]] with an approved plan of operations constituting the final elements;

4 (2) all units of local government involved have adopted the necessary effectuating ordin-  
5 ances or resolutions as may be required;

6 (3) the state or regional agencies, if any, with jurisdiction over the subject matter and area  
7 have approved;

8 (4) no neighboring local unit will be adversely affected to a disproportionate degree, as de-  
9 termined by the [department], by the joint program; and

10 (5) no neighboring local unit which might benefit and who has adopted a resolution desiring  
11 inclusion within [30] days after notification of the beginning of the feasibility study has been exclud-  
12 ed, unless inclusion would so reduce benefits to or adversely affect other units as to make the pro-  
13 gram economically infeasible in the determination of the [department].

14 (d) Grants pursuant to subsection (c) shall be for terms not to exceed four years, subject to avail-  
15 ability of state appropriations, and shall not exceed the greater of:

16 (1) an amount equal to all extraordinary administrative and operating costs, which shall be  
17 those non-capital costs incurred by a local unit for service provided through the joint agreement, con-  
18 tract, or transfer in excess of the operating and administrative costs which it would have incurred  
19 for the provision of its existing service had such joint agreement, contract, or transfer not been imple-  
20 mented; or

21 (2) an amount equal to 10 percent of the total operating and administrative costs and, if there  
22 is no Federal or other state assistance available, capital costs incurred by the local unit as a result of  
23 implementation of the joint program.

24 (e) If the governing body of a county or municipality in which a joint or consolidated program  
25 has applied for the location and erection of sewage treatment or solid waste disposal facilities refuses  
26 permission therefor or fails to take final action upon the application within [60] days of its filing, the  
27 head of the joint or consolidated program may, at any time within [30] days following the date of such  
28 refusal or the date of expiration of said period of [60] days, apply to the [appropriate state agency],  
29 which is authorized, after having heard the head of the joint program and the county or municipality  
30 affected, to grant the application for the erection of the sewage treatment or disposal or solid waste  
31 treatment or disposal facilities, notwithstanding the aforesaid refusal or failure to act of the governing  
32 body, upon being satisfied that the topographical and other physical conditions existing in the local  
33 units comprising the joint program are such as to make the erection of such facilities within their  
34 own boundaries impracticable as an improvement for the benefit of the whole applying joint program.

35 SECTION 6. *Separability.* [Insert separability clause.]



1 SECTION 7. *Effective Date.* [Insert effective date.]

2 [OR]

3 [Alternative 2.]

[AN ACT TO AUTHORIZE THE TRANSFER OF FUNCTIONS BETWEEN  
POLITICAL SUBDIVISIONS AND TO PROVIDE STATE TECHNICAL AND  
FINANCIAL ASSISTANCE FOR SUCH TRANSFERS]

(Be it enacted, etc.)

1 SECTION 1. *Definitions.* As used in this act:

2 (a) "Political subdivision" means a county, city, town, or village, and, only for the purposes of  
3 transferring but not receiving a function, school district, special district, or public authority.

4 (b) "Substate district organization" means a regional body which performs areawide compre-  
5 hensive and functional planning, research, technical assistance, grant-in-aid review, [special district  
6 oversight, interlocal contracting, environmental and developmental activities, and service delivery]  
7 [and related responsibilities].

8 SECTION 2. *Transfers Authorized.* Two or more political subdivisions are authorized to enter  
9 into an agreement with each other providing for transfer of the responsibility for a function to one  
10 another or any combination thereof upon the consent of each political subdivision involved. Substate  
11 district organizations are authorized to assume responsibility for a function under transfer arrange-  
12 ments upon the consent of a majority of the member local governments representing at least [60] per-  
13 cent of the substate district's population, and the consent of the political subdivision transferring the  
14 function.<sup>1</sup>

15 SECTION 3. *Transfer Agreements.*

16 (a) Prior to the transfer of a function, the parties shall enter into an agreement, which shall in-  
17 clude:

18 (1) a description of the function to be transferred;

19 (2) measurable standards setting forth the level, quality, and scope of performance;

20 (3) designation of an arbitration body<sup>2</sup> to determine whether or not the function is being  
21 performed in accordance with the terms of the transfer agreement;

22 (4) the manner in which employees engaged in the performance of the function will be trans-  
23 ferred, reassigned, or otherwise treated;

24 (5) the manner in which real property, facilities, equipment, or other personal property re-  
25 quired in the exercise of the function are to be transferred, sold, or otherwise disposed of;

26 (6) the method of financing to be used in performing the function;

27 (7) the effective date of the transfer; and

<sup>1</sup>See the Advisory Commission on Intergovernmental Relations' model *Statewide Substate Districting Act*, Section 7(g).

<sup>2</sup>Possible arbitration bodies include the local government boundary commission, state advisory commission on intergovernmental relations, department of community affairs, or substate district organization if it is not a party to the transfer.

1 (8) any other legal, financial, and administrative arrangements necessary to effect the transfer  
2 in an orderly and equitable manner.

3 (b) Immediately following approval by the parties, the transfer agreement shall be filed with [in-  
4 sert department of community affairs or other appropriate state agency].

5 SECTION 4. *Revocation of Transfer.* When a political subdivision which has transferred a func-  
6 tion is of the opinion that the function is not being performed as specified in the agreement, it may  
7 institute revocation proceedings. The political subdivision shall notify the designated arbitration body  
8 of the manner in which the performance of the function has not met agreed upon standards. If the  
9 arbitration body determines the complaint to be valid, it may allow the political subdivision or substate  
10 district organization performing the function up to [six months] to meet the prescribed standards. If the  
11 arbitration body finds, at the original determination or at the end of the allotted time period, that the  
12 political subdivision or substate district organization cannot or will not perform the function as  
13 agreed, it shall arrange for transfer of the function back to the original political subdivision.

14 SECTION 5. *State Assistance.*

15 (a) The [insert department of community affairs or other appropriate state agency] is authorized to  
16 furnish technical and financial assistance to political subdivisions and substate district organizations  
17 studying the feasibility of a functional transfer. The [department] may reimburse the parties [ ] percent  
18 of the actual cost of the completed study.

19 (b) The [department of community affairs] is authorized to provide grants-in-aid to political subdi-  
20 visions for non-recurring costs involved in a functional transfer, including the equalization of costs  
21 relating to debt maintenance, personnel expenses, benefits and pensions, and the acquisition or con-  
22 version of physical property. The political subdivision or substate district organization receiving the  
23 transferred function shall provide the [department] with documented evidence of costs incurred. The  
24 [department] may reimburse the parties [ ] percent of such costs.

25 (c) State appropriations are authorized in the amounts necessary for this section.

26 SECTION 6. *Separability.* [Insert separability clause.]

27 SECTION 7. *Effective Date.* [Insert effective date.]

## 2.206 NEIGHBORHOOD SUBUNITS OF GOVERNMENT<sup>1</sup>

A growing body of opinion points to the need for increasing citizen involvement in the governmental activities of neighborhoods within large cities and counties. Some observers believe that the disappearance of any meaningful sense of community among residents of large cities and counties in our metropolitan areas has been one of the major causes of the "crisis in the cities." The complaint is frequently voiced that the gap between the neighborhood and the city hall or the county building has lengthened continually until the distance seems astronomical rather than a few blocks or a few miles. Indianapolis has developed its "mini-government" management to overcome this concern. Boston and Honolulu have their "little city halls." Dayton, Detroit, the District of Columbia, and Pittsburgh are developing various responses to the demand for more "grass roots" government physically closer to the people.

States should consider legislation authorizing large cities and county governments in metropolitan areas to establish neighborhood subunits of government with limited powers of taxation and local selfgovernment.<sup>2</sup> While the establishment of neighborhood centers is by no means the complete answer to the unrest which exists in many of our large urban areas, there is a definite need to stimulate individual areas to develop programs of neighborhood improvement and selfimprovement.

The following suggested legislation authorizes city and county governments to create neighborhood subunits of government with elected neighborhood governing bodies. The legislation provides that these subunits may be dissolved at will by the city or county governing body. The legislation is not intended to fragment local government structure further in metropolitan areas. However, it is designed to make it possible, through the neighborhood subgovernment device, for existing large units of local government to harness some of the resources and aspirations of their inner communities. The proposed legislation suggests a means through which a local government can actively involve one or more neighborhoods in the governmental process.

*Section 1* declares that the purpose of the act is to encourage citizen participation by permitting limited selfgovernment through the establishment of neighborhood councils as legal entities of city or county governments. *Section 2* defines a neighborhood service area and a neighborhood area council. *Section 3* permits the establishment of neighborhood service areas, and authorizes neighborhood area councils to finance certain governmental services at a different level than the overall city or county tax rate, so that only recipients must pay for a particular service.<sup>2</sup> It should be noted that a constitutional amendment may be necessary in some states in order to permit use of this device.

*Section 4* defines the optional procedures for establishing individual neighborhood service units. One procedure emphasizes local initiative as reflected by the submission of a petition to the city or county by the neighborhood residents. The other procedure allows a city or county governing body unilaterally to create neighborhood service areas, including a citywide or countywide system of such areas. *Section 4* also provides for a public hearing and final approval by the city or county governing body to establish these areas. *Section 5* permits the extension of the boundaries of an existing neighborhood service area. *Section 6* prescribes legislative standards for determining neighborhood service area boundaries, and *Section 7* specifies the procedures for dissolution of a service area.

*Section 8* provides for the election of council members and the filling of vacancies to serve unexpired terms. *Section 9* sets forth council powers and functions. A council may exercise only those powers and functions that are authorized by the city or county governing body. A power may be transferred to a neighborhood council in its entirety or may be shared with the local governing body. Neighborhood councils are authorized to initiate and carry out such self help projects as supplemental refuse collection, beautification, street fairs and festivals, and cultural activities. Limited budget and finance authority, subject to city or county audit, may be shared or transferred to neighborhood councils for the acceptance of funds

<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *Fiscal Balance in the American Federal System*, Two volumes, Report A-31 (Washington, D.C.: U.S. Government Printing Office, October, 1967).

<sup>2</sup>See also Advisory Commission on Intergovernmental Relations draft *County Modernization Act*, Title V, *Subordinate Service Areas*, and *New Community District Act*.

from public and private sources to meet overhead costs of administration and costs for services rendered. Neighborhood councils may also levy a uniform tax to finance certain special services.

*Section 10* describes procedures for neighborhood council meetings and provides that members shall receive no compensation other than reimbursement for actual and necessary travel and other expenses incurred in the performance of their duties. *Section 11* permits the council to employ a staff consultant, while *Section 12* requires the council to make an annual report to the city or county.

*Sections 13 and 14* provide for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT TO AUTHORIZE CITIES AND COUNTIES TO ESTABLISH NEIGHBORHOOD SERVICE AREAS TO ADVISE, UNDERTAKE, AND FINANCE CERTAIN GOVERNMENTAL SERVICES]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* It is the purpose of this act to encourage citizen involvement in govern-  
2 ment at the neighborhood level in urban areas by permitting limited selfgovernment through the  
3 establishment of neighborhood councils as legal entities of the city or county government.

4 SECTION 2. *Definitions.* As used herein:

5 (a) "City" means any [insert appropriate classes of municipal government], located within a  
6 metropolitan area.

7 (b) "County" means any county located, in whole or in part, within a metropolitan area.

8 (c) "Metropolitan area" means an area designated as a Standard Metropolitan Statistical Area  
9 by the United States Bureau of the Census.<sup>1</sup>

10 (d) "Neighborhood council" means a neighborhood area council created by Section 8 of this act  
11 to govern a neighborhood service area.

12 (e) "Neighborhood service area" means an area established pursuant to Sections (3), (4), (5), and

13 SECTION 3. *Establishment of Neighborhood Service Areas.* Any city [governing body] or county  
14 [governing body] of a city or county located within a metropolitan area may establish within its borders  
15 one or more neighborhood service areas.<sup>2</sup> There shall be only one such service area for any part of a  
16 city or county.

17 SECTION 4. *Creation.*

18 (a) A petition signed by [ ] percent of the [qualified voters] [residents] within any portion of a  
19 city or county may be submitted to the city [governing body] or county [governing body] requesting  
20 the establishment of a neighborhood service area to provide any service or services which the city or  
21 county is otherwise authorized by law to provide. The petition shall describe the territorial boundaries  
22 of the proposed neighborhood service area and shall specify the services to be provided.

23 (b) Upon receipt of the petition and verification of the signatures thereon, the city [governing  
24 body] or county [governing body], within [30] days following verification, shall hold a public hearing  
25 on the question of whether or not the requested neighborhood service area shall be established and, if  
26 an area has territory in more than one jurisdiction, the governing bodies may act jointly.

<sup>1</sup>Particular states may find it necessary for constitutional reasons, or otherwise desirable, to apply a somewhat different definition, tailored to their special circumstances.

<sup>2</sup>Care should be taken in the drawing of the boundaries in order not to exacerbate intrajurisdictional disparities within the city or county.

1 (c) Within [30 days] following the public hearing, the city [*governing body*] or county [*govern-*  
2 *ing body*], by resolution shall approve or disapprove the establishment of the requested neighborhood  
3 service area. A hearing may be adjourned from time-to-time, but shall be completed within [60]  
4 days of its commencement.

5 (d) A resolution approving the creation of the neighborhood service area may contain amend-  
6 ments or modifications of the area's boundaries or functions as set forth in the petition.

7 (e) A city [*governing body*] or county [*governing body*], acting singly or jointly, may establish  
8 neighborhood service areas on its own motion either for individual neighborhoods or for neighbor-  
9 hoods throughout its jurisdiction in order to provide citizen input on the administration of city or  
10 county services which have been decentralized.

11 SECTION 5. *Boundary and Functional Changes of a Neighborhood Service Area.* The city  
12 [*governing body*] or county [*governing body*], pursuant to a request from the neighborhood council,  
13 or pursuant to a petition signed by at least [ ] percent of the qualified voters living within the terri-  
14 tory proposed to be added or deleted, or on its own motion, may enlarge, diminish, or otherwise alter  
15 the boundaries or functions of any existing neighborhood service area following the procedures set  
16 forth in Section 4(b), (c), (d), or (e).

17 SECTION 6. *Considerations in Setting Boundaries.* In establishing neighborhood service area  
18 boundaries and determining those services to be undertaken by the neighborhood area council, the  
19 city [*governing body*] or the county [*governing body*], shall study and take into consideration the  
20 following:

21 (a) the extent to which the area constitutes a neighborhood with common concerns and a ca-  
22 pacity for local neighborhood initiative, leadership, and decision making with respect to city or coun-  
23 ty government;

24 (b) city or county departmental and agency authority and resources over functions that may be  
25 either transferred or shared with the neighborhood council;

26 (c) population density, distribution, and growth within a neighborhood service area to assure  
27 that its boundaries reflect the most effective territory for local participation and control;

28 (d) citizen accessibility to, electoral control of, and participation in, neighborhood service area  
29 activities and functions;

30 (e) means of minimizing intrajurisdictional disparities; and

31 (f) such other matters as might affect the establishment of boundaries and services which would  
32 provide for more meaningful citizen participation in city or county government.

33 SECTION 7. *Dissolution of Neighborhood Service Area.*

34 (a) A city [*governing body*] or county [*governing body*], after public hearing, may dissolve a neigh-  
35 borhood service area on its own initiative or pursuant to a petition signed by at least [ ] percent of

1 the qualified voters living within the neighborhood service area, or pursuant to a resolution of the  
2 neighborhood council.

3 (b) The city [*governing body*] or county [*governing body*], shall give notice of a public hearing  
4 in [ ] newspapers of general circulation in the neighborhood service area of its intention to hold a  
5 public hearing on a proposed dissolution, the notice to be given not less than [30] days before the  
6 date of the public hearing.

7 (c) The city [*governing body*] or county [*governing body*], shall provide for disposition of the assets  
8 and responsibilities and assumption of liabilities of the area so dissolved.

9 SECTION 8. *Election of Neighborhood Council; Vacancies.*

10 (a) The neighborhood council shall consist of [five to nine] members. The term of office of each  
11 member shall be [four] years, and members shall serve until their successors are elected and qualified.<sup>1</sup>

12 (b) The neighborhood council members shall be elected at-large by the voters of the neighborhood  
13 service area at the time as provided by law for holding general elections. Members shall be residents of  
14 the neighborhood service area who are qualified to vote in elections for local government officials.

15 (c) A vacancy shall be filled by the [council] [city [*governing body*] or county [*governing*  
16 *body*]]. Members so appointed shall serve for the remainder of the unexpired term.

17 SECTION 9. *Neighborhood Council Powers and Functions.* A neighborhood council may ex-  
18 ercise any powers and perform any functions within the neighborhood service area which are held  
19 by the city [*governing body*] or county [*governing body*], and which may be delegated to it specifical-  
20 ly by the city [*governing body*] or county [*governing body*], including:

21 [*Comment: Specifically delegated powers may include portions of the city or county budget and fi-*  
22 *nance authority subject to city or county audit, as well as administrative functions. The following*  
23 *may include some power which may differ from the power of the city or county and obviously could*  
24 *not be delegated; however, they do provide an outline]:*

25 [(a) *advisory or delegated substantive authority, or both, with respect to such functions as com-*  
26 *munity facility development and operation; urban renewal; relocation, public housing, planning and*  
27 *zoning actions, and other physical development programs; crime prevention and juvenile delinquency*  
28 *programs; health services; code inspection; recreation; education; referral and complaint services;*  
29 *and manpower training];*

30 [(b) *community self help projects, such as supplemental refuse collection, beautification, minor*  
31 *street and sidewalk repair, establishment and maintenance of neighborhood community centers,*  
32 *street fairs and festivals, cultural activities, recreation, referral and complaint services, and housing*  
33 *rehabilitation and sale]; and*

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<sup>1</sup>Some states may desire to set up staggered terms for members.



1 [(c) budget and finance authority, subject to city or county audit, to apply for and accept funds  
2 from public and private sources including public subscriptions, and to expend moneys to meet over-  
3 head costs of council administration and support for community self help projects; and authority to  
4 raise revenue for special services by adoption of a uniform annual levy, not to exceed [five dollars  
5 (\$5), on each [resident] [head of household] of the neighborhood service area].]

6 SECTION 10. *Compensation; Meetings; Bylaws; Quorum.*

7 (a) Members of a neighborhood council shall receive no compensation but may receive reim-  
8 bursement of actual and necessary travel and other expenses incurred in the performance of official  
9 duties, up to a maximum of [\$ ] in any one calendar year.

10 (b) All meetings of a neighborhood council shall be open to the public, as provided in [cite state  
11 open meeting law].

12 (c) A neighborhood council shall adopt bylaws providing for the conduct of its business and the  
13 selection of a presiding officer and other officers.

14 (d) A majority of the members of a neighborhood council shall constitute a quorum for the  
15 transaction of business. Each member shall have one vote.

16 SECTION 11. *Staff.* The neighborhood council may employ staff, and consult and retain ex-  
17 perts as it deems necessary. The neighborhood council may make agreements with local, state, or  
18 Federal agencies for temporary transfer, loan, or other cooperative use [with or without compensa-  
19 tion] of their employees, or its employees.

20 SECTION 12. *Annual Report.* The neighborhood council shall make an annual report of its  
21 activities to the city or county.

22 SECTION 13. *Separability.* [Insert separability clause.]

23 SECTION 14. *Effective Date.* [Insert effective date.]

## 2.207 SUPERVISION OF SPECIAL DISTRICTS<sup>1</sup>

More than 23,000 "special districts" (other than school districts) existed in the United States in 1972, according to the *Census of Governments*. These districts provide valuable governmental services to the people. In 1972 their total expenditures exceeded \$8.6-billion and their current revenues from their own sources, mostly from taxes and service and toll charges, exceeded \$5.3-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 are frequently not coordinated with the activities of state government and units of general local government. 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 1964 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 Commission's more recent report, *Substate Regionalism and the Federal System*, (six volumes — 1973 and 1974) detailed further complications in properly relating activities of special districts in both urban and rural areas.

The suggested act is designed to ensure that special district activities are related to those of general local government (*i.e.*, counties, cities, and towns), as well as to ensure the availability of appropriate information concerning the activities of districts available to the general public.

*Section 1* states the purpose of the act, and *Section 2* provides definitions.

*Section 3* requires the approval by either the municipality or the county, or both, of budgets, appropriations, land acquisitions, and other projects pursued 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.

*Section 4* requires that notification be given a state official and a county official of activities of existing and newly created special districts.

*Section 5* directs a state agency, to the extent feasible, to establish uniform fiscal years, to establish budget and account standards for all special districts, and to audit or approve private audits of district accounts. It also 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 6* directs counties and municipalities in preparing annual reports to include pertinent information on the activities of special districts operating within their territory.

*Sections 7 and 8* provide for separability and effective date clauses, respectively.

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *The Problem of Special Districts in American Government*, Report A-22 (May, 1964); *Regional Decision Making: New Strategies for Substate Districts*, Volume I of *Substate Regionalism and the Federal System*, Report A-43 (October, 1973); and *The Challenge of Local Governmental Reorganization*, Volume III of *Substate Regionalism and the Federal System*, Report A-44 (Washington, D.C.: U.S. Government Printing Office, February, 1974).

Suggested Legislation

[AN ACT TO COORDINATE SPECIAL DISTRICT ACTIVITIES  
WITH THOSE OF OTHER GOVERNMENTS AND TO INSURE PUBLIC  
AVAILABILITY OF INFORMATION RELATING TO SPECIAL  
DISTRICT ACTIVITIES]<sup>1</sup>

(Be it enacted, etc.)

1 SECTION 1. *Purpose and Policy.* It is the purpose of this act to establish procedures to insure  
2 that the activities of special districts are properly coordinated with those of other governmental units  
3 within the state. Further, it is essential that special districts, as well as other governmental units, take  
4 affirmative action to insure that the public is fully aware of the activities of all governmental entities  
5 operating within a particular community.

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

7 (a) "Governing body" means the body possessing legislative authority in a city, county, or special  
8 district.

9 (b) "Special district" means a local unit of special government created pursuant to law for the  
10 purposes of performing prescribed, specialized functions within limited boundaries, exclusive of  
11 [school districts and] those units of local special government formed by county or municipal govern-  
12 ment pursuant to their powers and governed, *ex officio*, by the governing body of such county or  
13 municipality.

14 SECTION 3. *Actions by Special Districts Subject to Approval.*<sup>2</sup>

15 (a) Prior to adoption of any budget, setting of any tax rates or other levies, appropriation of any  
16 funds, or acquisition of title to any land by a special district authorized by law, the district shall sub-  
17 mit to the city and/or county in which it is located a statement indicating its intention to take such ac-  
18 tion. If the action affects two or more cities and/or counties, the statement shall be submitted to each  
19 of them.

20 (b) The statement shall be in the form of a resolution adopted by the governing body of the dis-  
21 trict, indicating the intention of the district to take such action and shall contain a brief but appropri-  
22 ate identification of the action, and other information required by the city(s) and/or county(s).

23 (c) Within [30] days after receipt of the statement of intention, the governing bodies of the city  
24 or county, or cities or counties shall by resolution indicate their approval or disapproval or the pro-  
25 posed acquisition; a resolution disapproving the proposed acquisition shall state the reasons therefor.

<sup>1</sup>Suggested short title: *Coordination of Special District Activities Act.*

<sup>2</sup>Another approach is to have the governing body of the city or county also serve as the governing body of the special district. By this means, special district powers and beneficial financing procedures could be enjoyed without losing the benefits of program coordination.

1 (d) If the special district is performing a function which directly affects a program conducted by  
2 the state, upon receiving approval for it pursuant to subsection (b), the local governing body shall  
3 transmit a copy of its statement of intention and the approving resolution or resolutions to the [*de-*  
4 *partment of community affairs or the secretary of state*] who shall immediately refer the material to  
5 the state agency responsible for the administration of the state program involved. The state agency  
6 shall, [30] days from receipt of the material, either approve or disapprove the proposed acquisition.  
7 The agency shall approve the proposed action unless it finds that it would be inconsistent or in con-  
8 flict with state policy or an approved state plan for providing governmental services. The state  
9 agency's action shall be communicated to the governing bodies of the district and the city(s) and  
10 county(s) by an order signed by the head of the stage agency, and if the proposed acquisition is dis-  
11 approved, the order shall state the reasons therefor.

12 (e) Upon receiving approvals required pursuant to this section, a special district may proceed  
13 with the proposed action as otherwise authorized by law.

14 SECTION 4. *Reporting the Creation of Special Districts.*

15 The governing body of any existing special district shall, within [30] days after the adoption of  
16 this act, notify the [*department of community affairs or secretary of state*] and the [*clerk of the*  
17 *county governing body or bodies*] in which it is authorized to operate of its existence. The notifica-  
18 tion shall include a citation to the statute pursuant to which it was created and a brief description of  
19 its activities and service area.

