1965
STATE LEGISLATIVE PROGRAM
of the
ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Washington, D.C. 20575
October 1964
M-24

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FOREWORD

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

Although the Commission is a continuing body it recognizes that its own value and place in the Federal system will be determined by the extent to which it contributes to significant improvements in the relationships between and among Federal, State, and local governments. It therefore devotes a considerable share of its resources to encouraging the adoption of its recommendations for legislative and administrative action by these governments.

The Commission seeks to implement its legislative recommendations to the States by translating them into legislative language for consideration by the 50 State legislatures. This document contains 35 legislative proposals in the form of draft bills and policy statements to implement the recommendations for State legislation approved by the Commission through June 30, 1964. These proposals are presented under three subject matter headings: A. Taxation and Finance. B. Urban Problems. C. Other Intergovernmental Problems. Each of these subject areas is introduced by a statement summarizing the broad objectives of the Commission's recommendations. Each legislative draft, in turn, is preceded by a brief explanation of its content.

Most of the Commission's proposals for State legislation have been submitted for consideration by the Committee of State Officials on Suggested State Legislation of the Council of State Governments. The Committee consists of members of Commissions on Interstate Cooperation, Commissions on Uniform State Laws, Attorneys General and legislative officials. Those legislative proposals of the Advisory Commission that have been approved by the Committee of State Officials on Suggested State Legislation are published and distributed by the Council of State Governments to Governors, legislators, and other State officials. All but five of the Advisory Commission's proposals for State legislation are now included in the Council's Program of Suggested State Legislation.

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

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

The Commission presents its proposals for State legislation in this volume in the hope that it will serve as a useful reference aid for State legislators, State legislative service agencies, and others interested in strengthening the legislative framework of State-local relations.

1965 LEGISLATIVE PROGRAM OF THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Table of Contents

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

\# Policy statement only.

Table of Contents, Continued

* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.
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A. TAXATION AND FINANCE

Introductory Statement

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

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

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

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

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

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

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

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

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

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

States are directly concerned with the quality of property taxation for other reasons as well. The $22 billion that will be collected from this source in calendar year 1964 nearly equals the combined collections from the states' own taxes and accounts for 45 percent of aggregate state and local tax revenues. In short, the property tax is the most important single factor in the impact of non-federal taxes on the pace of industrialization and economic development, on production, income and consumption, and on the distribution of the tax burden among the people.

Without benefit of strong state support, local governments are severely handicapped in property tax reform. Most are too small to afford the organization and technical skill required to appraise and assess the wide variety of highly specialized properties currently used by industry. Sensitivity to intercommunity competition for business can restrain tax reform and may encourage competitive under-assessment. Moreover, state law does much to prescribe the elements of property taxation and so is mandatory on the localities.

A survey of the recent successes and failures in property tax reform in different parts of the country, conducted by the Advisory Commission on Intergovernmental Relations, leaves no doubt that the tax is capable of reasonably fair operation and administration, that the rate of progress in this direction is strongly influenced by the degree of responsibility assumed by the state, and that tax officials, practitioners, and scholars are in general agreement about the lines of action states should take to give soundly based local property tax improvement efforts a reasonable chance to succeed.[1]

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

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

PROPERTY TAX SURVEY COMMISSION*

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

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

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

Suggested Legislation

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

(Be it enacted, etc.)

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

*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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

Section 2. Commission Duties. The Commission shall:

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

(2) Determine (a) whether provision of the constitution or any statute, ordinance or charter unduly restricts legislative or administrative flexibility and responsibility for producing and maintaining a productive and administrable property tax system and, (b) whether the property tax laws need revision or recodification;

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

(4) Examine the question of reimbursing local communities for the amounts of tax loss sustained in the instance of mandatory tax exemptions;

(5) Make a thorough review of all classes of partial and total exemptions from tax liability based on assessed valuations made by assessment officials, study the desirability of their continuance from the point of view of sound policy, and with respect to those exemptions that may be continued, recommend such adjustments as would be called for by the adoption of the market value determinations made or to be made by the [state tax agency] as the uniform measure for all such exemptions from property tax liability;[1]

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

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

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

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

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

(a) Centralized property tax administration, with each local government determining the amount of its own tax levies, within any applicable limitations, and with the state providing all professional services for the assessment, collection and enforcement of the property tax liability;

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

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

(d) Some other uniform method of property assessment administration.

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

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

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

Section 5. Hearings. The Commission may hold public hearings in various parts of the state and prescribe any necessary rules for the conduct thereof.

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

their actual and necessary expenses.

Section 7. Duration. Sections 1-6 of this act shall cease to be of any force or effect on and after [4 years after effective date of this act] and the Commission established hereby shall terminate as of [same date].

Section 8. Appropriation. [Use this section to make initial appropriation to the Commission.]

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

PROPERTY TAX ORGANIZATION AND ADMINISTRATION *

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

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

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

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

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

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

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

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

Suggested Legislation

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

(Be it enacted, etc.)

Section 1. Division of Property Taxation.[1] (a) There shall be in the /state tax agency/ a Division of Property Taxation, hereinafter called the "Division." The head of the Division shall be the Director, appointed by the Commissioner in accordance with the provisions of the /state merit system law/. The Director shall serve in accordance with the provisions of such law. He shall have experience and training in the fields of taxation and property appraisal.