20 SECTION 5. *Special Districts; Financial Matters.*

21 (a) The [*appropriate state agency*]<sup>1</sup> is empowered and authorized to make such reasonable rules  
22 and regulations regarding uniform fiscal years, audit standards, accounting practices and procedures,  
23 and reporting requirements by special districts in this state, including a uniform classification of ac-  
24 counts, as it deems necessary to assure the use of proper accounting and fiscal management tech-  
25 niques by such units.<sup>2</sup>

26 (b) The governing body of each special district, in accordance with its approved budget, shall  
27 make appropriations for each fiscal year which, in any one year, shall not exceed the amount to be  
28 received from taxation and other revenue sources. It shall be unlawful for any officer of a special dis-  
29 trict to draw money from the [*treasury*] except in pursuance of appropriation by law.

30 (c) Every special district authorized by law to levy a property tax or a special assessment shall  
31 annually inform each county and city within which it operates of the tax and/or special assessment  
32 rate levied by the district and the assessed valuation of property against which the tax is levied and

<sup>1</sup>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 the department of community affairs or the state audit agency should be inserted.

<sup>2</sup>These rules and regulations should be the same as those which apply to cities and counties in order to facilitate coordination of special district activities with those of cities and counties.

1 the basis for the assessment rate. The counties and cities so notified shall provide an itemization of  
2 special district property taxes and assessments levied against the property when furnishing tax [bills]  
3 [or receipts] to property owners within their borders.

4 (d) Each special district shall make provision for annual post-audit of its financial accounts in  
5 accordance with this section. The [*appropriate state agency*] annually shall audit the accounts of all  
6 special districts operating within the state [or may approve annual private audit of the accounts of  
7 special districts performed at the expense of the district]. The reports of private auditors [shall be trans-  
8 mitted to the [*appropriate state agency*] and the reports of private auditors] and audits made by the  
9 [*appropriate state agency*] shall be transmitted to the local government or governments within which  
10 the special district is authorized to operate.

11 (e) Any word, sentence, phrase, or provision of any special act, municipal charter, or other law  
12 that prohibits or restricts a unit of local government from complying with this section or any rules  
13 or regulations, promulgated hereunder is hereby nullified and repealed to the extent of such conflict.

14 SECTION 6. *City and County Annual Reports.* The annual report of any county or city issuing  
15 a report shall include, in addition to any other information required by law, pertinent information on  
16 the activities of all special districts operating wholly or partially within the territory of the city or  
17 county.

18 SECTION 7. *Separability.* [*Insert separability clause.*]

19 SECTION 8. *Effective Date.* [*Insert effective date.*]

## 2.3 Areawide Units

## 2.301 STATEWIDE SUBSTATE DISTRICTING ACT<sup>1</sup>

Continuing population growth and rapid technological change during the second half of the 20th century have produced major challenges to the structure of local government. Solutions to such problems as air and water pollution, outmoded transportation systems, and inadequate water and sewer facilities required a geographic base, administrative organization, and fiscal capacity that often surpassed those of individual counties and cities. Moreover, persistent jurisdictional fragmentation, resulting from reliance on special districts and the general failure to merge or modernize local governments, contributed to the inability of most local units to respond effectively to diverse areawide needs and problems.

A number of states experimented with substate districts in the late 1950s and early 1960s. Beginning in the mid-1960s, however, the Federal government assumed a major regional leadership role. Twenty-four Federal programs attempted to fill the institutional void at the substate level through requirements and incentives for areawide planning, grant-in-aid review, and administrative districting. These programs triggered the establishment by state and local governments of approximately 600 multifunctional regional councils of local elected officials; 1,800 single purpose, substate districts for health, manpower, law enforcement, air and water quality, transportation, and other activities; and many of the 500 substate districts for state planning and development purposes.

These areawide efforts of Federal, state, and local governments have occasionally coincided to produce a single body responsible for several functions. Usually, however, the wavering reliance of these governments on both single purpose and multipurpose regional agencies has contributed to a further fragmentation of the governance structure in both metropolitan and non-metropolitan areas. This ambivalence has resulted in overlapping boundaries, duplicating functions, and confusing responsibilities at the substate regional level.

Recently established areawide bodies are responsible basically for planning, communications, coordination, and grant administration. Their activities may be confined to a single function or may involve several. While many of these organizations have been successful in facilitating regional cooperation and communication, formulating comprehensive and functional plans, and coordinating development, they operate under severe constraints. Regional councils and substate districts are generally not able to bind their membership to decisions they make, implement the plans they prepare, deliver the public services they believe necessary, or raise the revenues they need to avoid heavy dependence on Federal funds. Furthermore, in many cases their policy board members are not accountable to the public.

To remedy these shortcomings, in the first volume of its report on *Substate Regionalism and the Federal System*, entitled *Regional Decision-Making: New Strategies for Substate Districts*, the Advisory Commission on Intergovernmental Relations adopted an integrated group of recommendations calling for the establishment of a single set of substate district boundaries with one overarching, multipurpose regional unit in each district. In the Commission's view, the use of a single set of geographic boundaries for virtually all Federal and state districting purposes would eliminate much of the present conflict, confusion, and overlap. Creation of one regional entity — an umbrella multijurisdictional organization — to perform all functional and comprehensive planning, exert policy control over special districts, ensure development in accordance with adopted regional plans, and undertake certain services, would link planning with implementation and produce more authoritative regional decisionmaking.

While the substate district organization established in the accompanying suggested state legislation would have significant influence over intergovernmental planning and development activities at the areawide level, it would be an agency of local government. Elected officials appointed by their general purpose local units would constitute a majority of representatives on the governing body. In addition, since the organization would perform certain decentralized state functions and would receive substantial finan-

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *Substate Regionalism and the Federal System*, especially Vol. 1, *Regional Decision Making: New Strategies for Substate Districts*, Report A-43 (Washington, D.C.: U.S. Government Printing Office, October, 1973).

cial assistance from this source, provision is made for the appointment of state government representatives to its governing body.

Four major features of the bill distinguish a substate district organization from a regional government; (1) there would be no direct election of governing body members, except under an optimal provision; (2) operating responsibility for certain areawide services could be assumed only after the affirmative vote of a majority of constituent localities; (3) no direct taxing powers could be exercised; and (4) the governor could veto certain actions conflicting with official statewide plans or with the plans, policies, or activities of another substate district organization.

Several other state legislative drafts should be considered in conjunction with this draft. Particular attention must be paid to the *State Planning and Growth Management Act*, the *Umbrella Multijurisdictional Organizations for Interstate Areas Act*, the *Umbrella Multijurisdictional Organization for Specific Metropolitan or Multicounty Areas Act*, the *Regional Government Study Commissions Act*, the *Regional Transportation Planning Act*, and *Establishment of Regional Transportation Authorities*.

At the same time, the Advisory Commission on Intergovernmental Relations recognizes that these organizations are no substitute for modernization of local governmental structure. Yet, the reform record to date suggests that reorganization is difficult to achieve. The approach taken in this suggested legislation — which embodies concepts contained in a number of state regional planning or substate districting statutes, or pending bills, including Florida, Georgia, Maine, Minnesota, and West Virginia — is designed to streamline the existing substate regional structure, to make it more authoritative, and to help overcome the present fragmented local governmental system.

*Section 1* sets forth the purpose of the act and *Section 2* provides definitions of the terms used.

*Section 3* mandates the division of the state into substate districts for planning, administrative, development, and other regional purposes by the governor, enumerating criteria to be considered and providing a means for boundary changes.

*Section 4* requires state agencies which divide the state for purposes of planning, administration, service delivery, environmental control, or development to conform their boundaries to those of the substate districts, except in special cases.

*Section 5* authorizes the designation of a single organization within each substate district to carry out the provisions of the act. If none currently exists, the governor shall organize one which includes representatives from each unit of local government within the district.

*Section 6* prescribes the membership of the substate district organization, authorizes it to hire an executive director, and requires it to promulgate rules of operation and to hold all meetings open to the public. An exception whereby a single unit of general local government is designated as the substate district organization negates all of the above. An alternate *Section 6* creates a separate general purpose agency designated as a regional council and provides for election of members from districts.

*Section 7* enumerates the specific powers and duties of the substate district organization.

*Section 8* designates the substate district organization as the authorized agency in each district to receive Federal grants for areawide purposes and directs the state agencies to use the organization for areawide planning, program operations, coordination, development, and districting activities. It also provides for a state advisory council whose membership consists of the head of each substate district organization.

*Section 9* provides for a gubernatorial veto of any action of a substate district organization in conflict with an officially adopted state development plan or officially adopted plans, policies, or actions of another substate district organization.

*Section 10* provides for funding for the organization through local contributions and state grants and, in the case of non-contributing members, suspends the unit's voting rights until its contribution is paid in full.

*Section 11* requires each substate district organization to file an annual report with its member units, the governor, and the presiding officers of the legislature, and lists its contents.

*Section 12* gives substate district organizations the legal status of agencies of local government and authorizes those general powers necessary to carry out their duties and responsibilities.

*Section 13 and 14* provide for separability and effective date clauses, respectively.



## Suggested Legislation

### [AN ACT PROVIDING FOR DESIGNATION OF UNIFORM SUBSTATE DISTRICTS AND COORDINATION THEREOF]<sup>1</sup>

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* The purpose of this act is to encourage and permit local units of govern-  
2 ment to join and cooperate with one another to improve the health, safety, and general welfare of  
3 their citizens; to provide uniform boundaries in order to assist cooperative efforts with state and  
4 Federal agencies; to plan for the future development of communities, areas, and regions to the end that  
5 governmental services may be more efficiently and equitably provided; and that such communities,  
6 areas, and regions may grow with adequate transportation, utilities, health, educationa, recreationa, and  
7 other essential facilities and services.

8 SECTION 2. *Definitions.*

9 (a) "Areawide" or "regional" means the geographic territory which encompasses the whole area  
10 of influence of a program or of impact of a problem to be addressed, usually transcending the boun-  
11 daries of any single unit of general local government.

12 (b) "Comprehensive regional development plan" means a long range guide for physical, economic,  
13 and social development of a substate district which identifies regional goals, objectives, and oppor-  
14 tunities and embodies the policies of a [*substate district organization*].

15 (c) "Governing body" means the legislative or policymaking body of a unit of general local  
16 government, special district, regional planning body, or [*substate district organization*].

17 (d) "Local elected official" means the chief elected executive or a member of the governing body  
18 of a unit of general local government.

19 (e) "Major capital facility" means any structure or physical facility which has an impact or effect  
20 on development of a substate district, including those which: are located on or near the boundaries  
21 between local jurisdictions; are part of an areawide system of public services or facilities, such as major  
22 highway, rapid transit, or water and sewer systems; are of a magnitude to establish new directions in  
23 the population or economic growth of the area; or are related to distribution of housing, employment,  
24 and other components of an officially adopted comprehensive regional development plan.

25 (f) "Population" means the number of inhabitants according to the latest special or decennial  
26 United States census. Unless otherwise indicated, for purposes of this act, county population includes

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<sup>1</sup>Suggested short title: [*State*] *Statewide Substate Districting Act*.

1 only the residents of unincorporated areas.

2 (g) "Regional planning body" means an organization engaged in areawide functional or compre-  
3 hensive planning.

4 (h) "Special district" means a local unit of special government created pursuant to general or  
5 special law for the purpose of performing specialized functions within limited boundaries.

6 (i) "State agency" means any department, commission, board, or other administrative unit of state  
7 government.

8 (j) "State development plan" means a long range guide for physical, economic, and social de-  
9 velopment of the state which identifies statewide goals, objectives, and opportunities. It is based on the  
10 needs, policies, plans, and operations of every state agency and, to the extent practicable, on those  
11 units of general and special local government, [*substate district organizations and*] regional planning  
12 bodies, and the Federal government, and takes into account existing and prospective resources and  
13 capabilities of the state government. The plan and any revisions thereof, when approved by the legis-  
14 lature, become effective as state policy.

15 (k) "Substate district," "substate region," "region," or "district" means the geographic area  
16 within each set of boundaries delineated by the governor under Section 3.

17 (l) "[*Substate district organization*]" means an umbrella multipurpose regional body officially  
18 designated by the governor under Section 5 to perform areawide comprehensive and functional plan-  
19 ning, research, technical assistance, grant-in-aid review, special district oversight, interlocal con-  
20 tracting, environmental and developmental activities, and service delivery responsibilities.

21 (m) "Unit of general local government" means cities and counties. [*Enumerate other units of*  
22 *general local government.*]

23

### 24 SECTION 3. *Substate District Delineation.*

25 (a) The governor shall divide the state into substate districts for planning, administrative, de-  
26 velopment, and other regional purposes.

27 (b) Prior to district boundary delineation, the governor shall make any necessary studies and sur-  
28 veys, consult with appropriate state officials [*and the local government boundary commission*], and  
29 convene meetings of local elected officials. At least one public hearing shall be held in each proposed  
30 substate district.

31 (c) In defining the districts, the governor shall take into account the following criteria:

32 (1) preferences of affected units of general local government as expressed through resolu-  
33 tions;

34 (2) community of interest;

35 (3) geographic features and natural resources;

- 1 (4) patterns of communication and transportation;  
2 (5) patterns of urban development and land use;  
3 (6) interstate relationships and metropolitan area boundaries;  
4 (7) interrelatedness of social and economic problems;  
5 (8) boundaries of existing regional planning bodies and state planning and administrative  
6 areas;  
7 (9) utility of the proposed boundaries for the efficient and effective provision of areawide  
8 services; and  
9 (10) to the maximum extent practicable, no county or metropolitan area may be divided when  
10 forming a district.

11 (d) The governor, within [one year] of the effective date of this act, shall report to the legislature  
12 and certify to the [*secretary of state*] the boundaries of each substate district. At the same time, the  
13 governor shall notify the governing body of each unit of general local government, appropriate special  
14 district, and regional planning body as to the district in which it has been placed.

15 (e) When requested by units of general local government representing at least 60 percent of a  
16 district's population, and after each decennial census, the governor shall reconsider substate district  
17 boundaries, and may make appropriate adjustments pursuant to the criteria and procedures set forth  
18 in subsections (b) through (d) of this section.<sup>1</sup>

19 SECTION 4. *State Agency Use of Substate District Boundaries.*

20 (a) Each state agency which divides the state for purposes of planning, administration, service  
21 delivery, environmental control, or development shall conform its boundaries to those of the substate  
22 districts, except as provided in subsection (c) below.

23 (b) The governor shall monitor the boundary conformance process and shall allow the agencies  
24 involved sufficient time to comply. In all cases conformance shall be accomplished within [two years]  
25 of the effective date of this act.

26 (c) If a state agency, due to the unique nature of its clientele or functional responsibilities, cannot  
27 efficiently and effectively conform to substate district boundaries, it may petition the governor for  
28 permission to maintain separate boundaries. The governor may grant the exception only if compliance  
29 would be clearly detrimental to accomplishment of the purposes of the agency. Where exceptions are  
30 granted, the governor may require that state agency research, analysis, budgeting, and reporting be  
31 compiled on the geographic pattern of the official substate districts where these districts are basic  
32 statistical units in a statewide system.

33 SECTION 5. [*Substate District Organization*] *Designation.*

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<sup>1</sup>If the state has a boundary commission law, this provision should be related to it. See suggested state legislation entitled *Local Government Creation, Dissolution, and Boundary Adjustments*.

1 (a) In each substate district a single [organization] shall be designated by the governor, following  
2 completion of any necessary studies and surveys, consultation and meetings with appropriate local  
3 elected officials and their respective state associations, and at least one public hearing in the region.

4 (b) Existing regional planning bodies, including interstate ones, may be designated as  
5 [substate district organizations].

6 (c) If a single unit of general local government encompasses and is the major direct provider of  
7 services for [all] [90 percent] of the geographic area and population within a substate district, the unit  
8 shall be designated as the [substate district organization].

9 (d) If the governor finds that no regional planning body existing in a substate district possesses  
10 or has the potential for acquiring the basic powers, functional responsibilities, membership, staff, or  
11 other factors necessary to accomplish the purposes of this act, he shall convene a meeting of elected  
12 officials representing each unit of general local government within the district to organize a new  
13 regional body, which shall be designated as the [substate district organization].

14 (e) After designation of the [substate district organization], the governor shall convene a meeting  
15 of local elected officials in each region for the purpose of preparing and adopting bylaws. The bylaws  
16 shall be approved by the representatives of a majority of the units of general local government in the  
17 substate district encompassing at least 60 percent of the district's population. For purposes of this  
18 subsection, each unit of general local government shall be entitled to one vote.

19 SECTION 6. [Substate District Organization] Composition.

20 (a) All units of general local government within each substate region shall be members of the  
21 [substate district organization] for the area, with all the rights and responsibilities of membership  
22 stipulated in this act.

23 (b) The governing body of the [substate district organization] shall consist of local elected officials  
24 and state government representatives. At a minimum, 60 percent of the governing body membership  
25 shall be local elected officials. The governing body of each unit of general local government shall ap-  
26 point at least one official as its representative. [The governor shall appoint the state representa-  
27 tives.] [The governor shall appoint the state representatives, at least [ ] percent of whom shall be leg-  
28 islators elected from within the substate district or a substantial portion thereof.] [State representatives  
29 shall be members of the legislature elected from within the district or a substantial portion thereof,  
30 and [ ] executive branch representatives appointed by the governor.]

31 (c) Each member local government shall be entitled to one vote in the governing body. The com-  
32 bined vote of the state representatives shall equal the state proportion of the total membership estab-  
33 lished in the bylaws of each [substate district organization]. State representatives may cast multiple  
34 or fractional votes.

35 (d) At times prescribed in the bylaws, any member local government may call a weighted voting

1 procedure into effect. Under this procedure local government representatives may cast a multiple or  
2 fractional votes. These votes shall bear the same proportion to the total local member vote as [the in-  
3 dividual local government's population bears to the total population of the substate district] [the in-  
4 dividual local government's population bears to the total population of the substate district, except  
5 that, in addition to unincorporated areas, county population shall consist of residents of:

6 (1) incorporated territory proportionate to the county's share of total direct local government  
7 expenditures in this territory; or

8 (2) incorporated territory proportionate to the county's share of total local taxes collected in  
9 this territory;]

10 [the individual local government's annual financial contribution bears to the total annual local  
11 government fiscal support for the [*substate district organization*]]. State representatives shall cast the  
12 same percentage of the total vote as provided in subsection (c).

13 (e) Local representatives shall serve on the [*substate district organization*] governing body until  
14 their successor qualifies or until they are removed and replaced by majority vote of their local govern-  
15 ing body. State executive branch representatives shall serve at the pleasure of the governor. If any  
16 local or state official does not continue in office, his membership on the governing body terminates at  
17 the same time. Any vacancy on the governing body shall be filled for the unexpired term in the same  
18 manner as the original appointment.

19 (f) The governing body shall elect from among its membership a chairman and vice-chairman, and  
20 any other officers it deems necessary. The governing body may select an executive committee consist-  
21 ing of the chairman, vice-chairman, and other members as appropriate. The term of office of officers  
22 and executive committee members shall be set forth in the bylaws of each [*substate district organiza-*  
23 *tion*]. The governing body may authorize the executive committee to exercise any of its powers, pro-  
24 vided that any action taken by the executive committee may be amended or repealed by the governing  
25 body.

26 (g) The governing body shall employ and set the compensation of an executive director, who shall  
27 serve at its pleasure. The executive director shall employ professional, technical, legal, clerical, and other  
28 staff as necessary and authorized, and may remove these personnel. The executive director may make  
29 agreements with state agencies, regional planning bodies, units of general local government, or special  
30 districts for temporary transfer, loan, or other cooperative use of staff employees. With the consent of  
31 or pursuant to procedures established by the governing body, the executive director may acquire the  
32 services of consultants and enter into contracts on behalf of the governing body.

33 (h) The governing body shall promulgate rules governing its operations, provided they are in  
34 accordance with the provisions of [*insert state administrative procedures statute*].

35 (i) All meetings of the governing body, or any committee thereof, at which public business is

1 discussed or formal action is taken, shall conform to *[state open meeting act]*.

2 (j) If a single unit of general local government has been designated as the *[substate district or-*  
3 *ganization]*, the provisions of subsections (a) through (h) above do not apply. The governing body of  
4 this government shall exercise all of the powers and duties of a *[substate district organization]*, pro-  
5 vided that it shall establish procedures for obtaining the advice of state agencies and other general  
6 units of local government within the district on regional planning, coordination, and development  
7 matters.

8 [SECTION 6. *[Substate District Organization] Composition — Direct Election Option.*

9 (a) There is hereby created within each substate region a general purpose agency as a separate  
10 legal entity, to be known and designated as the *[name]* regional council for such region.

11 (b) The governing body of the agency shall consist of [ ] members selected by the voters from  
12 individual election districts for [ ] year terms *[except in time of reapportionment]*. Members shall be  
13 qualified electors of the state and of a county in which all or part of the election district is located.

14 (c) The region shall be apportioned into districts as follows: *[statement of district boundaries — in*  
15 *terms of voting boundaries — such as census tracts, state senatorial or house districts, or any other*  
16 *applicable method]*.

17 (d) (1) The governing body shall provide for reapportioned districts not later than *[30 days]* after  
18 state legislative reapportionment following each decennial census. The reapportioned districts shall be  
19 compact and contiguous and shall meet the standard of mathematical preciseness in equal population  
20 representation as provided by the *[legislature]* in its apportionment.

21 (2) If the governing body fails to provide such reapportioned districts within such time limit,  
22 any citizen of the region may bring action in *[appropriate court]* either to compel the performance of  
23 such duty or to provide said reapportioned districts for the region.

24 (e) (1) The election of members shall be by majority of votes cast, non-partisan, and held on the  
25 first Tuesday after the [ ] Monday in [ ] of *[each odd numbered year]*. If one candidate fails to re-  
26 ceive a majority of the votes cast, the two candidates receiving the highest number of votes shall  
27 participate in a run-off election to be held on the second Tuesday following the first election day.

28 (2) Members shall assume office on the third Tuesday following the first election day. At the  
29 first meeting, members shall elect a presiding officer, a secretary *[who need not be a member]*, and  
30 such other officers as they deem necessary.

31 [(3) For the first election following apportionment or reapportionment of districts, all mem-  
32 bers shall be subject to election with those in odd numbered districts being elected for two year terms —  
33 option for staggered four year terms.]

34 (f) Members shall continue in office until their successors qualify. Vacancies in the membership  
35 shall be filled by appointment of the governor if there is less than *[12 months]* of the term remaining;

1 otherwise, by a special election called for such purpose by the governing body.

2 (g) Members shall serve [with compensation, not exceeding [\$100] per day, as provided by reso-  
3 lution and receive *per diem*, travel, and other expenses] [without compensation; however, this shall  
4 not prohibit the payment of *per diem*, travel, and other expenses as provided in applicable state law].]

5 SECTION 7. *Powers and Duties.*

6 (a) *Regional Planning, Research, and Technical Assistance.* Each [substate district organiza-  
7 tion] shall:

8 (1) establish a comprehensive planning process and prepare, publish, and annually review  
9 and, if necessary, revise a plan for the coordinated development of its district. The plan shall be based  
10 on studies of governmental, social, economic, environmental, and physical conditions and trends, and  
11 seek to promote the general health, welfare, convenience, and prosperity of the district's population.  
12 It shall embody the policies of the [substate district organization], and include, but not be limited to:

13 (i) goals, objectives, standards, and principles to guide economic, social, environmental,  
14 and human resource development;

15 (ii) alternative strategies for economic growth and population settlement;

16 (iii) land, water, and air transportation networks and communication facilities;

17 (iv) the need for and proposed general location of public and private works and facilities,  
18 which by reason of their function, size, extent, or any other cause are of an areawide, as distinguished  
19 from a purely local, concern; and

20 (v) the long range development, operation, and financing of capital projects and facilities.

21 The comprehensive regional development plan and any amendments thereto shall be officially  
22 adopted by a majority vote of the governing body, after submission to the governor, [legislature,] and  
23 [insert appropriate state agency] to the governing body of each unit of general local government with-  
24 in the substate district for a period of not less than [30] days prior to public hearing to be held by the  
25 [substate district organization] after adequate notice. The governor, [appropriate committee(s) of the  
26 legislature and appropriate state agency] may make recommendations to the [organization] on or be-  
27 fore the date of the hearing for modification of the proposed plan necessary to achieve conformity  
28 with statewide plans and policies. Each unit of general local government may make recommendations  
29 to the [organization] on the effect of the proposed plan, or portions thereof, on its jurisdiction on or  
30 before the date of the hearing;

31 (2) prepare, publish, annually review and, if necessary, revise a program to implement the  
32 policies contained in the officially adopted comprehensive regional development plan for the district.  
33 The program shall contain, at a minimum, priorities for the undertaking of projects and methods for  
34 obtaining necessary financing;

35 (3) coordinate regional planning with related plans and activities of state agencies and local

1 governments within the district, adjacent substate districts and interstate areas, and Federal depart-  
2 ments and agencies;

3 (4) prepare and publish studies of the district's natural, human, financial, and other re-  
4 sources, and their relationship to existing and emerging problems such as those of industry, com-  
5 merce, transportation, population, housing, agriculture, environment, health, education, welfare,  
6 public service, local governments, and any other matters related to regional planning;

7 (5) collect, process, and analyze social and economic statistics for the district and make the  
8 results available to the general public;

9 (6) participate with other governmental agencies, educational institutions, and private organi-  
10 zations in coordinating regional research and educational activities described in paragraphs (4) and (5)  
11 of this subsection;

12 (7) provide information on a periodic basis to the governor, [*budget office*], and appropriate  
13 committees of the [*legislature*] on its activities, for use in the preparation and consideration of the  
14 state budget; and

15 (8) cooperate with and furnish, upon request, technical assistance to local planning and de-  
16 velopment agencies within the district.

17 (b) *Review of Certain Federally Assisted Projects.* The [*substate district organization*] shall review  
18 all applications submitted by units of general local government, special districts, and private non-prof-  
19 it organizations within its boundaries for a loan or grant from a Federal department or agency for pro-  
20 grams and purposes as required by Federal law or regulation. If the [*organization*] finds the applica-  
21 tion to be inconsistent with its officially adopted comprehensive regional development plan, it shall  
22 resolve these inconsistencies before submission of the application to the pertinent Federal department  
23 or agency for funding consideration.

24 (c) *Review of State Plans and Projects.*

25 (1) Each state agency shall submit to the [*substate district organization*] for review, com-  
26 ment, and recommendation all comprehensive plans and annual work programs that will have a signi-  
27 ficant effect within its boundaries. The [*organization*] shall have [30] days from the date of submis-  
28 sion of these plans and programs to conduct its review and to make comments and recommendations,  
29 during which period the state agency shall take no action to implement the plans and programs.

30 (2) The [*substate district organization*] shall review any proposed state major capital facilities  
31 project to be located within its boundaries. If a proposed project clearly concerns the jurisdictional  
32 area of two or more [*substate district organizations*] but is not part of a uniform statewide program,  
33 as determined by the governor, joint receipt and review shall be undertaken. The [*organization*] shall  
34 advise the state agency within [30] days from the date of submission as to whether the proposed  
35 project is in conflict with its officially adopted comprehensive regional development plan and imple-



1 menting policies or is not properly coordinated with other existing or proposed projects within the  
2 district. If the [organization] finds the proposed project conflicts with the plan or implementing  
3 policies or lacks proper coordination, it shall resolve all inconsistencies before project initiation.

4 (d) *Review of Local Plans and Projects.*

5 (1) Upon adoption of the comprehensive regional development plan, each unit of general  
6 local government located within the district shall submit to the [substate district organization] for  
7 review, comment, and recommendation its comprehensive plans or any other plans or programs which,  
8 in the judgment of the [organization], affect or are affected by the provisions of the comprehensive  
9 regional development plan. The submission of a comprehensive plan or other plan or program by a  
10 county government which includes the plans of other local units within the county may be considered  
11 a consolidated submission and waive the submission requirement for these units. The [substate dis-  
12 trict organization] shall have [30] days from the date of submission of these plans or programs to  
13 conduct its review and make comments and recommendations, during which period the unit of general  
14 local government shall take no action to implement the plans or programs.

15 (2) The governing body of each unit of general local government within a district shall sub-  
16 mit to the [substate district organization] for review all proposed major capital facility projects. The  
17 [organization] shall advise the unit within [30] days from the date of submission as to whether the  
18 proposed project has significance beyond local boundaries. If it lacks areawide significance, the  
19 [organization] shall certify this finding. If it has areawide significance, the [organization] shall deter-  
20 mine whether the proposed project is in conflict with the officially adopted comprehensive regional  
21 development plan and implementing policies, or is not properly coordinated with other existing or  
22 proposed projects within the district. If the [organization] finds the proposed project conflicts with  
23 the plan or implementing policies or lacks proper coordination, it shall resolve all inconsistencies be-  
24 fore project initiation.

25 (e) *Control Over Special Districts.* The [substate district organization] may:

26 (1) review proposals for the formation of special districts which would operate within its  
27 boundaries and, within [30] days, submit a report on the areawide significance of the proposed forma-  
28 tion to the referring units of general local government [and to the local government boundary com-  
29 mission];

30 (2) review and approve any plans, projects, or policies having an areawide impact of special  
31 districts operating within its boundaries;

32 (3) serve as or appoint the governing body of any areawide special district operating entirely  
33 within its boundaries, except school districts, and review and approve the budgets of these districts.

34 (f) *Interlocal Contracts.* The [substate district organization] may act as the administrator of a joint  
35 exercise of powers agreement if requested by the parties to the agreement.

1 (g) *Operating Authority.* The [substate district organization] may perform any regional function  
2 or activity upon the affirmative vote of a majority of member local governments. The governments  
3 must represent at least 60 percent of the substate district's population, as determined in accordance  
4 with a formula specified in the bylaws. To finance the function or activity, the [substate district  
5 organization] may impose user charges and issue and sell revenue bonds in accordance with proce-  
6 dures prescribed in [insert appropriate state statutory citation], and accept grants or other payments  
7 from Federal, state, or local units of government.

8 SECTION 8. *Federal and State Agency Use of [Substate District Organizations].*

9 (a) The [substate district organization] shall be the authorized agency in each district to receive  
10 Federal grants-in-aid for areawide planning, coordination, and development puposes.

11 (b) All state agencies shall use the [substate district organization] in each region for any areawide  
12 planning, program operations, coordination, development, and districting activities in which they  
13 engage, except those state agencies exempted from conforming to substate district boundaries under  
14 Section 4(c).

15 (c) The head of each [substate district organization] meeting together shall constitute a [state]  
16 regional advisory council which the governor and state agencies shall use for advice on the adminis-  
17 tration of their regional programs.

18 (d) To avoid duplication of the staffs of various regional planning bodies assisted by the state  
19 and Federal governments, the [substate district organization] shall provide basic planning, adminis-  
20 trative, and research services for all regional planning bodies heretofore or hereafter established in  
21 [state].

22 SECTION 9. *Gubernatorial Veto.* The governor, after making a finding, may veto any actions of  
23 a [substate district organization] that conflict with an officially adopted state development plan or  
24 with officially adopted plans, policies, or actions of another [substate district organization].

25 SECTION 10. *Finances.*

26 (a) Each [substate district organization] shall adopt an annual budget, a copy of which shall be  
27 submitted to each member governmental unit. Each member local government shall be provided an  
28 opportunity to comment on the budget before its adoption, and shall make financial contributions to  
29 the [substate district organization] in accordance with a formula established by the [organization's]  
30 governing body as part of the budget. The formula may be based on the population, or on the equaliz-  
31 ed assessed valuation of each member local government, or on a combination thereof.

32 (b) To assist financially with the exercise of the powers and duties of [substate district organiza-  
33 tions]. Grants shall be administered by the [specify state agency] and shall equal [33-1/3] [50] per-  
34 cent of the local contributions to the annual budget of the [substate district organization], but shall  
35 not exceed [\$ ] for any [organization] for any fiscal year. State grants may be used for the purpose

1 of matching Federal assistance programs.

2 (c) If any member governmental unit fails to make financial contributions to the [substate district  
3 organization] in accordance with the adopted formula, the unit shall forfeit its voting rights in the  
4 governing body until these contributions have been paid in full.

5 SECTION 11. *Annual Report.*

6 (a) On or before [date] of each year, each [substate district organization] shall prepare an annual  
7 report and submit copies to its member governmental units and to the governor and the presiding  
8 officers of the [legislature]. Provision also shall be made for public availability of the report. To the  
9 extent practicable, the report shall include the following:

10 (1) a consolidated statement of receipts and expenditures by category for the preceding fiscal  
11 year;

12 (2) a consolidated, detailed budget for the current year, including an outline of programs for  
13 that period;

14 (3) a description of the comprehensive regional development plan adopted for the district;

15 (4) summaries of any studies and recommendations made for the district;

16 (5) indicators of development progress;

17 (6) a listing of plans and programs submitted by state agencies, units of general local govern-  
18 ment, and special districts, and actions taken thereon by the [organization];

19 (7) a listing of applications for Federal grants or loans and proposals for major capital  
20 facilities projects, and actions taken thereon by the [organization];

21 (8) the size and composition of the governing body and professional staff; and

22 (9) recommendations regarding Federal and state programs, intergovernmental cooperation,  
23 funding, and legislative needs.

24 (b) To facilitate the exchange of information and provide [substate district organization] govern-  
25 ing bodies with comparative data to use in evaluating their [organization's] activities, the [insert  
26 appropriate state agency] shall compile and distribute an annual report on statewide [substate dis-  
27 trict organization] operations.

28 SECTION 12. *General Powers.*

29 (a) [Substate district organizations] have the legal status of agencies of local government.

30 (b) To facilitate the carrying out of their duties and responsibilities under this act, [substate dis-  
31 trict organizations] may:

32 (1) adopt and have a common seal and alter it at pleasure;

33 (2) sue and be sued;

34 (3) adopt bylaws and make rules and regulations for the conduct of business;

35 (4) establish committees, including citizen advisory committees;

- 1 (5) hold public hearings;
- 2 (6) borrow money and accept gifts; apply for and use grants or loans of money or other  
3 property from the Federal government, the state, a unit of general local government, a special district,  
4 or a private non-profit organization; enter into agreements necessary to obtain these funds; and hold,  
5 use, and dispose of moneys or property in accordance with the terms of the gift, grant, loan, or  
6 agreement;
- 7 (7) enter into all contracts and agreements necessary or incidental to the performance of its  
8 duties and responsibilities, including but not limited to:
- 9 (i) intergovernmental contracts or joint exercise powers agreements; and  
10 (ii) contracts for the services of consultants to perform planning, engineering, legal, or  
11 other appropriate services of a professional nature;
- 12 (8) authorize reimbursement for members of the governing body of the [organization] for  
13 *per diem*, travel, and other reasonable expenses for meetings, hearings, and other official business;
- 14 (9) prescribe all terms and conditions for the employment of officers, employees, and other  
15 agents including but not limited to their classification, the fixing of compensation and benefits, and  
16 the filing of performance and fidelity bonds and policies of insurance as it may deem advisable. The  
17 compensation and other conditions of employment of officers and employees shall not be governed  
18 by any rule applicable to state employees in the classified service unless the [substate district organi-  
19 zation] with the approval of [insert appropriate state official] so provides; and
- 20 (10) apply for coverage of its employees under the state retirement system in the same manner  
21 as if they were state employees, subject to necessary action by the [organization] to pay employer  
22 contributions into the state retirement fund.

23 SECTION 13. *Separability.* [Insert separability clause.]

24 SECTION 14. *Effective Date.* [Insert effective date.]

## 2.302 UMBRELLA MULTI JURISDICTIONAL ORGANIZATION FOR SPECIFIC METROPOLITAN OR MULTICOUNTY AREAS<sup>1</sup>

A number of states have established umbrella regional agencies in a few areas, primarily metropolitan, within the areas' own boundaries — without taking the approach statewide as suggested in the *Substate Districting Act*. Almost every state has one or more areas in which the various alternatives to, and options of, regional government are hotly debated. In recognition of the fact that local tradition plays a very strong role in governmental organization, as well as the varying level of desire and capacity between regions within a state, the Commission discussed and suggested various alternative arrangements which may not be uniform statewide; this allows local flexibility in decision making while still providing a responsive state structure and carefully coordinated approach.

The following suggested state legislation is tailored to meet and respond to a specific regional area. It further provides the necessary coordination with a statewide substate districting approach. The act is drawn mainly from a proposed Florida act<sup>2</sup> and from acts in Minnesota, Michigan, and Ohio.

*Section 1* states the findings and purpose of the act. *Section 2* provides definitions for the terms used in the act.

*Section 3* provides three alternative methods to create a regional council, and three ways to select the membership of its governing body.

*Section 4* enumerates the regional council's powers and duties, authorizes the council to employ an executive director who shall employ necessary staff, and requires the council to promulgate rules of operation.

*Section 5* authorizes the regional council to establish a comprehensive planning and review process and requires it to prepare, publish, and review annually a guide for coordinated development of the region.

*Section 6* mandates the regional council as the only authorized agency to receive state and Federal designations and/or grants for regional planning and coordination from specific programs, authorizes the council to provide basic administration, research, and planning for multicountry or regional planning and development agencies in the region, and requires the council to review and comment on any application of a unit of local government within the region to a state or Federal agency for financial assistance.

*Section 7* provides for cooperation with other local, regional, and state agencies through exchange of data, loan of employees to the council from local, state, or Federal agencies, delegation of certain of the council's powers and duties upon approval of the state's chief planning officer, and cooperative planning agreements.

*Section 8* requires the regional council to provide financial reports as prescribed by law; prepare and furnish an annual report on its activities to the governor, legislature, appropriate state agencies, presiding officer of the governing bodies of the units of local general purpose governments and appropriate regional agencies within its boundaries, and, for a fee, any interested person; adopt an annual budget as submitted by the executive director; and provide for an annual independent post-audit of its financial records. It also specifies the council's fiscal year.

*Section 9* authorizes the council to prepare and promulgate a plan creating a regional services district, delineates those purposes for which it may be established, and sets out the actions to be taken by the council upon promulgation of the service district plan and upon adoption of such a plan.

*Section 10* enumerates those powers and duties to be exercised by the council in relation to any special district created and organized within the region.

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *Regional Decision Making: New Strategies for Substate Districts*, Volume I of *Substate Regionalism and the Federal System*, Report A-43 (Washington, D.C.: U.S. Government Printing Office, October, 1973).

<sup>2</sup>Derived from: Florida Commission on Local Government, *Multicounty Planning of Service Delivery*, Special Report 73-3, February 28, 1973 (out-of-print).

*Section 11* deals with the funding of the regional council.

*Section 12* deals with implementation of the act – when members are to be elected and the first meeting held, and the actions to be taken by the council.

*Sections 13 and 14* provide for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT PROVIDING AN UMBRELLA MULTIJURISDICTIONAL ORGANIZATION FOR [NAME] REGION WITH AUTHORITY TO DELIVER SERVICES UNDER CERTAIN CIRCUMSTANCES]<sup>1</sup>

(Be it enacted, etc.)

1 SECTION 1. *Findings and Purpose.*

2 (a) The [legislature] finds and declares that in the [name] region:

3 (1) the problems of growth and development transcend the boundaries of individual units of  
4 general local government, and no single local unit can formulate plans or implement policies for their  
5 solution without affecting other units in their geographic area;

6 (2) the proliferation of single purpose areawide agencies has resulted in duplication of ef-  
7 fort and diffusion of responsibility, and has impeded the efforts of local governments to meet citizen  
8 needs;

9 (3) there is a need for a regional organization to provide a means for local governments to  
10 resolve their common problems, engage in areawide comprehensive and functional planning, ad-  
11 minister certain Federal and state grants-in-aid, coordinate development, and conduct other areawide  
12 activities; and

13 (4) the establishment of this regional organization does not deny the right of counties or mu-  
14 nicipalities to conduct local planning or deliver services.

15 (b) It is the purpose of this act to enhance the ability and opportunity of local governments in  
16 the [name] region to resolve issues and problems transcending their individual boundaries by establish-  
17 ing a general purpose regional agency with authority to:

18 (1) perform comprehensive regional planning;

19 (2) establish regional policy;

20 (3) enforce regional standards; and

21 (4) provide for [transportation, water resources, sewage treatment, solid waste disposal, and  
22 such other] regional functions as may be added through provisions of this act.

23 SECTION 2. *Definitions.* As used in this act, except where the context clearly indicates other-  
24 wise:

25 (a) "Agency" means [name] regional council.

26 (b) "Comprehensive regional development guide" means a long range plan identifying regional  
27 goals, objectives, and opportunities for physical, economic, and social development.

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<sup>1</sup>Suggested short title: *UMJO Act for [Individual Areas] [Specifically Named Area]*.

1 (c) "Governing body" means the legislative or policy making body of a unit of general local  
2 government, special district, or the agency.

3 (d) "Local elected official" means the chief elected executive or a member of the governing body  
4 of a unit of general local government.

5 (e) "Major capital facility" means any publicly financed structure or physical facility which  
6 has an impact or effect on development of the region including those which: are located on or near  
7 the boundaries between counties; are part of an areawide system of public services or facilities, such  
8 as major highways, rapid transit, or water and sewer; are of a magnitude to establish new directions  
9 in the population or economic growth of the region; or are related to the components of an officially  
10 adopted comprehensive regional development guide.

11 (f) "Population" means the number of inhabitants according to the latest special or decennial  
12 United States census.

13 (g) "Region" means the territory within a single substate district over which the agency has  
14 jurisdiction.

15 (h) "Special district" means a local unit of special government created pursuant to gen-  
16 eral or specific law for the purpose of performing specialized functions within limited boundaries.

17 (i) "State agency" means any department, commission, board, or other unit of the executive branch  
18 of state government.

19 (j) "Unit of general local government" means [a county or municipality].

20 SECTION 3. *Regional Agency; Creation; Membership.*

21 *[Alternative 1.]*

22 [(a) There is hereby created in the [name] region a general purpose agency as a separate legal  
23 entity, to be known and designated as the [name] regional council who shall have jurisdiction over  
24 [specify geographic jurisdiction].

25 [OR]

26 *[Alternative 2.]*

27 [(a) Upon adoption of [ordinances] [resolutions] which are worded exactly the same by the governing  
28 bodies of a [majority] of [units of general local government in a region, substate district, or interstate  
29 metropolitan area] with combined jurisdiction of [two-thirds] of the population in such region, district,  
30 or area, there shall be created a general purpose agency as a separate legal entity to serve the  
31 purposes of this act. The [ordinance] [resolution] shall provide the method of selecting the  
32 governing body of the agency [which shall be one of the alternatives provided in subsection  
33 (b)], shall state the name of the agency, and shall provide the effective date and method of im-

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<sup>1</sup>There are three alternative methods of creating the regional agencies:(1) by direct state action; (2) by action of the local govern-  
ments; and (3) by petition and referendum.



1 plementation [as set forth in Section 12].]

2 [OR]

3 [Alternative 3.]

4 [(a) (1) Upon petition of 10 percent of the citizens in an area which comprises greater than 50  
5 percent of the population in any substate district, there shall be created in such area a general pur-  
6 pose agency as a separate legal entity. The petition shall provide the method of selecting the  
7 governing body of the agency [which shall be one of the alternatives provided in subsection  
8 (b)], shall state the name of the agency, and shall provide the effective date and method of im-  
9 plementation [as set forth in Section 12].

10 (2) The petition shall become effective only upon approval by referendum of the voters of  
11 the area proposed to be included within such agency. The counties which have jurisdiction over the  
12 area to be included shall, upon verification of the petition, provide for a referendum in the same man-  
13 ner as provided in [insert citation of an appropriate statute on local referendums].]

14 [End of three alternatives.]

15 [Alternative 1.]

16 [(b)<sup>1</sup> (1) The governing body of the agency shall consist of local elected officials and state govern-  
17 ment representatives. At a minimum, 60 percent of the governing body membership shall be local  
18 elected officials, with every unit of general local government in the region required to be a member.  
19 The governing body of each unit of general local government shall appoint at least one official as  
20 its representative. [The governor shall appoint the state representatives.] [The governor shall appoint  
21 the state representatives, at least [ ] percent of whom shall be legislators elected from within the sub-  
22 state district or a substantial portion thereof.] [State representatives shall be members of the [legis-  
23 lature] elected from within the district or a substantial portion thereof, and executive branch repre-  
24 sentatives appointed by the governor.]

25 (2) Each member local government shall be entitled to one vote in the governing body. The  
26 combined vote of the state representatives shall equal the state proportion of the total membership  
27 established in the bylaws of each [substate district organization]. State representatives may cast multi-  
28 ple or fractional votes.

29 (3) At times prescribed in the bylaws, any member local government may call a weighted vot-  
30 ing procedure into effect. Under this procedure local government representatives may cast multiple or  
31 fractional votes. These votes shall bear the same proportion to the total local member vote as [the  
32 individual local government's population bears to the total population of the substate district] [the

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<sup>1</sup>There are three alternative methods of selecting the membership of the governing body: (1) local elected officials and state representatives; (2) bicameral chambers, one consisting of local elected officials, and the other consisting of directly elected members; and (3) a 100 percent directly elected body.

1 individual local government's population bears to the total population of the substate district, ex-  
2 cept that in addition to unincorporated areas, county population shall consist of residents of:  
3 (i) incorporated territory proportionate to the county's share of total direct local govern-  
4 ment expenditures in this territory; or  
5 (ii) incorporated territory proportionate to the county's share of total local taxes col-  
6 lected in this territory] [the individual local government's annual financial contribution bears to the  
7 total annual local government fiscal support for the substate district organization]. State  
8 representatives shall cast the same percentage of the total vote as provided in paragraph (2).]

9 [OR]  
10 [Alternative 2.]

11 [(b) (1) The governing body of the agency shall consist of two chambers.

12 (i) One chamber shall be composed of elected officials of constituent governments.  
13 Every unit of general local government in the region is required to be a member and shall appoint  
14 at least one official as its representative. Each member local government, in good standing, shall  
15 be entitled to one vote in the chamber.

16 (ii) The other chamber shall be composed of [ ] members selected by the voters from  
17 individual election districts for [ ] year terms.<sup>1</sup>

18 (2) Any matter may originate in either chamber and upon passage by a majority of each  
19 chamber shall be effective ten days after final passage or as otherwise provided therein.]

20 [OR]  
21 [Alternative 3.]

22 [(b) (1) The governing body of the agency shall consist of [ ] members selected by the voters from  
23 individual election districts for [ ] year terms [except in time of reapportionment]. Members shall be  
24 qualified electors of the state and of a county in which all or part of the election district is located.

25 (2) The region shall be apportioned into districts as follows: [statement of district bounda-  
26 ries — in terms of voting boundaries — such as census tracts, state senatorial or house districts, or  
27 any other applicable method].

28 (3) (i) The governing body shall provide for reapportioned districts not later than [30 days]  
29 after state legislative reapportionment following each decennial census. The reapportioned districts  
30 shall be compact and contiguous and shall meet the standard of mathematical preciseness in equal  
31 population representation as provided by the legislature in its apportionment.

32 (ii) If the governing body fails to provide such reapportioned districts within such time  
33 limit, any citizen of the region may bring action in [appropriate court] either to compel the performance

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<sup>1</sup>See *Alternative 3* for details to provide.

1 of such duty or to provide said reapportioned districts for the region.

2 (4) (i) The election of members shall be by majority of votes cast, non-partisan, and held  
3 on the first Tuesday after the [ ] Monday in [ ] of each odd numbered year. If one candidate fails to  
4 receive a majority of the votes cast, the two candidates receiving the highest number of votes shall  
5 participate in a runoff election to be held on the second Tuesday following the first election day.

6 (ii) Members shall assume office on the third Tuesday following the first election day.  
7 At the first meeting, members shall elect a presiding officer, a secretary (who need not be a member),  
8 and such other officers as they deem necessary.

9 [ (iii) For the first selection following apportionment or reapportionment of districts, all  
10 members shall be subject to election with those in odd numbered districts being elected for two year  
11 terms — option for staggered four year terms.]]

12 [End of three alternatives.]

13 (c) Members shall continue in office until their successors qualify. Vacancies in the membership  
14 shall be filled [Alternatives 1 and 2 — in the same manner as the original appointment] [Alternative 3  
15 — by appointment of the governor if there are less than 12 months of the term remaining; other-  
16 wise by a special election called for such purpose by the governing body].

17 (d) Members shall serve [with compensation, not exceeding \$100 per day, as provided by reso-  
18 lution and *per diem*, travel, and other expenses] [without compensation; however, this shall not pro-  
19 hibit the payment of *per diem*, travel, and other expenses as provided in [applicable state law].

20 (e) If the agency is designated as a regional agency for the purpose of [applicable state law] or  
21 any other state or Federal law and the area covered by such designation exceeds the geographic boun-  
22 daries of the regional council, the council may add such additional members to it or any of its com-  
23 mittees as may be agreed upon by the designating agency and the governing body to provide equitable  
24 representation. The additional members shall be selected by the governing body of local general pur-  
25 pose government covering all or part of the additional area and shall be heard only with respect to  
26 issues for which such designation was made.

27 SECTION 4. *Regional Agency; Duties and Powers.*

28 (a) The agency shall have and exercise all powers necessary or convenient to enable it to carry out  
29 the duties and responsibilities which are hereby, or may hereafter be, imposed upon it by law. With-  
30 out in any manner limiting or restricting the general powers conferred by this chapter, the agency  
31 may:

- 32 (1) adopt and have a common seal and alter it at pleasure;  
33 (2) sue and be sued;  
34 (3) adopt bylaws and make rules and regulations for the conduct of its business;  
35 (4) establish committees, including citizen advisory committees, and divisions, and authorize

1 the staffing of same, as necessary, to carry out its powers;

2 (5) hold public hearings;

3 (6) borrow money,<sup>1</sup> accept gifts, apply for and use grants or loans of money or other prop-  
4 erty from the United States, the state, a local unit of government, or any person, for any agency  
5 purpose, enter into agreements required in connection therewith, and hold, use, and dispose of such  
6 moneys or property in accordance with the terms of the gift, grant, loan, or agreement relating there-  
7 to;

8 (7) enter into all contracts and agreements necessary or incidental to the performance of  
9 its duties and responsibilities, including but not limited to:

10 (i) intergovernmental contracts or joint exercise of powers agreements;

11 (ii) contracts for the services of consultants to perform planning, engineering, legal,  
12 or other appropriate services of a professional nature; and

13 (iii) contracts, including bonds, for financing appropriate services;

14 (8) prescribe all terms and conditions for the employment of officers, employees, and other  
15 agents including but not limited to their classification, the fixing of compensation and benefits, and  
16 the filing of performance and fidelity bonds and policies of insurance as it may deem advisable; pro-  
17 vide for adoption of qualifications, job descriptions; prescribe procedures for removal and appeal  
18 by employees;

19 (9) apply for coverage of its employees under the state retirement system in the same manner  
20 as if such employees were state employees, subject to necessary action by the agency to pay employer  
21 contributions into the state retirement fund;

22 (10) conduct studies of the region's resources with respect to existing and emerging prob-  
23 lems of industry, commerce, land use and water resources, transportation, population, housing,  
24 agriculture, public services, local government, relative tax effort and fiscal capacity of local govern-  
25 ments, and any other matters which are relevant to regional planning;

26 (11) collect, process, and analyze at regular intervals the social, economic, and fiscal statis-  
27 tics for the region with the necessary planning studies, consistent with [*applicable state law*], and  
28 make the results available to the general public;

29 (12) provide information to officials and state departments, agencies, and instrumentalities,  
30 Federal and local governments, and the public at large in order to foster a public awareness and  
31 understanding of the objectives of the comprehensive regional development guide and its proposals  
32 and the nature of regional and local planning in order to stimulate public interest and participation  
33 in the orderly, integrated development of the region;

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<sup>1</sup>In most states this general power would be restricted to short term notes with long term debt controlled by additional specific provisions of law.

1 (13) assume duties for additional areas pursuant to any state or Federal designation sub-  
2 ject to providing additional equitable representation as provided in subsection (e) of Section 3 of  
3 this act; and

4 (14) execute any and all instruments, and do and perform any and all acts for things neces-  
5 sary, convenient, or desirable for its purposes or to carry out the powers expressly given in this  
6 section.

7 (b) The governing body shall employ and set the compensation of an executive director, who  
8 shall serve at the pleasure of the governing body. The executive director shall employ professional,  
9 technical, clerical, legal, or other staff, as may be necessary and authorized, and remove same. The  
10 executive director may make agreements with local planning or other public agencies, within the  
11 geographic boundaries of the region, for temporary transfer, loan, or other cooperative use of  
12 staff employees and, with the consent of the governing body, or pursuant to procedures established  
13 by the governing body, may acquire the services of consultants and enter into contracts on behalf  
14 of the agency.

15 (c) The agency shall promulgate rules governing its operation, provided that such rules shall be  
16 in accordance with the administrative procedure provisions of *[applicable state law]*.

17 SECTION 5. *Comprehensive Regional Development Guide; Planning and Review.*

18 (a) (1) The agency shall establish a comprehensive planning process and prepare, publish, and  
19 annually review and, if necessary, revise, a guide for the coordinated development of the region. The  
20 guide shall be based on studies of governmental, social, economic, environmental, and physical con-  
21 ditions and trends, and shall seek to promote the general health, welfare, convenience, and pros-  
22 perity of the region's population. It shall embody the policies of the agency, and include, but not be  
23 limited to:

24 (i) goals, objectives, standards, and principles to guide economic, social, environmental,  
25 and human resource development;

26 (ii) alternative strategies for economic growth and population settlement;

27 (iii) land, water, and air transportation networks, and communication facilities;

28 (iv) the need for, and proposed general location of, public and private works and facil-  
29 ities, which by reason of their function, size, extent or any other cause are of an areawide, as dis-  
30 tinguished from a purely local, concern; and

31 (v) the long-range development, operation, and financing of capital projects and facilities.

32 (2) The comprehensive regional development guide, in part or in whole, and any amend-  
33 ments thereto, shall be officially adopted by a majority of the governing body, after submission to  
34 the governing body of each unit of general local government within the region for a period of not  
35 less than [30 days] prior to a public hearing to be held by the agency after adequate notice. Each unit

1 of general local government may make recommendations to the agency on the effect of the proposed  
2 plan, or portions thereof, on its jurisdiction on or before the date of the hearing.

3 (b) (1) The agency shall develop guidelines to determine developments of areawide concern  
4 [which shall include, but not be limited to, developments of regional impact<sup>1</sup> pursuant to [applicable  
5 state law] ].

6 (2) Any development of areawide concern shall not be considered by any unit of local  
7 government within the region until the agency and all affected local governmental units have been  
8 granted [30 days] advance notification. Any comment received from the agency or another unit of  
9 local government shall be placed on the local record and a response to any adverse comment must  
10 be made prior to any final decision.

11 (c) Upon adoption of the comprehensive regional development guide, each unit of local govern-  
12 ment located within the region and each state agency operating within the region shall submit to  
13 the agency for review, comment, and recommendation, its comprehensive plans or any other plans  
14 or programs which, in the judgment of the agency, affect or are affected by the provisions of the  
15 the comprehensive regional development guide. The submission of a comprehensive plan or other  
16 plan or program by a county government which includes the plans of other local units within the  
17 county may be considered a consolidated submission and waives the submission requirement for the  
18 units included. The agency shall have [30 days] from the date of submission of these programs to  
19 conduct its review and make comments and recommendations, during which period the unit of gen-  
20 eral local government or state agency shall take no action to implement the plans or programs.

21 (d) (1) The governing body of each unit of general local government and each state agency  
22 operating within the region shall submit to the agency for review all proposed major capital facil-  
23 ity projects. The agency shall advise the unit or state agency within [30 days] from the date of sub-  
24 mission as to whether the proposed project has regional significance. If it lacks regional significance,  
25 the agency shall certify this finding. If it has regional significance, the agency shall determine whether  
26 the proposed project is in conflict with the comprehensive regional development guide and implement-  
27 ing policies or is not properly coordinated with other existing or proposed projects within the region.  
28 If the agency finds the proposed project conflicts with the guide or implementing policies or lacks  
29 proper coordination, all such inconsistencies shall be resolved to its satisfaction before initiation.

30 (2) The agency shall review and approve any application for a loan or grant from a state  
31 or Federal department or agency submitted by special districts or private non-profit corporations  
32 within its boundaries. If the agency finds the proposed application to be in conflict with the com-  
33 prehensive development guide or implementing policies or is not properly coordinated with exist-

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<sup>1</sup>See *Establishment of Regional Transportation Authorities* and the *State Planning and Growth Management Act*.

1 ing or proposed projects within the region, the agency shall so inform the special district or private  
2 non-profit corporation who shall, upon receipt of such notification, suspend its application until  
3 resolution of the conflicts so noted.

4 (e) (1) The agency shall review proposals for the formation of special districts which would  
5 operate within its boundaries and within [30 days] submit a report on the regional significance of the  
6 proposed formation to the referring units of general local government [*and boundary commission*].<sup>1</sup>

7 (2) Each special district not governed by the governing body of a unit of local general  
8 government, *ex officio* or otherwise, located within the region shall submit to the agency all plans  
9 and annual work programs which the agency determines to affect or be affected by the provisions  
10 of the comprehensive development guide. The agency shall have [30 days] from the date of submis-  
11 sion of plans to conduct its review and approval and to make comments and recommendations, dur-  
12 ing which time the special district shall take no action to implement the plans or programs. If the  
13 agency finds the proposed program conflicts with the comprehensive regional development guide or  
14 implementing policies or lacks proper coordination, the special district shall resolve all inconsisten-  
15 cies and receive approval from the agency before project initiation.

16 SECTION 6. *Federal and State Programs.*

17 (a) The agency is the only authorized agency to receive state and Federal designations and/or  
18 grants for regional planning and coordination purposes from the following programs<sup>2</sup>:

- 19 (1) Section 403 of the *Public Works and Economic Development Act of 1965*, as amended;  
20 (2) Section 701 of the *Housing Act of 1954*, as amended;  
21 (3) *Omnibus Crime Control Act of 1968*, as amended;  
22 (4) Section 134 of the *Federal Aid Highway Act*, as amended; and  
23 (5) for the following purposes to the extent feasible as determined by the governor;  
24 (i) *Economic Opportunity Act of 1964*, as amended;  
25 (ii) *Comprehensive Health Planning Act of 1965*, as amended;  
26 (iii) Section 208 of the *Water Pollution Control Act Amendments of 1972*, as amended;  
27 (iv) Federal regional manpower planning programs;  
28 (v) resource, conservation, and development districts; or  
29 (vi) any state and Federal programs providing funds for multicounty or regional plan-  
30 ning, coordination, and development purposes.

31 (b) To avoid duplication of staffs for various multicounty or regional bodies assisted by state

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<sup>1</sup>See suggested state legislation entitled *Local Government Creation, Dissolution, and Boundary Adjustments*.

<sup>2</sup>Specific reference clarifies and strengthens the legislative intent; however, these specific program lists should be carefully checked and updated periodically; see Chapter VI of Advisory Commission on Intergovernmental Relations, *Regional Decision Making: New Strategies for Substate Districts*, Volume I of *Substate Regionalism and the Federal System*, Report A-43 (Washington, D.C.: U.S. Government Printing Office, October, 1973).

1 and Federal governments, the agency shall provide basic administration, research, and planning for  
2 all multicounty or regional planning and development agencies heretofore or hereafter established in  
3 the region. The agency may contract to obtain or perform services with state agencies, non-profit  
4 multicounty or regional groups, substate districts organized as the result of Federal programs, coun-  
5 cils of governments formed under [applicable state law] or any other law, and local units of govern-  
6 ment.

7 (c) (1) The governing body of each unit of local government located wholly or partly within  
8 the region shall submit to the commission for review and comment any application to agencies of  
9 the state or Federal government for financial assistance.

10 (2) The agency shall advise the unit of local government, within [30 days] regardless of longer  
11 periods permitted by Federal law from the date of the submission of the application, as to whether  
12 or not the proposed project, for which funds are requested, has significance beyond the boundaries  
13 of the applying unit of local government. If it does not have such significance, the agency shall certi-  
14 fy that it is not of significance beyond the boundaries of the applying unit of local government. If  
15 it does have such significance, the agency shall determine, within [30 days] from the date of the sub-  
16 mission of the application, whether or not the application is in conflict with the regional development  
17 plan or implementing policies thereof. In making such determination, it may also consider whether  
18 the proposed project is properly coordinated with other existing or proposed projects within the dis-  
19 trict. The agency shall resolve any adverse comments prior to approving such application for sub-  
20 mission to a state or Federal agency for financial assistance.

21 SECTION 7. *Cooperation with Other Agencies.*

22 (a) The agency shall cooperate with other regional planning commissions, the legislative or ad-  
23 ministrative bodies and officials of other districts or local governments within or without the region,  
24 the division of state planning, and other appropriate state and local agencies. All state and local  
25 agencies having information, maps, and data pertinent to the planning and development of the region  
26 shall, at cost, and may without cost, make the same, together with services and funds, available for  
27 use of the agency.

28 (b) Agencies of the Federal or state government and of local governmental units are authorized  
29 and encouraged to detail or loan employees to the agency on either a reimbursable or non-reimburs-  
30 able basis as may be mutually agreed by the state agency or governmental unit and the agency. Dur-  
31 ing the period of loan or detail the person will continue to be an employee of the lending agency or  
32 unit for purposes of salary, leave, retirement, and other personnel benefits but will work under the di-  
33 rection and supervision of the agency. A loan or detail made pursuant to this section shall expire  
34 at the end of [two years] or shorter time as agreed by the parties, but may be renewed by mutual con-  
35 sent of the loaning or detailing agency or governmental unit and the agency.



1 (c) The agency may delegate any portion of its powers and duties, upon the approval of the [*chief*  
2 *planning officer of the state*], to any multijurisdictional planning unit of local or state government  
3 within its boundaries pursuant to a mutual agreement entered into by the governing body of the  
4 unit and the agency for a term not to exceed [three years].

5 (d) The agency shall enter into a cooperative planning agreement with [*specify any additional*  
6 *major state agencies having jurisdiction within the region*]. The terms of said agreement shall be ap-  
7 proved by the governor and filed with the [*appropriate state official*] and the presiding officer [*of each*  
8 *house of the legislature*].

9 SECTION 8. *Reports; Fiscal Year; Budget and Audit.*

10 (a) The agency shall provide financial reports, in such form and in such manner, as prescribed  
11 by [*appropriate state law*].

12 (b) The agency shall prepare an annual report on its activities and shall furnish such to the gov-  
13 ernor and legislature, the [*appropriate state agencies*], the presiding officer of the governing bodies of  
14 the units of local general purpose government and the [*appropriate regional agencies*] within its  
15 boundaries, and, upon payment of a fee if such be established by the agency, to any interested per-  
16 son. Such report shall include:

17 (1) a financial statement in the form provided for financial reporting to the state;

18 (2) the budget for the year in which the report is filed, including an outline of its programs,  
19 activities, and staffing arrangements for such period;

20 (3) a description of the comprehensive regional development plan adopted by the region and  
21 indicators of development progress;

22 (4) summaries of any studies and the recommendations resulting therefrom made by the  
23 agency, and a listing of all applications for Federal and state loans or grants made by local units of  
24 government within the region, and a summary of the agency's review and comments;

25 (5) a list of plans or proposed capital facilities of units of local and state government sub-  
26 mitted to the agency;

27 (6) recommendations regarding Federal and state programs, intergovernmental cooperation,  
28 funding, and legislative needs; and

29 (7) any other information deemed necessary by the agency or which [*the appropriate state*  
30 *agency*] may require pursuant to a rule promulgated pursuant to [*applicable state law*].

31 (c) The fiscal year for the agency shall begin [*insert date*].

32 (d) Prior to [*insert date*] of each year, the executive director shall prepare and submit to the agen-  
33 cy, to all units of local general purpose government in the region, and to [*the appropriate regional and*  
34 *state agencies*], a proposed annual budget for the next fiscal year. Not later than [*insert date*], the  
35 governing body shall adopt its annual budget for the ensuing fiscal year.

1 (e) The agency shall make provisions for an annual independent post-audit of its financial re-  
2 cords. The [*appropriate state official*] is hereby instructed and authorized to make such audit pursu-  
3 ant to [*applicable state law*]. The agency may, with the approval of the [*appropriate state official*],  
4 make provision for any annual post-audit of all or any of its accounts with an independent auditor  
5 authorized to do business in the state.

6 SECTION 9. *Regional Agency; Authorization to Assume Certain Service Powers.*

7 (a) The agency is authorized to prepare and promulgate a plan for creation of a service district  
8 for regional services at any time and, upon request of the governing bodies of at least one-half of the  
9 units of general local government located within the district or of the governing bodies representing  
10 at least 60 percent of the population of the district, it shall promulgate a plan for the service so re-  
11 quested within one year from the date of such request.

12 (b) For the purposes of this section, the population of county governments shall be computed  
13 on the basis of the population in the unincorporated areas of the county.

14 (c) (1) Service districts may be established for all or any of the following purposes:<sup>1</sup>

15 (i) sewage treatment works, including any facilities covered by [*appropriate state law*];

16 (ii) facilities for the collection, treatment, and disposal of solid waste material;

17 (iii) facilities for water resources, including development of regional water supplies and  
18 integration of regional water distribution systems;

19 (iv) public transportation;<sup>2</sup> and

20 (v) any program or function added by a two-thirds vote of the governing body.]

21 (2) The geographic jurisdiction within the region for the exercise of any such purposes as-  
22 sumed by the agency or its designee shall be established and may be amended by the agency pursuant  
23 to the procedures established herein.

24 (d) (1) Upon promulgation of a plan for creation of a service district pursuant to this section,  
25 the agency shall submit such plan to the units of local general purpose government within the area  
26 of the proposed service district for adoption. Upon adoption of the plan by a majority of the units  
27 of local general purpose government affected, representing 60 percent of the population, the service  
28 district shall be created and the agency or its designee shall be authorized to assume all powers  
29 granted by this section for such purpose.

30 (2) As an alternative method for creation of a service district, the agency may propose in  
31 its plan the creation of such a service district pursuant to interlocal agreement under [*appropriate*  
32 *state law*] and, upon adoption of the agreement by the participating units, such service district shall  
33 be considered a special district subject to the provision of Section 10 of this act.

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<sup>1</sup>See also, suggested state legislation entitled *Regional Service Corporation*.

<sup>2</sup>See also, suggested state legislation entitled *Establishment of Regional Transportation Authorities*.

1 (3) A service district plan may be amended or repealed in the same manner as provided for  
2 its original adoption.

3 (e) (1) Upon creation of a service district, which shall be governed by the agency or its designee,  
4 the agency or its designee shall be authorized to assume and exercise all contractual and operational  
5 powers otherwise conferred by state law on units of local government within the proposed service  
6 district to plan, finance, undertake, and develop facilities and programs for the authorized purpose.  
7 With respect to any such power for which Federal or state government assistance is sought or re-  
8 ceived, the agency or its designee shall be the governing body of the service district area for purposes  
9 of such assistance. [The placement of any facility by such a service district shall be considered a de-  
10 velopment of regional impact<sup>1</sup> with the service district as developer and subject to the procedures  
11 established in *[appropriate state law]*.]

12 (2) To finance the function or activity, the agency may apply for and accept state, Federal,  
13 and local contributions, and issue and sell revenue bonds in accordance with procedures prescribed  
14 in *[appropriate state statutory citation]*. The agency may also raise, by user charge or fees authorized  
15 by a duly enacted resolution after adequate notice, amounts of money which are necessary for the  
16 conduct of its operations and may enforce this receipt and collection in the manner prescribed by  
17 resolution.

18 SECTION 10. *Powers in Relation to Certain Special Districts.*

19 (a) The agency shall exercise powers and duties set forth in this section in relation to any special  
20 district created and organized within the region.

21 (b) The governing body of any special district operating within the region shall submit, at least  
22 [60 days] prior to adoption, the proposed annual budget for the ensuing fiscal year, any long term  
23 financial plan or program, and any other plans or programs of the special district for future operat-  
24 ions.

25 (c) The agency shall review the proposed annual budget and any long term financial plan or pro-  
26 gram and make comments and recommendations thereon. Any other plans or programs of the special  
27 district for future operations shall be reviewed pursuant to the same procedure and to the same ex-  
28 tent as the plans or programs of other units of local government pursuant to Section 5 of this act.

29 (d) In the case of special districts located within the region, an adverse review and comment as  
30 provided in (c) shall cause a suspension of such plan or program until such time as the agency de-  
31 termines the amended proposal to be in conformity with regional goals and policies.

32 SECTION 11. *Regional Agency; Funding.*

33 (a) The agency is authorized to apply for, contract for, receive, and expend for its purposes any

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<sup>1</sup>See *Establishment of Regional Transportation Authorities and the State Planning and Growth Management Act.*

1 funds or grants from any participating local governmental unit or from the state, Federal government,  
2 or any other source.

3 (b) The agency shall be eligible for state financial assistance from funds appropriated by the  
4 [legislature] to the [appropriate state agency] for this purpose. Financial assistance provided hereunder  
5 shall be an annual grant of [33½] [50] percent of local contributions to the annual budget of the  
6 agency but shall not exceed [\$ ] for any fiscal year. [In addition the agency shall receive 3 percent  
7 of all state revenue sharing funds distributed to units of local government within the region pursuant  
8 to [appropriate state law].]

9 SECTION 12. *Implementation.*

10 [(a) *Alternatives 2 and 3* – The first election for members shall be held on] the first Tuesday  
11 after the [ ] Monday in [ ] of [year].]

12 (b) The first meeting of the governing body shall be held on the second Tuesday following the  
13 date [of selection] [set for the runoff election pursuant to this act]. At the first meeting, the governing  
14 body shall organize, elect a presiding officer, secretary (who need not be a member), and such other  
15 officers as it deems necessary. It shall further adopt its rules of procedure, employ an executive di-  
16 rector, and, after a public hearing with at least seven days notice, adopt a budget for the initial fiscal  
17 period which shall be from [dates]. Any state or local agency having funds appropriated to it for the  
18 purpose of assisting the formation of the agency may expend such funds upon the request of the  
19 governing body at any time before [date] and thereafter as provided by the budget.

20 (c) The [names of existing regional agencies] established pursuant to [appropriate existing state  
21 laws] are hereby transferred on [date] [by a type of transfer as provided in appropriate state law] to the  
22 [name] regional council established pursuant to this act. All employees of such agency(s) shall continue  
23 as employees of the agency and shall retain all vested rights and benefits granted prior to [date].

24 SECTION 13. *Separability.* [Insert separability clause.]

25 SECTION 14. *Effective date.* [Insert effective date.]

## 2.303 UMBRELLA MULTIJURISDICTIONAL ORGANIZATIONS FOR INTERSTATE AREAS<sup>1</sup>

### (JOINT FEDERAL/MULTISTATE COMPACT)

A number of metropolitan regions in this country involve areas in more than one state. In order to provide umbrella multijurisdictional organizations for such areas, the following joint compact between the Federal and state governments is suggested.

Of course, the suggested act on interlocal contracting and joint enterprise, and an interstate compact between the states without Federal participation, also could be used to provide a useful regional organization for addressing metropolitan issues in interstate areas. Indeed, even non-profit corporations are being used for such purposes at the present time. However, interlocal agreements and non-profit charters cannot confer all of the powers recommended by ACIR for umbrella multijurisdictional organizations, and ordinary interstate compacts — which are still quite rare for metropolitan purposes — have not done so. Since a large share of metropolitan areawide activities are Federally supported, and since the Federal government is the only basic constitutional unit which spans the interstate metropolitan areas, ACIR believes that the Federal government has a responsibility to initiate, help to negotiate, and to participate actively as members of compacts for these areas.

The Commission's recommendation is for use of the Federal compact (multistate) approach; however, it has noted that both state and local action should be taken when this Commission preferred approach is not practicable. This can be done through suggested state legislation entitled *Interlocal Contracting and Joint Enterprise*, or *Statewide Substate Districting Act*, or *Umbrella Multijurisdictional Organization for Specific Metropolitan or Multicounty Areas*.

The suggested compact was adapted from interstate acts of Illinois/Missouri,<sup>2</sup> Nevada/California,<sup>3</sup> and Connecticut/New Jersey/New York.<sup>4</sup>

*Section I* states the agreement of the states and the Federal government to the following compact.

*Article I* states the findings, purpose of the act, and definitions used in the act.

*Article II* creates a regional council and provides for its membership.

*Article III* enumerates the council's powers and duties, authorizes the council to employ an executive director who shall employ necessary staff, and requires the council to promulgate rules of operation.

*Article IV* requires the council to establish a comprehensive planning and review process and to prepare, publish, and review annually a comprehensive regional development guide.

*Article V* mandates the council as the only authorized agency to receive state and Federal designations and/or grants for regional planning and coordination from certain programs, authorizes the council to provide basic administration, research, and planning for multicounty or regional planning and development agencies in the region, and requires the council to review any application of a state agency or unit of local government for projects within the region which would receive state or Federal agency financial assistance.

*Article VI* provides for cooperation with other local, regional, and state agencies through exchange of data; loan of employees to the council from local, state, or Federal agencies; delegation of certain of the council's powers and duties, upon approval of the governors of each party state; and cooperative planning agreements.

*Article VII* requires the regional council to provide financial reports as prescribed by law or agreement of the governors of the party states; prepare and furnish an annual report on its activities to the governors, legislatures, appropriate state agencies, presiding officer of the governing bodies of units of local general

<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *Regional Decision Making: New Strategies for Substate Districts*, Volume I of *Substate Regionalism and the Federal System*, Report A-43 (Washington, D.C.: U.S. Government Printing Office, October, 1973).

<sup>2</sup>House Bill 1134, *Missouri Laws 1973*.

<sup>3</sup>Chapter 714, *Nevada Laws 1973*.

<sup>4</sup>Public Act 450, *New York Laws 1971*.

purpose governments and appropriate regional agencies within its boundaries, and, for a fee, any interested person; adopt an annual budget as submitted by the executive director; and provide for an annual independent post-audit of its financial records. It also specifies the council's fiscal year.

*Article VIII* authorizes the regional council to prepare and promulgate a plan creating a regional service district, delineates those purposes for which it may be established, and sets out the actions to be taken by the council upon promulgation of the service district plan and upon adoption of such a plan.

*Article IX* enumerates those powers and duties to be exercised by the council in relation to any special district created and organized within the region.

*Article X* deals with the funding of the regional council

*Article XI* authorizes the governors of the party states and the members of the regional council to proceed with the development of regional organization and programs in accordance with the articles of the compact and sets out when members are to be selected and the first meeting held, and the actions to be taken by the council.

*Sections 2 and 3* provides for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT PROVIDING FOR A JOINT FEDERAL-MULTISTATE COMPACT TO  
CREATE AN UMBRELLA MULTIJURISDICTIONAL ORGANIZATION WITH  
SERVICE POWERS UNDER CERTAIN CONDITIONS]<sup>1</sup>

(Be in enacted, etc.)

1 SECTION 1. *Compact Between [States] and Federal Government.* The state of [name] hereby  
2 agrees with the state(s) of [name] and with the government of the United States, upon enactment by  
3 each of them of legislation having the same effect as this section, to the following compact.<sup>2</sup>

Article I

FINDINGS, PURPOSE, AND DEFINITIONS

1 (1) The [legislature] finds and declares that in the [name] regions:

2 (a) the problem of growth and development transcend the boundaries of individual units of  
3 general local and state government, and no single local or state unit can formulate plans or imple-  
4 ment policies for their solution without affecting other units in their geographic area;

5 (b) the proliferation of single purpose areawide and less than areawide agencies has resulted  
6 in duplication of efforts and diffusion of responsibility, and has impeded the efforts of local and state  
7 governments to meet citizen needs;

8 (c) there is a need for a joint Federal-multistate organization in [region] to provide a means  
9 for the local, state, and Federal governments involved to resolve their common problems, engage in  
10 areawide comprehensive and functional planning, administer certain Federal and state grants-in-  
11 aid, coordinate development, and conduct other areawide activities; and

12 (d) the establishment of this regional organization does not affect the right of counties or  
13 municipalities to conduct local planning or deliver local services.

14 (2) It is the purpose of this act to enhance the ability and opportunity of local governments in the  
15 [name] region to resolve issues and problems transcending their individual boundaries by establishing a  
16 general purpose regional agency with authority to:

17 (a) perform comprehensive regional planning;

18 (b) establish regional policy;

19 (c) enforce regional standards; and

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<sup>1</sup>Suggested short title: *Interstate UMJO Compact.*

<sup>2</sup>This act is to be enacted also by the Federal government. For that purpose, this wording needs appropriate revision.

1 (d) provide for [*transportation, water resources, sewage treatment, solid waste disposal, and*  
2 *such other*] regional functions as may be added through provisions of this act.

3 (3) *Definitions.* As used in this act, except where the context clearly indicates otherwise:

4 (a) "Agency" means [*name*] regional council.

5 (b) "Comprehensive regional development guide" means a long range plan identifying re-  
6 gional goals, objectives, and opportunities for physical, economic, and social development.

7 (c) "Governing body" means the legislative or policy making body of a unit of general  
8 local government, special district, or the agency.

9 (d) "Local elected official" means the chief elected executive or a member of the governing  
10 body of a unit of general local government.

11 (e) "Major capital facility" means any publicly financed structure or physical facility which  
12 has an impact or effect on development of the region including those which: are located on or near  
13 the boundaries between units of general local government; are part of an areawide system of public  
14 services or facilities, such as major highways, rapid transit, or water and sewer; are of a magnitude  
15 to establish new directions in the population or economic growth of the region; or are related to the  
16 components of an officially adopted comprehensive regional development guide.

17 (f) "Population" means the number of inhabitants according to the latest special or decen-  
18 nial United States census.

19 (g) "Region" means the territory within [*specify area*].

20 (h) "Special district" means a local or multistate unit of special government created pursuant  
21 to general or special law for the purpose of performing specialized functions within the region's  
22 boundaries [except school districts].

23 (i) "State agency" means any department, commission, board, or other unit of the executive  
24 branch of state government.

25 (j) "Unit of general local government" means [*a county or municipality*].

## Article II

### REGIONAL AGENCY CREATION AND MEMBERSHIP

1 (1) There is hereby created in the [*name*] region a general purpose interstate agency as a separate  
2 legal entity, to be known and designated as the [*name*] regional council.

3 (2) (a) The governing body of the agency shall consist of local elected officials, state, and Federal  
4 government representatives.<sup>1</sup> At a minimum, 60 percent of the governing body membership shall be

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<sup>1</sup>The rest of this section, while consistent with ACIR's suggested intrastate UMJO legislation, is merely suggested. The Commission recognizes the uniqueness of compact negotiations and did not take a specific position on the proportionate shares of representation for each level of government.



1 local elected officials, with every unit of general local government in the region required to be a mem-  
2 ber. The governing body of each unit of general local government shall appoint at least one official  
3 as its representative. The governor shall appoint [ ] representatives and, with the consent of Con-  
4 gress as provided in Article XII, the President shall appoint [ ] representatives.

5 (b) Each member local government shall be entitled to one vote in the governing body. The  
6 combined vote of the state representatives shall equal the state proportion of the total membership  
7 which shall be 20 percent. State and Federal representatives may cast multiple or fractional votes.  
8 The combined vote of Federal representatives shall equal the Federal proportion of the total member-  
9 ship which shall be 20 percent. State and Federal representatives may cast multiple or fractional  
10 votes.

11 (c) At times prescribed in the bylaws, any member local government may call a weighted  
12 voting procedure into effect. Under this procedure local government representatives may cast multiple  
13 or fractional votes. These votes shall bear the same proportion to the total local member votes as [the  
14 individual local government's population bears to the total population of the interstate district]  
15 [the individual local government's population bears to the total population of the interstate district,  
16 except that in addition to unincorporated areas, county population shall consist of residents of:

17 (i) incorporated territory proportionate to the county's share of total direct local gov-  
18 ernment expenditures in this territory; or

19 (ii) incorporated territory proportionate to the county's share of total local taxes col-  
20 lected in this territory] [the individual local government's annual financial contribution bears to the  
21 total annual local government fiscal support for the substate district organization]. State and Federal  
22 representatives shall cast the same percentage of the total vote as provided in paragraph (b).

23 (3) Members shall continue in office until their successors qualify. Vacancies in the membership  
24 shall be filled in the same manner as the original appointment.

25 (4) Members shall serve [with compensation, not exceeding \$100 per day, as provided by resolu-  
26 tion and *per diem* and travel] [without compensation; however, this shall not prohibit the payment of  
27 *per diem* and travel as provided in [applicable state law]].

28 (5) If the agency is designated as a regional agency for the purpose of [applicable state law] or any  
29 other state or Federal law and the area covered by such designation exceeds the geographic boundar-  
30 ies of the regional council, the council may add such additional members to it or any of its committees  
31 as may be agreed upon by the designating agency and the governing body to provide equitable repre-  
32 sentation. The additional members shall be selected by the governing body of local general purpose  
33 government covering all or part of the additional area and shall be heard only with respect to issues  
34 for which such designation was made.

## Article III

### REGIONAL AGENCY DUTIES AND POWERS

1 (1) The agency shall have and exercise all powers necessary or convenient to enable it to carry  
2 out the duties and responsibilities which are hereby, or may hereafter be, imposed upon it by law.

3 Without in any manner limiting or restricting the general powers conferred herein, the agency may:

4 (a) adopt and have a common seal and alter it at pleasure;

5 (b) sue and be sued;

6 (c) adopt bylaws and make rules and regulations for the conduct of its business;

7 (d) establish committees, including citizen advisory committees, and divisions and authorize  
8 the staffing of same, as necessary to carry out its duties and exercise its powers;

9 (e) hold public hearings;

10 (f) borrow money,<sup>1</sup> accept gifts, apply for and use grants or loans of money or other prop-  
11 erty from the United States, the state, a local unit of government or any person, for any agency pur-  
12 pose, and enter into agreements required in connection therewith, and hold, use, and dispose of such  
13 moneys or property in accordance with the terms of the gift, grant, loan, or agreement relating thereto;

14 (g) enter into all contracts and agreements necessary or incidental to the performance of its  
15 duties and responsibilities, including, but not limited to:

16 (i) intergovernmental contracts or joint exercise of powers agreements;

17 (ii) contracts for the services of consultants to perform planning, engineering, legal, or  
18 other appropriate services of a professional nature; and

19 (iii) contracts, including bonds, for financing appropriate services.

20 (h) prescribe all terms and conditions for the employment of officers, employees, and other  
21 agents including but not limited to their classification, the fixing of compensation and benefits, and  
22 the filing of performance and fidelity bonds and policies of insurance as it may deem advisable; pro-  
23 vide for adoption of qualifications, job descriptions; prescribe procedures for removal and appeal by  
24 employees;

25 (i) apply for coverage of its employees under the state [or Federal] retirement system of any  
26 compact member in the same manner as if such employees were state [or Federal] employees, subject  
27 to necessary action by the agency to pay employer contributions into the state [or Federal] retirement  
28 fund;

29 (j) conduct studies of the region's resources with respect to existing and emerging problems  
30 of industry, commerce, land use and water resources, transportation, population, housing, agricul-  
31 ture, public services, local government, relative tax effort and fiscal capacity of local governments,

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<sup>1</sup>In most states this general power would be restricted to short term notes with long term debt controlled by additional specific provisions of law.

1 and any other matters which are relevant to regional planning;

2 (k) collect, process, and analyze at regular intervals the social, economic, and fiscal statistics  
3 for the region with the necessary planning studies, consistent with [*applicable state laws*], and make  
4 the results available to the general public;

5 (l) provide information to officials and state departments, agencies and instrumentalities, to  
6 Federal and local governments, and to the public at large in order to foster a public awareness and un-  
7 derstanding of the objectives of the comprehensive regional development guide and its proposals  
8 and the nature of regional and local planning in order to stimulate public interest and participation  
9 in the orderly, integrated development of the region;

10 (m) assume duties for additional areas pursuant to any state or Federal designation subject to  
11 providing additional equitable representation as provided in subsection (5) of Article II of this act; and

12 (n) execute any and all instruments, and do and perform any and all acts for things neces-  
13 sary, convenient, or desirable for its purposes or to carry out the powers expressly given in this section.

14 (2) The governing body shall employ and set the compensation of an [*executive director*], who  
15 shall serve at the pleasure of the governing body. The [*executive director*] shall employ professional,  
16 technical, clerical, legal or other staff, as may be necessary and authorized, and remove same. The  
17 [*executive director*] may make agreements with local planning or other public agencies, within the geo-  
18 graphic boundaries of the region, for temporary transfer, loan, or other cooperative use of staff em-  
19 ployees and, with the consent of the governing body or pursuant to procedures established by the  
20 governing body, may acquire the services of consultants and enter into contracts on behalf of the  
21 agency.

22 (3) The agency shall promulgate rules governing its operation, provided that such rules shall be  
23 promulgated only after public hearing with notice.

#### Article IV

### COMPREHENSIVE REGIONAL DEVELOPMENT GUIDE: PLANNING AND REVIEW

1 (1) (a) The agency shall establish a comprehensive planning process and prepare, publish, and  
2 annually review and, if necessary, revise a guide for the coordinated development of the region. The  
3 guide shall be based on studies of governmental, social, economic, environmental, and physical con-  
4 ditions and trends, and seek to promote the general health, welfare, convenience, and prosperity of  
5 the region's population. It shall embody the policies of the agency, and include, but not be limited to:

6 (i) goals, objectives, standards, and principles to guide economic, social, environmental,  
7 and human resource development;

8 (ii) alternative strategies for economic growth and population settlement;

1 (iii) land, water, and air transportation networks and communication facilities;  
2 (iv) the need for and proposed general location of, public and private works and facili-  
3 ties, which by reason of their function, size, extent, or any other cause are of an areawide, as dis-  
4 tinguished from a purely local, concern; and  
5 (v) the long range development, operation, and financing of capital projects and facilities.

6 (b) The comprehensive regional development guide, in part or in whole, and any amend-  
7 ments thereto, shall be officially adopted by a majority vote of the governing body, after submission  
8 to the governing body of each unit of general local government within the region, as well as each par-  
9 ticipating state, and each appropriate Federal agency, for a period of not less than [30 days] prior to a  
10 public hearing to be held by the agency after adequate notice. Each unit of government to which the  
11 plan is submitted may make recommendations to the agency on the effect of the proposed plan, or  
12 portions thereof, and on its jurisdiction on or before the date of the hearing.

13 (2) (a) The agency shall develop guidelines to determine developments of areawide concern [which  
14 shall include, but not be limited to, developments of regional impact<sup>1</sup> pursuant to *[applicable state*  
15 *law]*].

16 (b) Any development of areawide concern shall not be acted upon by any unit of local gov-  
17 ernment within the region or by any state or Federal agency until the regional agency created herein  
18 and all affected local governmental units have been granted [30 days] advance notification. Any com-  
19 ment received from those notified shall be placed on public record and a response to any adverse com-  
20 ment must be made prior to any final decision.

21 (3) Upon adoption of the comprehensive regional development guide, each unit of local govern-  
22 ment located within the region and each state agency operating within the region shall submit to the  
23 agency for review, comment, and recommendation its comprehensive plans or any other plans or pro-  
24 grams which, in the judgment of the agency, affect or are affected by the provisions of the compre-  
25 hensive regional development guide. The submission of a comprehensive plan or other plan or pro-  
26 gram by a county government which includes the plans of other local units within the county may be  
27 considered a consolidated submission and waive the submission requirement for the units included.  
28 The agency shall have [30 days] from the date of submission of these programs to conduct its review  
29 and make comments and recommendations, during which period the unit of general local government  
30 or state agency shall take no action to implement the plans or programs.

31 (4) (a) The governing body of each unit of general local government and each state and Federal  
32 agency operating within the region shall submit to the agency for review all proposed major capital  
33 facility projects. The agency shall advise the submitting unit or agency within [30 days] from the date

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<sup>1</sup>See the *Establishment of Regional Transportation Authorities and the State Planning and Growth Management Act.*

of submission as to whether the proposed project has regional significance. If it lacks regional significance, the agency shall certify this finding. If it has regional significance, the agency shall determine whether the proposed project is in conflict with the comprehensive regional development guide and implementing policies or is not properly coordinated with other existing or proposed projects within the region. If the agency finds the proposed project conflicts with the guide or implementing policies or lacks proper coordination, all such inconsistencies shall be resolved to its satisfaction before project initiation.

(b) The agency shall review and approve any application for a loan or grant from a state or Federal department or agency submitted by special districts or private or non-profit corporations within its boundaries. If the agency finds the proposed application to be in conflict with the comprehensive development guide for implementing policies or is not properly coordinated with existing or proposed projects within the region, the agency shall so inform the special district or private non-profit corporation who shall, upon receipt of such notification, suspend its application until resolution of the conflicts so noted.

(5) (a) The agency shall review proposals for the formulation of special districts which would operate within its boundaries and within [30 days] submit a report on the regional significance of the proposed formation to the referring units of general local government [and boundary commission].<sup>1</sup>

(b) Each special district not governed by the governing body of a unit of local general government, *ex officio* or otherwise, located solely within the region shall submit to the agency all plans and annual work programs which the agency determines to affect or be affected by the provisions of the comprehensive regional development guide. The agency shall have [30 days] from the date of submission of plans to conduct its review and approval and to make comments and recommendations, during which time the special district shall take no action to implement the plans or programs. If the agency finds the proposed program conflicts with the comprehensive regional development guide or implementing policies or lacks proper coordination, the special district shall resolve all inconsistencies and receive approval from the agency before project initiation.

(6) The governor of any participating state, or the President of the United States, upon making a written finding, may veto any actions of the [name] regional agency that conflict, respectively, with (a) an officially adopted state development plan or with officially adopted plans, policies, or actions of any adjoining [substate district organization], or (b) an official plan, policy, or action of the United States.

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<sup>1</sup>See suggested state legislation entitled *Local Government Creation, Dissolution, and Boundary Adjustment*.

Article V  
FEDERAL AND STATE PROGRAMS

1           (1) The agency is the only authorized agency to receive state and Federal designations and/or  
2 grants for regional planning and coordination purposes from the following programs:<sup>1</sup>

3           (a) Section 403 of the *Public Works and Economic Development Act of 1965*, as amended;

4           (b) Section 701 of the *Housing Act of 1954*, as amended;

5           (c) *Omnibus Crime Control Act of 1968*, as amended; and

6           (d) Section 134 of the *Federal Aid Highway Act*, as amended;

7           (e) for the following purposes, to the extent feasible, and as mutually determined by the  
8 governors of the party states:

9           (i) *Economic Opportunity Act of 1964*, as amended;

10           (ii) *Comprehensive Health Planning Act of 1965*, as amended;

11           (iii) Section 208 of the *Water Pollution Control Act Amendments of 1972*, as amended;

12           (iv) Federal regional manpower planning programs;

13           (v) resource, conservation, and development districts; or

14           (vi) any state and Federal programs providing funds for multicounty or regional plan-  
15 ning, coordination, and development purposes.

16           (2) To avoid duplication of staffs for various multicounty or regional bodies assisted by state  
17 and Federal governments, the agency shall provide basic administration, research, and planning for  
18 all multicounty or regional planning and development agencies heretofore or hereafter established in  
19 the region. The agency may contract to obtain or perform services with state agencies, non-profit  
20 multicounty or regional groups, substate districts organized as the result of Federal programs or state  
21 law, councils of governments formed under [*applicable state law*] or any other law, and local units of  
22 government.

23           (3) (a) The governing body of each unit of local government located wholly or partly within the  
24 region shall submit to the agency for review and comment any application to agencies of the state  
25 or Federal government for financial assistance.

26           (b) The agency shall advise the unit of local government, within [30 days] regardless of  
27 longer periods permitted by Federal law from the date of the submission of the application, as to  
28 whether or not the proposed project, for which funds are requested, has significance beyond the

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<sup>1</sup>Specific reference clarifies and strengthens the legislative intent, however, the specific program list should be carefully checked and updated to the most recent Federal action; see Chapter VI, Advisory Commission on Intergovernmental Relations, *Regional Decision Making: New Strategies for Substate Districts*, Volume I of *Substate Regionalism and the Federal System*, Report A-43 (Washington, D.C.: U.S. Government Printing Office, October, 1973).

1 boundaries of the applying unit of local government. If it does not have such significance, the agency  
2 shall certify that it is not of significance beyond the boundaries of the applying unit of local govern-  
3 ment. If it does have such significance, the agency shall determine, within [30 days] from the date of  
4 submission of the application, whether or not the application is in conflict with the regional develop-  
5 ment plan or implementing policies thereof. In making such determination, it may also consider  
6 whether the proposed project is properly coordinated with other existing or proposed projects within  
7 the district. The agency shall resolve any adverse comments prior to approving such application for  
8 submission to a state or Federal agency for financial assistance.

## Article VI

### COOPERATION WITH OTHER AGENCIES

1 (1) The agency shall cooperate with other regional planning commissions, the legislative or ad-  
2 ministrative bodies and officials of other districts or local governments within or without the region,  
3 the [division of state planning,] and other appropriate state and local agencies. All state and local agen-  
4 cies having information, maps, and data pertinent to the planning and development of the region  
5 shall, at cost, and may, without cost, make the same, together with services and funds, available for  
6 use of the agency.

7 (2) Agencies of the Federal or state government and of local governmental units are authorized  
8 and encouraged to detail or loan employees to the agency on either a reimbursable or non-reimbursa-  
9 ble basis as may be mutually agreed by the stage agency or governmental unit and the agency. During  
10 the period of the loan or detail the person will continue to be an employee of the lending agency or  
11 unit for purposes of salary, leave, retirement, and other personnel benefits but will work under the  
12 direction and supervision of the agency. A loan or detail made pursuant to this section shall expire at  
13 the end of [two years] or shorter time as agreed by the parties, but may be renewed by mutual consent  
14 of the loaning or detailing agency or governmental unit and the agency.

15 (3) The agency may delegate any portion of its powers and duties, upon the approval of the  
16 governor of each party state, to any multijurisdictional planning unit of local or state government  
17 within its boundaries pursuant to a mutual agreement entered into by the governing body of the unit  
18 and the agency for a term not to exceed [three years].

19 (4) The agency shall enter into a cooperative planning agreement with [*specify any additional*  
20 *major state agencies having jurisdiction with the region*]. The terms of said agreement shall be ap-  
21 proved by the governor of each party state and filed with the [*appropriate state official*] and the  
22 [*presiding officer of each house of the legislature*] in each party state.

Article VII  
REPORTS, FISCAL YEAR, BUDGET, AND AUDIT

1       (1) The agency shall provide financial reports, in such form and in such manner, as prescribed  
2 by [*appropriate state law*] [or as may be mutually agreed by the governors of the party states].

3       (2) The agency shall prepare an annual report on its activities and shall furnish such to the gov-  
4 ernor and legislature, the [*appropriate state agencies*], the presiding officer of the governing bodies of  
5 the units of local general purpose government and the [*appropriate regional agencies*] within its  
6 boundaries and, upon payment of a fee if such be established by the agency, to any interested person.  
7 Such report shall include:

8           (a) a financial statement in the form provided for financial reporting to the state;

9           (b) the budget for the year in which the report is filed, including an outline of its programs,  
10 activities, and staffing arrangements for such period;

11           (c) a description of the comprehensive regional development plan adopted by the region and  
12 indicators of development progress;

13           (d) summaries of any studies and recommendations resulting therefrom made by the agency,  
14 a listing of all applications for Federal and state loans or grants made by local units of government  
15 within the region, and a summary of the agency's review and comments;

16           (e) a list of plans or proposed capital facilities of units of local and state government sub-  
17 mitted to the agency;

18           (f) recommendations regarding Federal and state programs, intergovernmental cooperation,  
19 funding, and legislative needs; and

20           (g) any other information deemed necessary by the agency.

21       (3) The fiscal year for the agency shall begin [*specify*].

22       (4) Prior to [*specify date*] of each year, the [*executive director*] shall prepare and submit to the  
23 agency, to all units of local general purpose government in the region, and [*to the appropriate re-*  
24 *gional and state agencies*], a proposed annual budget for the next fiscal year. Not later than [*specify*  
25 *date*], the governing body shall adopt its annual budget for the ensuing fiscal year.

26       (5) The agency shall make provisions for an annual independent post-audit of its financial rec-  
27 ords. The auditor shall be chosen by mutual agreement of the governors of each party state, or other-  
28 wise by the governing body of the agency. The audits shall be in such form as mutually prescribed by  
29 the governors of the party state, or otherwise the governing body of the agency, and shall be filed  
30 with the [*appropriate state official*] of each party state.



Article VIII

REGIONAL AGENCY AUTHORIZATION TO ASSUME CERTAIN SERVICE POWERS

1 (1) The agency is authorized to prepare and promulgate a plan for creation of a service district  
2 for regional services at any time and, upon request of the governing bodies of at least one-half of the  
3 units of general local government located within the district or of the governing bodies representing  
4 at least 60 percent of the population of the district, it shall promulgate a plan for the service so  
5 requested within one year from the date of such request.

6 (2) For the purposes of this section, the population of county governments shall be computed  
7 on the basis of the population in the unincorporated areas of the county.

8 (3) (a) Service districts may be established for all or any of the following purposes:

9 [(i) sewage treatment works, including any facilities covered by *[appropriate state law]*;

10 (ii) facilities for the collection, treatment, and disposal of solid waste material;

11 (iii) facilities for water resources, including development of regional water supplies and  
12 integration of regional water distribution systems;

13 (iv) public transportation; and

14 (v) any program or function added by a two-thirds vote of the governing body.]

15 (b) The geographic jurisdiction within the region for the exercise of any such purposes as-  
16 sumed by the agency or its designee shall be established and may be amended by the agency pursuant  
17 to the procedures established herein.

18 (4) (a) Upon promulgation of a plan for creation of a service district pursuant to this section, the  
19 agency shall submit such plan to the units of local general purpose government within the area of the  
20 proposed service district for adoption. Upon adoption of the plan by a majority of the units of local  
21 general purpose government affected, representing a majority of the population, the service district  
22 shall be created and the agency or its designee shall be authorized to assume all powers granted by  
23 this section for such purpose.

24 (b) As an alternative method for creation of a service district, the agency may propose in its  
25 plan the creation of such a service district pursuant to interlocal agreement under *[appropriate state*  
26 *law]* and, upon adoption of the agreement by the participating units, such service district shall be con-  
27 sidered a special district subject to the provision of Article IX of this compact.

28 (c) A service district plan may be amended or repealed in the same manner as provided for its  
29 original adoption.

30 (5) Upon creation of a service district, which shall be governed by the agency or its designee, the  
31 agency or its designee shall be authorized to assume and exercise all contractual and operational pow-  
32 ers otherwise conferred by state law on units of local government within the proposed service district

1 to plan, finance, undertake, and develop facilities and programs for the authorized purpose. With re-  
2 spect to any such power for which Federal or state government assistance is sought or received, the  
3 agency or its designee shall be the governing body of the service district area for purposes of such  
4 assistance. [The placement of any facility by such a service district shall be considered a development  
5 of regional impact<sup>1</sup> with the service district as developer and subject to the procedures established in  
6 the *[appropriate state law]*.] To finance the function or activity, the agency may apply for and  
7 accept Federal, state, and local contributions and issue and sell revenue bonds in accordance  
8 with procedures prescribed in *[appropriate state statutory citation]*. The agency may also  
9 raise, by user charges or fees authorized by a duly enacted resolution after adequate notice,  
10 amounts of money which are necessary for the conduct of its operations and may enforce this re-  
11 ceipt and collection in the manner prescribed by resolution. The governor, by executive order,  
12 may suspend or alter such procedures in order to provide compatibility with the law of a party  
13 state.

## Article IX

### POWERS IN RELATION TO CERTAIN SPECIAL DISTRICTS

1 (1) The agency shall exercise the powers and duties set forth in this section in relation to any  
2 special district created and organized within the region.

3 (2) The governing body of any special district operating within the region shall submit, at  
4 least [60 days] prior to adoption, the proposed annual budget for the ensuing fiscal year, any long  
5 term financial plan or program, and any other plans or programs of the special district for future  
6 operations.

7 (3) The agency shall review the proposed annual budget and any long term financial plan or  
8 program and make comments and recommendations thereon. Any other plans or programs of the  
9 special district for future operations shall be revised pursuant to the same procedure and to the same  
10 extent as the plans or programs of other units of local government pursuant to Article IV of this  
11 compact.

12 (4) In the case of special districts located within the region, an adverse review and comment as  
13 provided in (3) shall cause a suspension of such plan or program until such time as the agency  
14 determines the amended proposal to be in conformity with regional goals and policies.

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<sup>1</sup>See the *Establishment of Regional Transportation Authorities* and the *State Planning and Growth Management Act*.

## Article X

### REGIONAL AGENCY FUNDING

1 (1) The agency is authorized to apply for, contract for, receive, and expend for its pur-  
2 poses any funds or grants from any participating local governmental unit or from the state, Federal  
3 government, or any other source.

4 (2) The agency shall be eligible for state financial assistance from funds appropriated by the  
5 [legislature] to the [appropriate state agency] for this purpose. Financial assistance provided hereunder  
6 shall be an annual grant of [33 $\frac{1}{3}$ ] [50] percent of local contributions to the annual budget of the  
7 agency, but shall not exceed [\$] or an amount equal to the expenditures of other party states divided  
8 by their population in the region, whichever is lesser, for any fiscal year. [In addition the agency shall  
9 receive 3 percent of all state revenue sharing funds distributed to units of local government within  
10 the region pursuant to [appropriate state law].]

## Article XI

### IMPLEMENTATION

1 (1) The President, governors, and, when available, members of the agency are authorized and  
2 directed to proceed with the development of the regional organization and programs in accordance  
3 with the articles of this compact as rapidly as may be economically practicable and are vested with  
4 all necessary and appropriate powers, not inconsistent with the constitution or the laws of the  
5 United States or of participating states, to effectuate the same, except the power to levy direct taxes or  
6 assessments upon the citizens of the district.<sup>1</sup>

7 (2) The agency shall render such advice, suggestion, and assistance to all local and state offi-  
8 cials as will permit all local and municipal improvements, so far as practicable, to fit in with the  
9 plan.

10 (3) The first selection of members shall take place prior to [date] and after passage of similar  
11 legislation by the state(s) of [name] and the Federal government.

12 (4) The first meeting of the governing body shall be held on the second Tuesday following the  
13 date of selection. At the first meeting, the governing body shall organize, elect a presiding officer,  
14 secretary (who need not be a member), and such other officers as it deems necessary. It shall further  
15 adopt its rules of procedure, employ an [executive director], and, after a public hearing with at least  
16 seven days notice, a budget for the initial fiscal period which shall be [dates]. Any state or local agency

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<sup>1</sup>See the suggested *Establishment of Regional Transportation Authorities* for examples of direct tax authorizations which could be included here.

1 having funds appropriated to it for the purpose of assisting the formation of the agency may expend  
2 such funds upon the request of the governing body at any time before [date] and thereafter as pro-  
3 vided by the budget.

4 (5) The [names of pre-existing agencies] established pursuant to [appropriate existing state  
5 laws] are hereby transferred on [date] [by a type of transfer as provided in appropriate state law] to the  
6 [name] regional council established pursuant to this act. All employees of such agencies shall continue  
7 as employees of the agency and shall retain all vested rights and benefits granted prior to the ef-  
8 fective date of this compact.

9 SECTION 2. *Separability.* [Insert separability clause.]

10 SECTION 3. *Effective date.* [Insert effective date clause.]

## 2.304 REGIONAL SERVICE CORPORATION<sup>1</sup>

A notable phenomenon of the past several decades 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. The spread of functional authorities has caused concern among public administrators, scholars, and political leaders in regions and 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 regional or 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 a regional 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 regions and 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 regional service corporations, contains safeguards against the three arguments most often cited against authorities. The regional service corporation proposed could be a multifunctional 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 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 region or 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 "regional 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.<sup>3</sup> (2) The corporation would be empowered by statute, subject to local voter approval, to carry on one or more of several areawide functions, such as sewage or solid waste disposal, water supply, transportation, or planning. If the function of comprehensive planning were voted to the corporation, performance on a regionwide basis would be required, in contrast to permission for a smaller "service area" in the case of other functions.<sup>4</sup>

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations: *The Problem of Special Districts in American Government*, Report A-22 (May, 1964); *The Challenge of Local Governmental Reorganization*, Volume III of *Substate Regionalism and the Federal System*, Report A-44 (February, 1974); *Governmental Functions and Processes: Local and Areawide*, Volume IV of *Substate Regionalism and the Federal System*, Report A-45 (Washington, D.C.: U.S. Government Printing Office February, 1974).

<sup>2</sup>This legislation would not, obviously, provide for all the problems involved where an authority is needed to serve a regional or metropolitan territory in two or more states. However, some of the principles expressed in this proposed statute might well be extended to any legislation or compacts providing explicitly for such agencies.

<sup>3</sup>See also Advisory Commission on Intergovernmental Relations proposed legislation, *Regional Government Study Commissions*.

<sup>4</sup>See also Advisory Commission on Intergovernmental Relations proposed legislation, *Umbrella Multijurisdictional Organization for Specific Metropolitan or Multicounty Areas*.

(3) The corporation would be governed by a council consisting of representatives from the boards of county commissioners, and from the mayors and councils of component cities.<sup>1</sup> (4) The corporation would have power to impose service charges and special benefit assessments, to impose sales, income, and property taxes, and to issue bonds.<sup>2</sup> The use of sales, income, or property taxes would be appropriate where a corporation has responsibility for functions that cannot be financed solely through special assessments. The areawide territory encompassed by a regional service corporation would overcome some of the objectionable features of administering "local" non-property taxes. By authorizing areawide sales or income taxes, states can to some extent reduce the fiscal disparities between contiguous local units. Where possible such taxes should be "piggybacked" on state or local taxes to simplify administration.

The text of the suggested legislation is based on the provisions of Chapter 213, *Laws of 1957*, state of Washington.

*Section 1* states the purpose of the legislation as being to provide people in the regions or metropolitan areas in the state the means of obtaining essential services not adequately provided by existing local government agencies. *Section 2* deals with definitions.

*Section 3* outlines the service area and functions of a regional service corporation. *Section 4* sets forth the method of establishing and modifying a regional service corporation.

*Section 5* provides for the organization and the method of selecting a governing body for a regional service corporation; *Section 6* outlines the duties of the corporation; *Section 7* sets forth the grant of general powers to the corporation; and *Section 8* sets forth the scope of the corporation's financial powers.

*Sections 9 and 10* provided for separability and effective date clauses, respectively.

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<sup>1</sup>See also Advisory Commission on Intergovernmental Relations proposed legislation, *Umbrella Multijurisdictional Organization for Specific Metropolitan or Multicounty Areas*.

<sup>2</sup>See also Advisory Commission on Intergovernmental Relations proposed legislation, *Regional Home Rule Charters*.

## Suggested Legislation

# [AN ACT PROVIDING FOR THE CREATION AND OPERATION OF REGIONAL SERVICE CORPORATIONS TO PROVIDE AND COORDINATE CERTAIN SPECIFIED PUBLIC SERVICES AND FUNCTIONS FOR PARTICULAR AREAS]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* It is hereby declared to be the public policy of this state to provide for the  
2 people of the state the means of obtaining essential services not adequately provided by existing agen-  
3 cies of local government. The growth of population and the movement of people into various areas  
4 has created problems of sewage and solid waste disposal, water supply, public transportation, plan-  
5 ning, parks, and parkways which extend beyond the boundaries of individual cities, counties, and  
6 special districts. For reasons of topography, the location and movement of population, land condi-  
7 tions, and development, one or more of these problems cannot be adequately met by the individual  
8 cities, counties, and special districts in regions of this state. It is the purpose of this act to enable cit-  
9 ies and counties to act jointly to meet these common problems in order that the proper growth and  
10 development of all areas of the state may be assured and the health and welfare of the people residing  
11 therein may be secured.

12 SECTION 2. *Definitions.*

13 (a) "Authorized regional function" means an areawide function which a regional service corpor-  
14 ation shall have been authorized to perform in the manner provided in this act.

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

16 (c) "Central county" means the county containing the city with the largest population in a ser-  
17 vice area.

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

19 (e) "City council" means the legislative body of any city or town.

20 (f) "Component city" means an incorporated city or town within a service area.

21 (g) "Component county" means a county of which all or part is included within a service area.

22 (h) "Metropolitan area" as used herein is an area designated as a Standard Metropolitan Statistical  
23 Area by the United States Office of Management and Budget.<sup>1</sup>

24 (i) "Population" means the number of residents as shown by the figures released from the most  
25 recent official U.S. *Census of Population* or official estimate thereof.

26 (j) "Region" means those areas of the state designated pursuant to [executive order or statute

<sup>1</sup>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 (House Bill 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 *which establishes the statewide substate district areas*].

2 (k) "Regional service council" means the legislative body of a regional service corporation.

3 (l) "Regional function" means any of the functions of government named in Section 3 of this act.

4 (m) "Regional service corporation" means an organization created pursuant to Section 4 of this  
5 act.

6 (n) "Service area" means the area contained within the boundaries of an existing or proposed re-  
7 gional service corporation.

8 (o) "Special district" means a local unit of special government created pursuant to law for the  
9 purposes of performing prescribed, specialized functions within limited boundaries, exclusive of  
10 [school districts and] those units of local special government formed by county or city governments  
11 pursuant to their powers, and governed, *ex officio*, by the governing body of such county or city.

12 SECTION 3. *Areas and Functions of a Regional Service Corporation.*

13 (a) A regional service corporation may be organized to perform certain regional functions, as pro-  
14 vided in this act, for a service area consisting of contiguous territory which comprises all or part of  
15 a region or an area which includes the entire area of two or more cities or counties, of which a central  
16 city, if cities only are involved, has a population of [50,000] or more; but if a regional service cor-  
17 poration shall be authorized to perform the function of regional comprehensive planning it shall ex-  
18 ercise such power, to the extent found feasible and appropriate, for the entire region rather than only  
19 for some smaller service area. No regional service corporation shall have a service area which includes  
20 only a part of any city, and every city shall be either wholly included or wholly excluded from bound-  
21 aries of a service area. No territory shall be included within the service area of more than one regional  
22 service corporation, except where a regional service corporation with comprehensive planning powers  
23 has been created for a region with subsidiary service corporations for less than regionwide services.

24 (b) A regional service corporation shall have the power to perform any one or more of the follow-  
25 ing functions, when authorized in the manner provided in this act:

26 (1) regional comprehensive planning;<sup>1</sup>

27 (2) regional sewage treatment and disposal;

28 (3) regional water supply and quality control;

29 (4) regional public transportation;<sup>2</sup>

30 (5) regional solid waste disposal;

31 (6) regional parks and parkways;

32 (7) [ ]; or

<sup>1</sup>If the regional service corporation assumes this function, it should have all powers and responsibilities specified in the umbrella multijurisdictional organizations and substate districting draft bills.

<sup>2</sup>If the regional service corporation assumes this or other specified areawide service functions, it should be subordinate to the regional UMJO as provided in the UMJO and regional transportation authority draft bills.



1 (8) [ ]

2 (c) With respect to each function it is authorized to perform, a regional service corporation shall  
3 make services available throughout its service area on a uniform basis; provided however that services  
4 may vary among parts of the service area subject only to classifications or distinctions which are ap-  
5 plied uniformly throughout the service area and which are reasonably related to such relevant factors  
6 as population density, topography, types of users, and volume of services used. As among various  
7 parts of the service area, no differentiation shall be made in the nature of services provided, or in the  
8 conditions of their availability, which is determined only by the fact that particular territory is located  
9 within or outside of a component city.

10 (d) In the event that a component city shall annex territory which, prior to such annexation is  
11 outside the service area of a regional service corporation, such territory shall by such annexation be-  
12 come a part of the service area.

13 SECTION 4. *Establishment and Modification of a Regional Service Corporation.*

14 (a) A regional service corporation may be created by vote of the qualified electors residing in a  
15 region in the manner provided in this act. An election to authorize the creation of a regional service  
16 corporation may be called pursuant to either a resolution or a petition, as follows;

17 (1) a resolution or concurring resolutions calling for such an election may be adopted by either:

18 (i) the city council of a central city, or

19 (ii) the city councils of two or more component cities, or

20 (iii) the [board of commissioners] of a central county,

21 (iv) the [board of commissioners] of two or more component counties; or

22 (2) (i) a petition calling for such an election shall be signed by at least [4] percent of the quali-  
23 fied voters residing within the region or within a service area which includes all of a metropolitan  
24 area, and shall be filed with the [appropriate official] of the central county,

25 (ii) any resolution or petition calling for such an election shall describe the boundaries of  
26 the proposed service area, name the regional function or functions which the regional service cor-  
27 poration shall be authorized to perform in the service area;

28 (3) (i) a certified copy of such resolution or petition or certified copies of such concurring  
29 resolutions shall be transmitted to the [board of commissioners] of the central county,

30 (ii) after the filing of a first petition or resolution with such county [official] or [board of  
31 commissioners] respectively, action by such [official] or [board] shall be deferred on any subsequent peti-  
32 tion or resolution until after the election has been held pursuant to such first petition or resolution;

33 (4) upon receipt of such a petition or resolution(s), the [official] shall examine the same and  
34 certify to the sufficiency of the signatures thereon. Within 30 days following the receipt of such pe-  
35 tition or resolution(s), the [official] shall transmit the same, together with his certificate as to the suf-

1   iciency thereof, to the legislative body of each county and city within the proposed service area.

2       (b) The election on the formation of the regional service corporation shall be conducted by the  
3   [*appropriate official*] of the central county, with the assistance of the [*appropriate official*] of each  
4   component city and county, in accordance with the general election laws of the state, and the results  
5   thereof shall be canvassed by the county [*canvassing board*] of the county [and of the other compo-  
6   nent counties], which shall certify the result of the election to the [*board of county commissioners*] of  
7   the central county [and, if any, other component counties], and shall cause a certified copy of such  
8   canvass to be filled in the office of the [*secretary of state*].<sup>1</sup> Notice of the election shall be published in  
9   one or more newspapers of general circulation in each component county in the manner provided in  
10  the general election laws. No person shall be entitled to vote at such election unless he is a qualified  
11  voter under the laws of the state in effect at the time of such election. The ballot proposition shall be  
12  substantially in the following form:

13           (1) FORMATION OF REGIONAL SERVICE CORPORATION

14           Shall a regional service corporation be established for the area described in [*here insert*  
15           *either a resolution of the [board of commissioners] of [name] county adopted on the [ ]*  
16           *day of [ ] 19[ ], or a petition filed by [ ] percent of voters to the county [board of com-*  
17           *missioners] of [name]] to perform the metropolitan functions of [*here insert the title of each*  
18           *of the functions to be authorized as set forth in the petition or initial resolution*]?  
19           YES ..... [ ]  
20           NO ..... [ ]*

21           (2) If a majority of the persons voting on the proposition residing within the service area  
22  shall vote in favor thereof, the regional service corporation shall thereupon be established and the  
23  [*board of commissioners*] of the central county shall adopt a resolution setting a time and place for  
24  the first meeting of the regional council which shall be held not later than 30 days after the date of  
25  such election. A copy of such resolution shall be transmitted to the legislative body of each component  
26  city and county and of each special district which shall be affected by the particular regional func-  
27  tions authorized.

28           (c) (1) A regional service corporation may be authorized to perform one or more regional func-  
29  tions in addition to those which it has previously been authorized to perform, with the approval of  
30  the voters at an election, conducted in the manner provided by subsections (a) and (b) of this section,  
31  concerning an election on the original formation of a regional service corporation. The regional  
32  service council by resolution may submit the proposal in the same manner as the governing body  
33  of a central city or county.

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<sup>1</sup>In a state where this procedure might face constitutional difficulties, provision should be made, instead, for individual county canvassing, and certification to the central county or the secretary of state (or other appropriate state official).

1 (2) If a majority of the persons voting on the proposition shall vote in favor thereof, the re-  
2 gional service corporation shall be authorized to perform such additional metropolitan function or  
3 functions.

4 (d) The service area of a regional service corporation may be extended, subject to the general geo-  
5 graphical conditions stated in Section 3, in the manner provided in this section.

6 (1) The regional service council of a regional service corporation may make or authorize  
7 studies to ascertain the desirability and feasibility of extending the service area of the corporation to  
8 include particular additional territory within the region, or the metropolitan area served, which is con-  
9 tiguous to the existing service area of the corporation. If such studies appear to justify, the regional  
10 service council may adopt a resolution stating that it has formally under consideration the annexation  
11 of certain territory to the service area. The resolution shall clearly describe the area or areas concern-  
12 ed, and shall specify the time and place of a public hearing to be held on the matter by the regional  
13 service council. Such resolution shall be published in one or more newspapers having general circu-  
14 lation in the area proposed to be served, at least [30] days before the date set for the public hearing.

15 (2) the regional service council shall hold the public hearing so announced, to receive testi-  
16 mony on the question of extending the boundaries of the service area, and it may hold further pub-  
17 lic hearings on the matter, subject in each instance to published notice in a newspaper having general  
18 circulation in the area, at least [three] days in advance.

19 (3) Following such hearings, the regional service council may, by resolution, authorize the  
20 annexation to the service area of all or any portion of the territory which was considered for annex-  
21 ation in accordance with the foregoing paragraphs of this section. Such resolution shall clearly de-  
22 scribe the area or areas to be annexed and shall specify the effective date of the annexation, which  
23 shall in no event be sooner than either:

24 (i) [six] months from the date when such resolution is published; or

25 (ii) [one] month after the date of the next regular primary or general election to be held  
26 throughout the metropolitan area. The resolution shall be published in one or more newspapers hav-  
27 ing general circulation in the metropolitan area.

28 (4) Any annexation to the service area of a regional service corporation which is authorized  
29 in the manner provided above shall become effective on the date specified unless nullified pursuant to  
30 a popular referendum conducted as follows.

31 (i) To be sufficient, a petition calling for a popular referendum on the prospective an-  
32 nexation of particular territory to the service area of a regional service corporation shall be signed by  
33 at least either:

34 (a) [4] percent of the qualified voters residing within the entire service area of the  
35 corporation as prospectively enlarged; or

1 (b) [20] percent of the qualified voters residing within the territory concerning which  
2 a referendum is proposed.

3 (ii) the petition shall indicate such territory, in terms of any one or more entire areas  
4 specified for annexation by the regional service council resolution which is described in para-  
5 graph (3).

6 (iii) Such petition shall be filed with the [appropriate official] of the central county with-  
7 in [30] days of the publication of the annexation resolution by the regional service council. The [official]  
8 shall examine the same and certify to the sufficiency of the signatures thereon.

9 (iv) If a sufficient petition is filed, the question specified by such petition shall be sub-  
10 mitted at the next regular primary or general election held throughout the service area. If, at such elec-  
11 tion, a majority of the vote cast on the question within the service area of the regional service corpor-  
12 ation, as prospectively enlarged, shall vote against the annexation of a particular area or areas, the  
13 action of the regional service council with respect to such area or areas shall thereby be nullified.<sup>1</sup>

14 SECTION 5. *Organization and Governing Body of a Regional Service Corporaton.*

15 (a) A regional service corporation shall be governed by a regional service council composed of the  
16 following:<sup>2</sup>

17 (1) one member selected by, and from, the [board of commissioners] of each component county;

18 (2) one member who shall be the mayor of the central city;

19 (3) one member from each of the three largest component cities other than the central city,  
20 selected by, and from, the mayor and city council of each of such cities;

21 (4) [ ] members representing all component cities other than the four largest cities to be sel-  
22 ected from the mayors and city councils of such smaller cities by the mayors of such cities in the fol-  
23 lowing manner: the mayors of all such cities shall meet on the second Tuesday following the estab-  
24 lishment of a metropolitan service corporation and thereafter on [date] of each even numbered year at  
25 [ ] o'clock at the office of the [board of county commissioners] of the central county. The chairman of  
26 such board shall preside. After nominations are made, ballots shall be taken and the [ ] candidate[s]  
27 receiving the highest number of votes cast shall be considered selected; and

28 (5) one member, who shall be chairman of the regional service council, selected by the other  
29 members of the council. He shall not hold any additional public office other than that of notary pub-  
30 lic or member of the military forces of the United States or of this state, not on active duty.

31 (b) At the first meeting of the regional service council following the formation of a regional ser-  
32 vice corporation, the mayor of the central city shall serve as temporary chairman. As its first official

<sup>1</sup>An alternative type of referendum requirement may be found desirable by some states.

<sup>2</sup>Numbers of members coming from cities as contrasted to counties, as well as the total size of the regional service council should, of course, be adjusted in terms of the general pattern of local government prevalent within the regional or metropolitan areas of the particular state. See also Advisory Commission on Intergovernmental Relations proposed legislation, *Regional Home Rule Charters*, and *Umbrella Multijurisdictional Organization for Specific Metropolitan or Multicounty Areas*.

1 act, the council shall elect a chairman. The chairman shall be a voting member of the council and shall  
2 preside at all meetings. In the event of his absence or inability to act, the council shall select one of its  
3 members to act as chairman *pro tempore*. A majority of all members of the council shall constitute a  
4 quorum for the transaction of business. A smaller number of council members than a quorum may  
5 adjourn from time-to-time and may compel the attendance of absent members in such manner and  
6 under such penalties as the council may provide. The council shall determine its own rules and order  
7 of business, shall provide by resolution for the manner and time of holding all regular and special  
8 meetings and shall keep a journal of its proceedings which shall be a public record. Every legislative  
9 act of the council of a general or permanent nature shall be by resolution.

10 (c) The chairman shall hold office until [date] of each even numbered year and may, if reelected,  
11 serve more than one term. Each member of a regional service council selected under the provisions of  
12 subsection (a) (1) and (3) of this section shall hold office at the pleasure of the body which selected  
13 him. No member, other than the chairman, may hold office after he ceases to hold the position of  
14 mayor, commissioner, or councilman.

15 (d) A vacancy in the office of a member of the regional service council shall be filled in the same  
16 manner as provided for the original selection. The meeting of mayors to fill a vacancy of the member  
17 selected under the provisions of subsection (a) (4) of this section shall be held at such time and  
18 place as shall be designated by the chairman of the regional service council after ten days' written  
19 notice mailed to the mayors of each of the cities specified in subsection (a) (4) of this section.

20 (e) The chairman of the regional service council shall receive such compensation as the other  
21 members of the council shall provide. Members of the council other than the chairman shall receive  
22 compensation for attendance at regional service council or committee meetings of [\$] *per diem* but  
23 not exceeding a total of [\$] in any one month, in addition to any compensation which they may  
24 receive as officers of component cities or counties; but officers serving in such capacities on a  
25 full-time basis shall not receive compensation for attendance at regional service council or committee  
26 meetings, other than reimbursement for expenses actually incurred by them in the conduct of official  
27 business for the regional service corporation.

28 (f) The name of a regional service corporation shall be established by its regional service council.  
29 Each regional service corporation shall adopt a corporate seal containing the name of the corporation  
30 and the date of its formation.

31 (g) All the powers and functions of a regional service corporation shall be vested in the regional  
32 service council unless expressly vested in specific officers, boards, or commissions by this act. With-  
33 out limitation of the foregoing authority, or of other powers given it by this act, the regional service  
34 council shall have the following powers:

35 (1) to establish offices, departments, boards, and commissions in addition to those provided

1 by this act which are necessary to carry out the purpose of the regional services corporation, and to  
2 prescribe the functions, powers, and duties thereof;

3 (2) to appoint or provide for the appointment of, and to remove or to provide for the re-  
4 moval of, all officers and employees of the regional service corporation except those whose appoint-  
5 ment or removal is otherwise provided for by this act [subject to the civil service provisions of [*cite*  
6 *appropriate civil service statute provisions*]];

7 (3) to fix the salaries, wages, and other compensation of all officers and employees of the  
8 regional service corporation except those otherwise fixed in this act [subject to the civil service pro-  
9 visions of [*cite appropriate civil service statute provisions*]]; and

10 (4) to employ such engineering, legal, financial, or other specialized personnel as may be nec-  
11 essary to accomplish the purposes of the regional service corporation.

12 SECTION 6. *Duties of a Regional Service Corporation.*

13 (a) As expeditiously as possible after its authorization to undertake additional regional func-  
14 tions, the regional service corporation shall develop plans with regard to the extent and nature of the  
15 services it will initially undertake with regard to each authorized regional function, and the effective  
16 dates when it will begin to perform particular functions. Such initial basic plans shall be adopted by  
17 resolution of the regional service council.

18 (b) The regional service corporation shall plan for such adjustment or extension of its initial as-  
19 sumption of responsibilities for particular authorized functions as is found desirable, and the regional  
20 service council may authorize such changes by resolution.

21 (c) It shall be the duty of a regional service corporation to prepare comprehensive plans for the  
22 service area with regard to present and future public facility requirements for each of the regional  
23 functions it is authorized to perform.

24 (d) If a regional service corporation shall be authorized to perform the functions of regional com-  
25 prehensive planning,<sup>1</sup> it shall have the following duties, in addition to the other duties and powers  
26 granted by this act:

27 (1) to prepare a recommended comprehensive land use plan and public capital facilities plan  
28 for the regional area as a whole;

29 (2) to review proposed zoning ordinances and resolutions or comprehensive plans of compo-  
30 nent cities and counties and make recommendations thereon. Such proposed zoning ordinances and  
31 resolutions or comprehensive plans must be submitted to the regional service council prior to adop-  
32 tion and may not be adopted until reviewed and returned by the regional service council. The regional  
33 service council shall cause such ordinances, resolutions, and plans to be reviewed by the planning

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<sup>1</sup>The corporation shall cover the entire region for this function and shall assume the function of an UMJO. See also draft bills on sub-  
states districting and UMJO for additional specific details relating to this power.

1 staff of the regional service corporation and return such ordinances, resolutions, and plans, together  
2 with their findings and recommendations thereon, within 90 days following their submission; and  
3 (3) to provide planning services for component cities and counties upon request and upon  
4 payment therefor by the cities or counties receiving such service.

5 (e) A regional service corporation shall offer to employ every person who on the date such cor-  
6 poration acquires a regional facility is employed in the operation of such facility by a component  
7 city or county or by a special district. Where a regional service corporation employs a person em-  
8 ployed immediately prior thereto by a component city or county, or by a special district, such employ-  
9 ee shall be deemed to remain an employe of such city, county, or special district for the purposes of  
10 any pension plan of such city, county, or special district, and shall continue to be entitled to all rights  
11 and benefits thereunder as if he had remained as an employee of the city, county, or special district,  
12 until the regional service corporation has provided a pension plan and such employee has elected, in  
13 writing, to participate therein. Until such election, the regional service corporation shall deduct from  
14 the remuneration of such employee the amount which such employee is, or may be, required to pay in  
15 accordance with the provisor s of the plan of such city, county, or special district and the regional  
16 service corporation shall pay to the city, county, or special district any amounts required to be paid  
17 under the provisions of such plan by employer and employee.

18 SECTION 7. *General powers of a Regional Service Corporation.*

19 (a) In addition to the powers specifically granted by this act, a regional service corporation shall  
20 have all powers which are necessary to carry out the purposes of the regional service corporation and  
21 to perform authorized regional functions.

22 (b) A regional service corporation may sue and be sued in its corporate capacity in all courts  
23 and in all proceedings.

24 (c) A regional service corporation shall have power to adopt, by resolution of its regional ser-  
25 vice council, such rules and regulations as shall be necessary or proper to enable it to carry out auth-  
26 orized regional functions and may provide penalties for the violation thereof. Actions to impose or  
27 enforce such penalties may be brought in the [appropriate] court in the central county.

28 (d) A regional service corporation shall have power to acquire by purchase, condemnation, gift,  
29 or grant and to lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the  
30 use of facilities requisite to its performance of authorized regional functions, together with all lands,  
31 properties, equipment, and accessories necessary for such facilities. Facilities which are owned by  
32 a city or special district may, with the consent of the legislative body of the city or special districts  
33 owning such facilities, be acquired or used by the regional service corporation. Cities and special  
34 districts are hereby authorized to convey or lease such facilities to a regional service corporation or to  
35 contract for their joint use on such terms as may be fixed by agreement between the legislative body

1 of such city or special district and the regional service council, without submitting the matter to the  
2 voters of such city or district.

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

9 (f) A regional service corporation shall have power to construct or maintain regional facilities  
10 in, along, on, under, over, or through public streets, bridges, viaducts, and other public rights-of-way  
11 without first obtaining a franchise from the county or city having jurisdiction over them; but such  
12 facilities shall be constructed and maintained in accordance with the ordinances and resolutions of  
13 the city or county relating to construction, installation, and maintenance of similar facilities in such  
14 public properties.

15 (g) Except as otherwise provided herein, a regional service corporation may sell or otherwise dis-  
16 pose of any real or personal property acquired in connection with any authorized regional function  
17 and which is no longer required for the purposes of the regional service corporation in the same  
18 manner as provided [for cities and the [ ] class, or *[other appropriate law]* ]. When the regional serv-  
19 ice council determines that a regional facility or any part thereof which has been acquired from a  
20 component city or county without compensation is no longer required for regional purposes, but is  
21 required as a local facility by the city or county from which it was acquired, the regional council shall  
22 by resolution transfer it to such city or county.

23 (h) A regional service corporation may contract with the United States or any agency thereof, any  
24 state or agency thereof, any other regional service corporation, any county, city, special district, or  
25 other governmental agency for the operation by such entity of any facility or the performance on its  
26 behalf of any service which the regional service corporation is authorized to operate or perform, on  
27 such terms as may be agreed upon by the contracting parties.

28 SECTION 8. *Financial Powers of a Regional Service Corporation.*

29 (a) A regional service corporation shall have power to set and collect charges for services it sup-  
30 plies and for the use of regional facilities it provides.

31 (b) A regional service corporation shall have the power to issue bonds for any authorized cap-  
32 ital purpose of the regional service corporations; but a proposition authorizing the issuance of such  
33 bonds shall have been submitted to the electors of the regional service corporation at a special election

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<sup>1</sup>For additional methods of locating property in certain critical service areas, such as sewage treatment and solid waste disposal, see the draft legislation on interlocal contracting and joint enterprises.



1 and assented to by a majority of the persons voting on said proposition at said election.<sup>1</sup>

2 (c) The regional service corporation shall have the power to levy special assessments payable  
3 over a period [not exceeding [ ] years] on all property within the service area specially benefited by an  
4 improvement, on the basis of special benefits conferred, to pay in whole or in part the damages or  
5 costs of any such improvement.

6 (d) (1) A regional service corporation may levy a property tax within its area on all taxable prop-  
7 erty after a referendum on the proposition authorizing the property tax has been conducted by the  
8 [election officials] of the component counties in accordance with the general election laws of the state  
9 and a majority of the persons voting on the proposition assent to the imposition of the tax. The re-  
10 sults thereof shall be canvassed by the [county canvassing board] of the central county, which shall  
11 certify the result of the election to the [insert name of governing body] of the central county, which  
12 shall cause a certified copy of such canvass to be filed in the office of the [secretary of state]. Notice of  
13 the election shall be published in one or more newspapers of general circulation in each component  
14 county in the manner provided in the general election laws. No person shall be entitled to vote at such  
15 election unless he has been a qualified voter under the laws of the state in effect at the time of such  
16 election for at least 30 days preceding the date of the election. The expenses of the referendum shall  
17 be prorated among all the counties according to each county's share of the total population of the  
18 area.

19 (2) The regional service corporation shall annually fix the amount of money necessary to be  
20 raised by taxation upon the taxable property in its area. Annually before [insert date] the [assessor] of  
21 each [insert name of collection unit performing assessment] shall transmit to the corporation a written  
22 statement showing the taxable value of all property within the jurisdiction of the [insert local unit per-  
23 forming assessment] which lies within the area. The value shall be ascertained from the [assessment  
24 records] for the years [as equalized and corrected by the state [property tax review agency]]. On [insert  
25 date] the corporation shall fix the tax rate [not to exceed [ ]], based upon the aggregate of equalized  
26 values transmitted by the [assessor]. On [insert date] the tax rate shall be certified to the governing bodies  
27 of the counties within the area and taxes shall be certified to the governing bodies of the counties  
28 within the area and taxes shall be levied and collected for the corporation in the same manner as  
29 taxes levied for other purposes.

30 (e) A regional service corporation may impose within its area by reference to the state sales and  
31 use tax act, a sales and use tax at a rate not to exceed [ ] percent of the state sales and use tax paid.

32 (f) A regional service corporation may impose within its area a tax on income, as defined by ref-  
33 erence to the provisions of [the state income tax act], and at a rate not to exceed [ ] percent of any tax-

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<sup>1</sup>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.

1 payer's liability under the [state income tax act].

2 (g) The [state tax department] shall administer a sales and use tax, or an income tax adopted under  
3 this act. The [state tax commissioner] may prescribe forms and reasonable rules and regulation, for  
4 the purpose of making returns and for the ascertainment, assessment, and collection of a tax imposed  
5 under this act. The rules and regulations promulgated in accordance with the state income or sales tax  
6 act shall apply to the taxes adopted under this act, except when, in the judgment of the [tax commis-  
7 sioner], such rules would be inconsistent or not feasible of proper administration. The [state tax de-  
8 partment] shall keep full and accurate records of all moneys received and distributed under this act.

9 (h) All sums received or collected on behalf of a regional service corporation from income and  
10 sales taxes, levied pursuant to this act, shall be deposited to a special fund which is hereby estab-  
11 lished in the [state treasury]. The amount collected on behalf of a regional service corporation shall be  
12 paid within [ten] days after collection to the regional service corporation after deducting the amount  
13 of refunds, and the amount necessary to defray the cost of collecting and administering the tax.

14 (i) A regional service corporation shall have the power, when authorized by a majority of all  
15 members of the regional service council, to borrow money from any component city or county and  
16 such cities or counties are hereby authorized to make such loans or advances on such terms as may be  
17 mutually agreed upon by the regional service council and the legislative bodies of such component  
18 city or county.

19 (j) All banks, trust companies, bankers, savings banks and institutions, building and loan as-  
20 sociations, savings and loan associations, investment companies, and other persons carrying on a  
21 banking or investment business, all insurance companies, insurance associations and other persons  
22 carrying on an insurance business, and all executors, administrators, curators, trustees, and other fid-  
23 uciaries, may legally invest any sinking funds, moneys or other funds belonging to them, or within  
24 their control, in any bonds or other obligations issued by a regional service corporation pursuant  
25 to this act. Such bonds and other obligations shall be authorized security for all public deposits in  
26 this state.

27 (k) A regional service corporation shall have the power to invest its funds held in reserves or  
28 sinking funds or any such funds which are not required for immediate disbursement, in property or  
29 securities in which [mutual savings] banks may legally invest funds.

30 SECTION 9. *Separability.* [Insert separability clause.]

31 SECTION 10. *Effective date.* [Insert effective date]

## 2.305 REGIONAL HOME RULE CHARTERS<sup>1</sup>

The variation in social and economic conditions and local traditions across the nation argue against any suggestion of a single ideal structure of regional government. In many states, regional special districts or interlocal contractual arrangements are providing several basic services of local government, including public transportation services, environmental control, health, water and sewer facilities, and solid waste disposal. Yet, these agencies are hampered in their service delivery efforts by a lack of priority setting strengths and governmental structures encouraging politically responsible leadership.

A number of states have also established umbrella regional planning agencies in a few areas, primarily metropolitan, within their boundaries without taking the approach statewide as suggested in ACIR's suggested *Statewide Substate Districting Act*. Almost every state has one or more areas in which the various alternatives to, and options of, regional government are hotly debated. In recognition of the fact that local tradition plays a very strong role in governmental organization, as well as the varying level of desire and capacity between regions within a state, the Commission discussed and suggested various alternative arrangements which may not be uniform statewide but which may allow local flexibility in decision making within a responsive state structure to ensure a carefully coordinated approach.

The following suggested state legislation is tailored to meet and respond to a specific regional area. It further provides the necessary coordination with a statewide substate districting approach. It provides a very strong regional governmental alternative to existing fragmented efforts at establishing a viable upper tier government responsive to regional needs and solutions.

*Section 1* sets forth the purpose of the legislation and *Section 2* provides definitions of terms used.

*Section 3* authorizes a charter study in an area consisting of two or more counties. This study would be prepared by a council of local governments, a special charter study commission, or an existing regional planning council or multipurpose regional agency.

*Section 4* provides for a home rule charter government, and delineates its powers and authority and required charter provisions.

*Section 5* requires the council or commission to report its findings within 18 months, and provides for the plan to be placed before the voters in the affected area.

*Section 6* sets out the means by which the boundaries of the charter form of government may be extended.

*Section 7* provides for assistance and grants, while *Sections 8 and 9* provide for separability and effective date clauses, respectively.

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *Regional Decision Making: New Strategies for Substate Districts*, Volume I of *Substate Regionalism and the Federal System*, Report A-43 (October 1973), and *The Challenge of Local Governmental Reorganization*, Volume III of *Substate Regionalism and the Federal System*, Report A-44 (Washington, D.C., U.S. Government Printing Office, February, 1974).

Suggested Legislation

[AN ACT PROVIDING PROCEDURES FOR ESTABLISHING A REGIONAL HOME  
RULE OPTION CHARTER GOVERNMENT]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* The purpose of this act is to allow local governments and citizens within  
2 a physically, economically, and socially interrelated region [as determined by the appropriate state  
3 official or law]<sup>1</sup> to adopt a regional home rule charter in order to resolve their common problems. The  
4 charter shall further establish the necessary priorities for efficient governmental functions as well as  
5 recognize existing local governmental units. This act is in addition to any authority presently granted  
6 by law and shall not prohibit the adoption of any other optional regional framework consistent with  
7 the law specifically providing for such option.

8 SECTION 2. *Definitions.* As used in this act, except where the context clearly indicates otherwise:

9 (a) "Governing body" means the legislative or policy making body of a unit of general local gov-  
10 ernment, special district, or regional home rule charter government.

11 (b) "Population" means the number of inhabitants according to the latest special or decennial  
12 United States census.

13 (c) "Regional home rule charter government" means a government established pursuant to a  
14 charter adopted under this act which may exercise powers concurrently with any existing unit of gen-  
15 eral local governments and may provide coordination of regional services but may preempt units of  
16 general local government only in those areas specified in the charter.

17 (d) "Unit of general local government" means [a county or municipality].

18 SECTION 3. *Charter Study.*

19 (a) A regional home rule charter government may be established, after study and adoption as pro-  
20 vided in this act, for any area consisting of two or more counties within a region of the state [as des-  
21 ignated by appropriate state official or law].<sup>1</sup>

22 (b) A charter study may be conducted either by:

23 (1) a council of local governmental officials or a regional home rule charter study commis-  
24 sion established and authorized to conduct such a study by resolution of the governing bodies of a  
25 majority of the units of general local government representing a majority of the population within  
26 the area proposed to be studied; or

27 (2) a regional home rule charter study commission established through a petition of [10] per-

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<sup>1</sup>See suggested legislation entitled *Statewide Substate Districting Act*.

1 cent of the voters of the area. Members of such commission shall be in such number and selected in  
2 such way as provided in the petition; or

3 (3) an existing regional planning council or multipurpose regional agency having jurisdic-  
4 tion over the area proposed to be studied.

5 (c) The cost of such study shall be determined by the council, agency, or commission, as the case  
6 may be, and shall be assessed to each unit of general local government based upon its respective pro-  
7 portion to the population of the area to be studied [in an amount not to exceed one dollar *per capita*].

8 (d) The council, agency, or commission may employ and fix the compensation of an executive di-  
9 rector who may employ other persons, including contractors, as may be necessary and authorized by  
10 the council, agency, or commission. It may further exercise all the powers granted a corporation pur-  
11 suant to [applicable state law] as a public body corporate and politic.

12 (e) The council, agency, or commission shall adopt rules for its organization and procedure to be  
13 followed under this act, provided that all meetings shall be open to the public and that at least one  
14 public hearing shall be held prior to the council's, agency's, or commission's final report.

15 (f) The council, agency, or commission shall study the existing structure of local and regional  
16 government and procedures for the delivery of regional governmental services within the region, and  
17 compare them with the regional home rule charter government authorized by this act. If it determines  
18 that establishment of a regional home rule charter government would make the administration of  
19 regional services more efficient and effective or more responsive and accountable to the people, it shall  
20 draw up a detailed plan of regional government embodied in a proposed charter consistent with Sec-  
21 tion 4 of this act and subject to adoption as provided by Section 5 of this act.

22 SECTION 4. *Regional Home Rule Charter Government.*

23 (a) (1) A regional home rule charter government for the region shall have all powers of regional  
24 selfgovernment except those expressly preempted or prohibited by the state constitution, by general  
25 [or special] law, or by the charter creating it. The regional home rule charter government may not  
26 preempt the exercise of power by units of general local government, but shall rather exercise such  
27 powers concurrently, except for preemptive areas specified in the charter, as required by Section  
28 4(c)(3) of this act.

29 (2) A regional home rule charter government may raise, by taxation and licenses authorized  
30 by the constitution or general law, or by user charges or fees authorized by resolution, amounts of  
31 money which are necessary for the conduct of the government of the region, and may enforce their  
32 receipt and collection in the manner prescribed by resolution not inconsistent with law. The governing  
33 body of the home rule charter government shall also:<sup>1</sup>

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<sup>1</sup>See draft legislation, *Improved and Standardized Accounting, Auditing, and Reporting and Citizen Participation in the Budget Process.*

- 1 (i) report its finances annually as provided by *[general law]*;  
2 (ii) make provision for establishing a fiscal year *[dates]*;  
3 (iii) make appropriations for each fiscal year which, in any one year, shall not exceed  
4 the amount to be received from taxation or other revenue sources. It shall be unlawful for any of-  
5 ficer of the regional government to draw money from the *[treasury]* except in pursuance of appropri-  
6 ation made by law; and  
7 (iv) make provision for annual post-audit of its financial accounts in accordance with  
8 the rules of the *[appropriate state official]*.

9 (b) The charter shall provide:

10 (1) the form of government which clearly defines the responsibility for legislative and execu-  
11 tive functions;

12 (2) a regional council to exercise its legislative powers and consisting of one of the follow-  
13 ing alternatives:

14 [(i) The governing body of the regional home rule charter government shall consist of

15 *[Alternative 1.]*

16  members selected by the voters from individual election districts for  year terms [except in time of  
17 reapportionment]. Members shall be qualified electors of the state and of a county in which all or part  
18 of the election district is located.

19 (ii) The region shall be apportioned into districts as follows: *[statement of district bound-*  
20 *dries – (in terms of voting boundaries) – such as census tracts, state senatorial or house districts,*  
21 *or any other applicable method]*.

22 (iii) (1) The governing body shall provide for reapportioned districts not later than [30  
23 days] after state legislative reapportionment following each decennial census. The reapportioned dis-  
24 tricts shall be compact and contiguous and shall meet the standard of mathematical preciseness in  
25 equal population representation as provided by the *[legislature]* in its apportionment.

26 (2) If the governing body fails to provide such reapportioned districts within such  
27 time limit, any citizen of the region may bring action in *[appropriate court]* either to compel the per-  
28 formance of such duty or to provide said reapportioned districts for the region.

29 (iv) (1) The election of members shall be by majority of votes cast, non-partisan, and held on  
30 the first Tuesday after the  Monday in  of each odd numbered year. If one candidate fails to receive  
31 a majority of the votes cast, the two candidates receiving the highest number of votes shall participate  
32 in a runoff election to be held on the second Tuesday following the first election day.

33 (2) Members shall assume office on the third Tuesday following the first election  
34 day. At the first meeting, members shall elect a presiding officer, a secretary (who need not be a mem-  
35 ber), and such other officers as they deem necessary.



1 ter government and shall have responsibility as provided in the charter and may, as provided in char-  
2 ter, either act as presiding officer of the council or withhold approval of any council action within  
3 limits set by the charter and thereby require an extraordinary majority as provided in the charter, to  
4 effectuate such action. Vacancies in the office of chief executive shall be filled with a person appoin-  
5 ted by the regional council for the unexpired term or as otherwise provided in the charter.]

6 [Alternative 3.]<sup>1</sup>

7 [(i) The governing body of the regional home rule charter government shall consist of  
8 two chambers.

9 (a) One chamber shall be composed of elected officials of constituent governments.  
10 Every unit of general local government in the region is required to be a member and shall appoint at  
11 least one official as its representative. Each member local government, in good standing, shall be  
12 entitled to one vote in the chamber.

13 (b) The other chamber shall be composed of [ ] members selected by the voters from  
14 individual election districts for [ ] year terms.<sup>2</sup>

15 (ii) Any matter may originate in either chamber and upon passage by a majority of each  
16 chamber shall be effective ten days after final passage or as otherwise provided therein.]

17 [End of three alternatives.]

18 (3) the extent to which the exercise of powers by the regional home rule charter government  
19 shall preempt the exercise of power by [any county, municipality, or special district] government  
20 having jurisdiction over the same area, whether generally or in specified areas, functions, powers, or  
21 duties, and the manner of exercising such preemptive powers;

22 (4) a method for the citizens or units of local general purpose government within the re-  
23 gion to require the assumption of a function or a portion thereof, by the regional agency; and

24 (5) an effective date.

25 (c) The regional home rule charter government also shall have the authority to assume, and if  
26 provided in the charter shall assume, the duties and responsibilities of any special district located sole-  
27 ly within its boundaries and upon such assumption to transfer all the special district's statutory pow-  
28 ers, duties and functions, records, personnel, property, debts, balances, tax levies, allocations, or other  
29 funds, assets, or liabilities. The transfer of segregated funds shall be made in such a manner that the  
30 relation between program and revenue source as provided by law is retained. The governing body of  
31 such special district is abolished unless the regional home rule charter government specifically re-  
32 tains it with advisory powers only.

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<sup>1</sup>Bicameralism as provided in this alternative may be used to meet both the one man-one vote principle, and the traditional local gov-  
ernment patterns of participation in regional affairs in particular cases.

<sup>2</sup>See *Alternative 1* for details in providing this directly elected chamber.



1 SECTION 5. *Adoption.*

2 (a) The council, agency, or commission shall report to the various units of general local govern-  
3 ment and the public its findings and proposed regional home rule charter, if any, within [18 months]  
4 of its establishment or in the case of an existing agency, beginning a study pursuant to this act. The  
5 commission shall be discharged [upon the filing of its final report] [on the day after its final report is  
6 voted on pursuant to a referendum under this section].

7 (b) A referendum on the question of whether to adopt the regional home rule charter shall be held  
8 not less than 30 days nor more than 90 days after the plan is submitted to the public. The complete  
9 text of the proposed optional plan and final report of the council or commission, or summary thereof,  
10 shall be published at county expense in a newspaper of general circulation within each county to be  
11 included in the regional charter government at least once during two different calendar weeks, within  
12 the 30 day period immediately preceding the date of the referendum. If a majority of those voting ap-  
13 prove the plan, then the regional home rule charter government shall be instituted in accordance with  
14 the terms of the charter.

15 (c) When a proposed charter has been approved by the voters, the [county clerk] shall immediately  
16 file a certified copy of the charter with the [secretary of state]. The approved charter shall then become  
17 the organic act for the government of the region and shall be a public record open to public inspec-  
18 tion and judicially noticeable by all courts.

19 (d) Authorized provisions of a regional home rule charter duly adopted by the voters supersede  
20 any conflicting laws, ordinances, or resolutions.

21 SECTION 6. *Extension of Boundaries.* The boundaries of any regional home rule charter gov-  
22 ernment established hereunder may be extended to cover any additional area within the same region  
23 [as designated by the appropriate state official or law] by such extension being proposed through  
24 resolution of the unit of local general purpose government having jurisdiction over the additional  
25 area, through petition of [10] percent of the voters of the additional area or by resolution of the re-  
26 gional charter governing body, approved by a majority of the electors in the area to be included voting  
27 in the next general election or an election called for such purpose.

28 SECTION 7. *State Assistance and Grants.*

29 (a) The [insert state department of community affairs or other appropriate state agency] may fur-  
30 nish, upon request, any regional home rule charter government study commission created under this  
31 act or existing agency acting pursuant to this act with information and technical assistance relating  
32 to the work of the commission.

33 (b) The [director of the state department of community affairs or other appropriate state agency]  
34 shall reimburse any local government, which has participated in a regional home rule charter govern-  
35 ment study, [ ] percent of the total funds provided by the participating jurisdictions to the council,

1 agency, or commission.

2 (c) The [*director of the state department of community affairs or other appropriate state agency*]  
3 shall reimburse any county, which has held a referendum as required in Section 5, [ ] percent of the  
4 total funds spent by such county for holding the referendum and notice thereof.

5 (d) State appropriations are authorized in the amounts required for this title.

6 SECTION 8. *Separability.* [*Insert separability clause.*]

7 SECTION 9. *Effective Date.* [*Insert effective date.*]

## 2.306 REGIONAL GOVERNMENT STUDY COMMISSIONS<sup>1</sup>

The Advisory Commission on Intergovernmental Relations' reports, entitled *Governmental Structure, Organization, and Planning in Metropolitan Areas* and *The Challenge of Local Government Reorganization* contain statements affirming that state constitutions and statutes should permit the people residing in regions to examine and, if they so desire, to change their local and regional government structure to meet their needs for effective regional, as well as local government. It was further recommended that states enact legislation authorizing the establishment of locally initiated study commissions to develop proposals for revising and improving local and regional government structure and services in the area concerned. The suggested legislation which follows is designed to carry out these recommendations. In any state which has a boundary adjustment commission<sup>2</sup>, this legislation may be unnecessary, at least in part.

Many studies of governmental problems in rural and 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 and regional 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 broad consideration of problems of local and regional government services and structure in metropolitan and non-metropolitan 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 a study commission may be brought into existence by a 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 regional services be provided and within two years of its establishment must prepare a comprehensive program for furnishing such metropolitan services as it deems desirable. Its recommendations may include proposals for carrying out the program, such as transfers of functions between local units; provision of regional services by reformed county governments; consolidation of municipalities, cities and counties, or special districts; creation of a permanent regional council of local officials or a regional service corporation; and adoption of a regional home rule charter government. 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, a regional home rule charter government 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 the area affected.

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *Governmental Structure, Organization, and Planning in Metropolitan Areas*, Report A-5 (July 1961); *The Challenge of Local Government Reorganization* (Volume III of *Substate Regionalism and the Federal System*), Report A-44 (Washington, D.C.: U.S. Government Printing Office, February, 1974).

<sup>2</sup>See ACIR suggested state legislation entitled *Local Government Creation, Dissolution, and Boundary Adjustment*, Title II.

Local units of government in the region are authorized to appropriate funds for the commission's activities. A state agency is authorized to provide up to 50 percent (50%) 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 and Chapter 125, *Laws of 1971*, State of Florida.

*Section 1* sets forth a declaration of policy and purpose for the proposed legislation, and *Section 2* enumerates the definitions used.

*Sections 3, 4, 5, 6, and 7*, respectively, provide for the following: establishment of regional study commission; the method of selecting commission members; time of appointment of members; meetings of the commission; vacancies created by and compensation of members; open meetings; quorums; and rules of the commission.

*Section 8* sets out the method of determining regional service boundaries and *Section 9* sets forth considerations to be undertaken in setting the boundaries.

*Section 10* provides for the preparation, by the commission, of a comprehensive program for the furnishing of services to these areas. *Section 11* sets out recommendations for implementation of the program.

*Section 12* provides that the commission shall determine the value and amount of all property used in performing any regional service and all bonded and other indebtedness of units of local government, and shall provide in its comprehensive program an equitable adjustment of such property and debts.

*Section 13* provides for the holding of public hearings on the proposed comprehensive program, and *Section 14* authorizes the commission to submit its proposals or recommendations contained in the program to the governing body of the affected units of local government and to referendum. *Section 15* provides for the effective date of any approved proposal, and *Section 16* sets forth the method of resubmitting a rejected program or the submission of a new program.

*Section 17* enumerates additional powers and duties of the commission, and *Sections 18 and 19* provide for funding of the commissions.

*Section 20* limits the lifetime of a commission to a maximum of four years or sooner upon completion of its duties.

*Section 21 and 22* provide for separability and effective date respectively.

Suggested Legislation

[AN ACT PROVIDING FOR THE CREATION OF REGIONAL STUDY COMMISSIONS TO STUDY AND PROPOSE MEANS OF IMPROVING ESSENTIAL GOVERNMENTAL SERVICES IN URBAN AND RURAL AREAS]

(Be it enacted, etc.)

1           SECTION 1. *Declaration of Policy; Purpose.*

2           (a) It is hereby declared to be the public policy of this state to provide for the residents of the  
3 metropolitan areas in the state and other regions the means of improving their local governments so  
4 that they can provide essential services more effectively and economically. The growth of urban pop-  
5 ulation, the movement of people into suburban areas, spreading commuter patterns for employment,  
6 shopping, and services in both urban and rural areas, as well as changing patterns of economic  
7 growth and natural resource use all are trends which have created problems relating to water supply,  
8 sewage disposal, transportation, parking, parks and parkways, police and fire protection, refuse dis-  
9 posal, health, hospitals, welfare, libraries, air pollution control, housing, urban renewal, planning and  
10 zoning, and other community services. These problems when extending beyond the boundaries of in-  
11 dividual units of local government frequently cannot be adequately met by such individual units.

12           (b) It is the purpose of this act to provide a method whereby the residents of the metropolitan  
13 areas and other regions may adopt local solutions to these common problems in order that proper  
14 growth and development of the state's regions may be assured and the health and welfare of the  
15 people residing therein secured.

16           SECTION 2. *Definitions.* As used in this act:

17           (a) "Central city" means the city having the largest population in the [substate district] according  
18 to the latest Federal decennial or special census.

19           (b) "Central county" means the county in which the greatest number of inhabitants of a [substate  
20 district] reside.

21           (c) "Commission" means a regional study commission established pursuant to Section 3 of  
22 this act.

23           (d) "Component county" means a county having territory within the [substate district].

24           (e) "Component city" means a city having territory within the [substate district].

25           (f) "Region" means the [substate district designated by the appropriate state law or official] or  
26 an area encompassing at least [60 percent] of the population of such district.

27           (g) "Regional service area" means an area the boundaries of which are determined by a regional  
28 study commission pursuant to Sections 8 and 9 of this act.

1 (h) "Regional services" means any one or more of the following services when provided for all  
2 or substantially all of an entire region or an entire region exclusive of one or more of the incorpor-  
3 ated cities lying therein:

- 4 (1) planning;
- 5 (2) sewage disposal;
- 6 (3) water supply;
- 7 (4) parks and recreation;
- 8 (5) public transportation;
- 9 (6) fire protection;
- 10 (7) police protection;
- 11 (8) health;
- 12 (9) welfare;
- 13 (10) hospitals;
- 14 (11) refuse collection and disposal;
- 15 (12) air pollution control;
- 16 (13) libraries;
- 17 (14) housing;
- 18 (15) urban renewal; and
- 19 (16) [other].

20 (i) "Unit of local government" means a county, city, or [insert name of other units of  
21 general government, such as village, township, or borough] lying, in whole or part, within a region  
22 which is providing one or more governmental services listed in subsection (h) of this section.

23 SECTION 3. *Establishing a Regional Study Commission.*

24 (a) A regional study commission may be established by a resolution or petition in the following  
25 manner:

26 (1) a joint resolution establishing such a commission may be adopted by a majority of the  
27 governing bodies of the counties, cities, [insert names of other types of units of government exer-  
28 cising general government powers] representing a majority of the population having any jurisdiction  
29 within the region. A certified copy of such resolution or certified copies of such concurring reso-  
30 lutions shall be transmitted to the [governing body] of the central county; or

31 (2) a petition requesting such an election shall be signed by at least [ ] percent of all the  
32 qualified voters residing within the region, and shall be filed with the [appropriate official] of the  
33 central county. Upon receipt of such a petition, the [appropriate official] shall examine the source and  
34 certify to the sufficiency of the signatures thereon. Within 30 days following receipt of such petition,  
35 the [appropriate official] shall transmit the same to the [governing body] of the central county to-

1     gether with his certificate as to the sufficiency thereof.

2           (b) Only one commission may be established in each region at any one time.

3           SECTION 4. *Selection of Regional Study Commission.*

4           (a) Any study commission established pursuant to this act for a region shall consist of members  
5     to be selected as follows:

6           (1) one member selected by the [insert name of governing body] of each component county;

7           (2) one member selected by the mayor and city council of each component city of at least  
8     2,500 population, but any city having more than [ ] population by the last official United States  
9     census shall be entitled to one more member for each additional [ ] of population or fraction thereof;

10          (3) one member representing all cities under 2,500 population and [insert name of other types  
11     of units of general government] to be selected by the [insert name of chief elected official, such as  
12     mayor or council president] of such cities and [insert name of other units]; but if the combined pop-  
13     ulation of such cities and [insert name of other units] exceeds [ ], they shall be entitled to one more mem-  
14     ber for each [ ] additional population or fraction thereof. The members from such cities and [in-  
15     sert name of other units] shall be elected as follows: The [insert name of chief elective official] of all  
16     such units of government shall meet on the second Tuesday following the establishment of a re-  
17     gional study commission and thereafter on [date] of each even numbered year at [ ] o'clock at the office  
18     of the [insert name of governing body] of the central county. The [chairman] of such [county gov-  
19     ing body] shall preside. After nominations are made, ballots shall be taken and the [ ] candidate[s]  
20     receiving the highest number of votes cast shall be considered elected;<sup>1</sup> and

21          (4) one member, who shall be chairman of the regional study commission, and may also be a  
22     member otherwise selected, selected by the other members of the commission.

23          (b) Each member selected under the provisions of subsection (a) (1) and (2) of this section shall  
24     reside at the time of appointment in the [insert name of unit] by which appointed and each member  
25     selected under paragraph (3) shall reside at the time of appointment in one of the cities [or other types  
26     of units] participating in the selection.

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

28          SECTION 5. *Time of Appointment.* The members of a regional study commission shall be ap-  
29     pointed within 60 days after the election establishing the commission.

30          SECTION 6. *Meetings of Commission.*

31          (a) Not later than 80 days after the election establishing a commission, the members of a com-  
32     mission shall meet and organize at a time which shall be set by the governing body of the central

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<sup>1</sup>If it is desired that each type of general government unit — for example, villages or townships — have separate representation a separate subsection may be provided for each, with the same general provisions as in *paragraph (3)*.

1 county.

2 (b) At the first meeting of each commission the member appointed by the [*insert name of govern-*  
3 *ing body*] of the central county shall serve as temporary chairman. As its first official act the commis-  
4 sion shall elect a chairman. The commission shall also elect a vice-chairman from among its members.

5 (c) Further meetings of the commission shall be held upon call of the chairman, the vice-chair-  
6 man in the absence or inability of the chairman, or a majority of the members of the commission.

7 SECTION 7. *Vacancies, Compensation, Open Meetings, Quorum, Rules.*

8 (a) In case of a vacancy for any cause, a new member shall be appointed in the same manner as  
9 the member replaced to fill the unexpired term.

10 (b) Members of a commission shall receive no compensation but shall receive actual and neces-  
11 sary travel and other expenses incurred in the performance of official duties.

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

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

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

19 SECTION 8. *Regional Service Boundaries.* A commission shall determine the boundaries within  
20 which it proposes that one or more regional services be provided.<sup>1</sup> Such boundaries shall be fixed by  
21 the commission within the boundaries of the region but need not include the whole region. The  
22 boundaries proposed by the commission shall not include part of any city, [*insert names of other*  
23 *units of general government, excluding county*] unless the whole city, [*repeat previous insertion*] is in-  
24 cluded, and shall not divide any existing water, sanitary, park and recreation, fire protection, or other  
25 special service district unless the comprehensive program, prepared by the commission pursuant to  
26 Section 11 of this act, will include provisions for the continuance of such service in that part of any  
27 such district not included within the boundaries as determined by the commission.

28 SECTION 9. *Considerations in Setting Boundaries.* In recommending boundaries and determin-  
29 ing the need for furnishing regional services, a commission shall study and take into consideration:

30 (1) the area within which regional services are needed at the time of establishment of the  
31 commission and for orderly growth of the region;

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<sup>1</sup>In states that have adopted a boundary commission pursuant to the Advisory Commission on Intergovernmental Relation's draft bill, *State Boundary Adjustment Commission*, (see Title II of *Local Government Creation, Dissolution, and Boundary Adjustment*), this function of the regional study commission should be made subservient to such state commission.



1 (2) the extent to which needed services are or can be furnished by existing units of local  
2 government and the relative cost to the taxpayer and user of such services of having them provided  
3 by existing units of local government or as regional services;

4 (3) the boundaries of existing units of local government;

5 (4) population density, distribution, and growth;

6 (5) the existing land use plan within the region, including the location of highways and  
7 natural geographic barriers to, and routes for, transportation;

8 (6) the true cash value of taxable property and differences in valuation under various possible  
9 boundaries for a region;

10 (7) the area within which benefits from regional services would be received and the costs  
11 of services borne;

12 (8) maintenance of citizen accessibility to, controllability of, and participation in local gov-  
13 ernment;

14 (9) such other matters as might affect provision of regional services on an equal basis  
15 throughout the area, and provide more efficient and economical administration thereof.

16 SECTION 10. *Comprehensive Program.* The commission shall prepare a comprehensive program  
17 for the furnishing of such regional services as it deems desirable in the region.

18 SECTION 11. *Recommendations to Implement Program.* In preparing its comprehensive pro-  
19 gram for furnishing regional services, a commission may recommend one or more of the following op-  
20 tions<sup>1</sup>, to take effect at the same or at different times, in accordance with approval procedures pro-  
21 vided in the appropriate laws and in Sections 13 and 14:

22 (a) an umbrella multijurisdictional agency [*as authorized in appropriate state laws*];<sup>2</sup>

23 (b) a consolidation of counties or of a municipality, or municipalities within the county, with  
24 the county and the merger of existing special districts, including any existing umbrella multijuris-  
25 dictional organizations contained solely within the boundaries of the area, with the new government  
26 and the establishment of such neighborhood governments as may be provided in the charter establish-  
27 ing such consolidation [*as authorized in appropriate state law*];<sup>3</sup>

28 (c) the establishment of a modernized county governmental operation under a charter [*as auth-*  
29 *orized in appropriate state law*];<sup>4</sup>

30 (d) a regional home rule charter government [*as authorized in appropriate state law*];<sup>5</sup>

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<sup>1</sup>*The Challenge of Local Governmental Reorganization*, p. 153.

<sup>2</sup>See draft legislation, *Umbrella Multijurisdictional Organizations*.

<sup>3</sup>See draft legislation, *Local Government Consolidation*.

<sup>4</sup>See draft legislation entitled *County Modernization*.

<sup>5</sup>See draft legislation, *Regional Home Rule Charters*.

1 (e) the establishment of a regional service corporation which shall have merged with it all exist-  
2 ing special districts which operate in [more than one] jurisdiction in the area to be served and shall  
3 have such powers as provided in the charter establishing it [*and as further authorized in appropriate*  
4 *state law*];<sup>1</sup>

5 (f) the creation of a permanent regional council, consisting of members of governing bodies of  
6 units of local government within the region;<sup>2</sup>

7 (g) any other change it considers desirable involving creation, dissolution, or consolidation of  
8 units of local government in the region or involving alteration of their boundaries, powers, and re-  
9 sponsibilities, consistent with provisions of the constitution of this state [*and the state boundary ad-*  
10 *justment commissions' authority*].<sup>3</sup>

11 SECTION 12. *Adjustment of Property and Debts.*

12 (a) The commission shall determine the value and amount of all property used in performing any  
13 regional service and all bonded and other indebtedness of units of local government attributable to  
14 the acquisition of such property and affected by its comprehensive program for regional services, and  
15 shall determine and provide in its comprehensive program an equitable adjustment of such property  
16 and debts of each unit of local government.

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

26 [Optional Section.]

27 [(c) When the regional study commission submits its report prior to hearings as provided in Sec-  
28 tion 13, it shall also submit a copy of the report to the [state] [local] [*government boundary commis-*  
29 *sion*] for consideration. The [*boundary commission*] shall review the proposals contained therein and  
30 return its comments and recommendations to the study commission within [45] days after receipt of  
31 the report. The study commission may make any changes it deems desirable, prior to submission of a

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<sup>1</sup>See suggested legislation, *Regional Service Corporation*.

<sup>2</sup>See suggested legislation on UMJOs.

<sup>3</sup>See legislation entitled *Interlocal Contracting and Joint Enterprises, Transfer of Local Functions between Municipalities and Counties, and Local Government Creation, Dissolution, and Boundary Adjustment*.

1 final report.]<sup>1</sup>

2 SECTION 13. *Public Hearings on Proposed Program.* Within [two] years after the date of its or-  
3 ganization, a commission shall complete the preparation of its preliminary determination of bound-  
4 aries and program for furnishing regional services, and shall provide for adequate publication and  
5 explanation of the program. The commission shall fix the dates and places for public hearings on the  
6 program. Notice of hearings shall be published [once each week for at least two weeks] preceding a  
7 hearing, in at least one newspaper of general circulation in each component county. The notice of  
8 hearing shall state the time and place for the hearing.

9 SECTION 14. *Submission of Recommendation.*<sup>2</sup> After public hearing, the commission may sub-  
10 mit proposals contained in its comprehensive program for approval as follows.

11 (a) Proposals including charters, charter amendments, or any other necessary legal instrument  
12 for creation of a new unit of local government shall require approval by a majority of eligible voters  
13 thereon in the jurisdiction of the proposed new unit.

14 (b) Proposals for abolishing or consolidating existing units of local government, or changing  
15 their boundaries, shall require approval by a majority of the eligible voters voting in the proposed  
16 consolidated area.

17 (c) Any other proposals which are submitted by the commission and which under existing law  
18 can be carried into effect by action of the governing bodies of the units affected, shall be effective if  
19 approved by the governing body of each of the units affected.<sup>3</sup>

20 (d) Where required, referendums shall be held at the next state general or primary election, oc-  
21 ccurring not sooner than [60] days after submission of the proposals by the commission.<sup>4</sup>

22 SECTION 15. *Effect of Approval.* Any proposal approved pursuant to Section 14 shall take  
23 effect at the time fixed in the proposal, and all laws and charters, and parts thereof, shall be supersed-  
24 ed by any proposals adopted under provisions of this act to the extent that they are inconsistent with  
25 the proposals adopted.

26 SECTION 16. *Resubmission and New Program.* If any election directed by a commission pur-  
27 suant to Section 14 of this act results in a negative vote, the commission may:

28 (a) direct the resubmission of the same issue at a new election in those areas which rejected the  
29 issue to be held not earlier than one year from the date of the election at which such negative vote was

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<sup>1</sup>This section should be omitted in states which do not have a boundary commission.

<sup>2</sup>Careful study should be made of existing adoption provisions in state law for various activities; see also the Advisory Commission on Intergovernmental Relations' draft legislation, boundary commission, umbrella multijurisdictional organizations, regional service corporations, regional home rule charter.

<sup>3</sup>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 to the legislative assembly.

<sup>4</sup>States may also wish to provide for submission at special elections.

1 cast; or

2 (b) withdraw its comprehensive program, or that part thereof rejected at such election, and devise  
3 a new program which the commission believes will be more acceptable and proceed thereon as speci-  
4 fied in Sections 13 and 14 of this act.

5 SECTION 17. *Additional Powers and Duties.* A commission shall have the following additional  
6 powers and duties:

7 (a) to contract and cooperate with such other agencies, public or private, as it considers neces-  
8 sary for the rendition and affording of such services, facilities, studies, and reports to the commission  
9 as will best assist it to carry out the purposes for which the commission was established. Upon re-  
10 quest of the chairman of a commission, all state agencies and all counties and other units of local gov-  
11 ernment, and the officers and employees thereof, shall furnish such commission such information as  
12 may be necessary for carrying out its functions and as may be available to, or procurable by, such  
13 agencies or units;

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

16 (c) to accept and expend moneys from any source, including the Federal government. All moneys  
17 received by the commission shall be deposited with the [county treasurer] of the central county. The  
18 [county treasurer] is authorized to disburse funds of the commission on its order; and

19 (d) to do any and all other things as are consistent with and reasonably required to perform its  
20 functions under this act.

21 SECTION 18. *Appropriations.* The units of local government of any region having a regional  
22 study commission established under this act may appropriate funds for the necessary expenses of the  
23 commission.

24 SECTION 19. *State Matching Funds.* In order to encourage and assist in the establishment and  
25 operation of regional study commissions, the [appropriate state agency]<sup>1</sup> is authorized to enter into  
26 contracts to make grants to regional study commissions to help finance their activities. The amount  
27 of any such grant may equal but not exceed the amount of funds appropriated by local units of  
28 government pursuant to Section 18.

29 SECTION 20. *Term of Commission.* All commissions shall terminate four years from the date  
30 of their establishment. However, a commission, upon completion of its duties, may terminate earlier  
31 by a vote of three-fourths of the members favorable to such earlier termination.

32 SECTION 21. *Separability.* [Insert separability clause.]

33 SECTION 22. *Effective Date.* [Insert effective date.]

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<sup>1</sup>Preferably an office of local government, a department of community affairs, or a state boundary commission.





## COMMISSION MEMBERS

### PRIVATE CITIZENS

**Robert E. Merriam**, Chairman, Chicago, Illinois  
**Robert H. Finch**, Los Angeles, California  
**John H. Altorfer**, Peoria, Illinois

### MEMBERS OF THE UNITED STATES SENATE

**Ernest F. Hollings**, South Carolina  
**Edmund S. Muskie**, Maine  
**William V. Roth**, Delaware

### MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES

**L. H. Fountain**, North Carolina  
**Clarence J. Brown, Jr.**, Ohio  
**James C. Corman**, California

### OFFICERS OF THE EXECUTIVE BRANCH, FEDERAL GOVERNMENT

**James M. Cannon**, Assistant to the President for Domestic Affairs  
**James T. Lynn**, Office of Management and Budget  
**Vacancy**

### GOVERNORS

**Richard F. Kneip**, South Dakota  
**Daniel J. Evans**, Washington  
**Robert D. Ray**, Iowa  
**Philip W. Noel**, Rhode Island

### MAYORS

**Richard G. Lugar**, Vice Chairman, Indianapolis, Indiana  
**Jack D. Maltester**, San Leandro, California  
**John H. Poelker**, St. Louis, Missouri  
**Vacancy**

### STATE LEGISLATIVE LEADERS

**John H. Briscoe**, Speaker, Maryland House of Delegates  
**Robert P. Knowles**, Senator, Wisconsin  
**Charles F. Kurfess**, Minority Leader, Ohio House of Representatives

### ELECTED COUNTY OFFICIALS

**Conrad M. Fowler**, Shelby County, Alabama  
**John H. Brewer**, Kent County, Michigan  
**William E. Dunn**, Salt Lake County, Utah



# what is acir?

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

The Commission is composed of 26 members — nine representing the Federal government, 14 representing state and local government, and three representing the public. The President appoints 20 — three private citizens and three Federal executive officials directly and four governors, three state legislators, four mayors, and three elected county officials from slates nominated by the National Governors' Conference, the Council of State Governments, the National League of Cities/U.S. Conference of Mayors, and the National Association of Counties. The three Senators are chosen by the President of the Senate and the three Congressmen by the Speaker of the House. Each Commission member serves a two year term and may be reappointed.

As a continuing body, the Commission approaches its work by addressing itself to specific issues and problems, the resolution of which would produce improved cooperation among the levels of government and more effective functioning

of the federal system. In addition to dealing with the all important functional and structural relationships among the various governments, the Commission has also extensively studied critical stresses currently being placed on traditional governmental taxing practices. One of the long range efforts of the Commission has been to seek ways to improve Federal, state, and local governmental taxing practices and policies to achieve equitable allocation of resources, increased efficiency in collection and administration, and reduced compliance burdens upon the taxpayers.

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

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