(b) The employees of the Division shall be in the /state merit service/. The Director may contract for the services of expert consultants to the Division.

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

(c) In addition to any duties, powers or responsibilities otherwise conferred upon the Division, it shall administer and enforce all laws related to the state supervision of local property tax administration and the central assessment of property subject to ad valorem taxation. Whenever the Division assesses or appraises property, or provides services therefor, it shall prescribe the methods and specifications for such assessment or appraisal.

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

(b) The Division shall provide for the examination of applicants for such certificates. No certificate shall be issued to any person who has not demonstrated to the satisfaction of the Division that he is competent to perform the work of an assessor or appraiser, as the case may be: provided that any applicant for a certificate who is denied the same shall have a right to review of such denial /in accordance with the state administrative procedure act/ /by a proceeding in the _____ court/.

Section 3. Collection and Publication of Property Tax Data.[2] (a) The Division annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity, and overall compliance with assessment requirements for each major class of property in each county in the state. In order to determine the degree of assessment uniformity and compliance in the assessment of major classes of property within each county, the Division shall compute the average dispersion. As used in this section, "average dispersion" means the percentage which the average of the deviations of the assessment ratio of individual sold /or appraised/ properties bears to their median ratio.

(b) The Division may require assessors and other local officers to report to it data on assessed valuations and other features of the property tax for such periods and in such form and content as the Division shall require. The Division shall so construct and maintain its system for the collection and analysis of property tax facts as to enable it to make intrastate comparisons as well as interstate comparisons

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

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

(c) The /~~state tax agency~~/ shall publish annually the findings of the Division's assessment ratio studies together with digests of property tax data.

Section 4. Tax Exemption Information. The county assessor regularly shall assess all tax exempt property within the county, calculate the total assessed valuation for each type of exemption, and compute the percentages of total assessed valuations thus exempt. The totals and computations thus made and obtained, together with summary information on the function, scope and nature of exempted activities, shall be published annually by the county.

Section 5. Forms. The Division shall devise, prescribe, /~~supply,~~/ and require the use of all forms deemed necessary for effective administration of the property tax laws. So far as practicable such forms shall be uniform, but nothing herein shall be deemed to prevent the prescribing of substitute or additional forms where special circumstances require.

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

standard maps or approve mapping plans and supervise map production. The /state tax agency/ /shall/ /may/ require the county to reimburse the state for tax maps installed by the Division. The amount or amounts of such reimbursement shall be deposited in the /state treasury/ to the account of the /state tax agency/.[3]

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

Section 8. Data Processing. To expedite the preparation of assessment rolls, tax rolls, and tax bills, the Division is authorized to take such action as may be appropriate to enable counties to receive the benefits of modern data processing methods.

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

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

/state tax agency/ may, within its available resources, and in accord with its determination of the need therefor, provide such services. The county shall pay to the /state tax agency/ the actual cost of such services in accordance with a schedule of standard fees and charges furnished, and from time to time, revised by the /state tax agency/. All payments received by the /state tax agency/ pursuant to this section shall be deposited in the /state treasury/ to the account of the /state tax agency/.

Section 10. Appraisal of Major Industrial and Commercial Properties. The Division shall provide to each county or multi-county assessment district the services of certified appraisers for the appraisal of major industrial and commercial properties. The properties to be appraised shall be determined by the Division after consultation with county assessors. In making such determinations, the Division shall take into account the ability of the county assessor to perform such appraisals with the resources at his disposal. /Provide for such reimbursement or county charge as may be appropriate/.

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

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

Section 12. Training Programs. The Division shall conduct or sponsor in-service, pre-entry and intern training programs on the technical, legal and administrative aspects of the assessment process. For this purpose it may cooperate with educational institutions, local, regional, state or national assessors' organizations, and with any other appropriate professional organizations. The Division may reimburse the participation expenses incurred by assessors and other employees of the state and its subdivisions whose attendance at in-service training programs is approved by the Division.

Section 13. Enforcement of Assessment and Appraisal Standards. (a) In order to promote compliance with the requirements of law, the Division shall issue and, from time to time, may amend or revise rules and regulations containing minimum standards of assessment and appraisal performance. Such standards shall relate to: adequacy of tax maps and records; types and qualifications of personnel; methods and specifications for the appraisal or reappraisal of property; and administration. For failure to meet the standards contained in such rules and regulations the Division may suspend, in whole or in part, performance of the assessment or appraisal function by a county.

(b) If the Division finds that a county has failed or is failing to meet the standards contained in the rules or regulations in force pursuant to paragraph (a) of this section, it shall notify the county assessor of the fact and nature of the failure. The notice shall be in writing and shall be served upon the county assessor and the /county governing board/.

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

(d) During the continuance of a suspension pursuant to paragraph (c) of this section, the Division shall succeed to the authority and duties from which the county has been suspended and shall exercise and perform the same. Such exercise and performance shall be a charge on the suspended county. The suspension shall continue until the Division finds that the conditions responsible for the failure to meet

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

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

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

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

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

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

[(d) If other statutes or provisions of local law do not affirmatively empower county assessors to assess, appraise and classify property, use this subsection to confer such power.]

Section 15. Governing Valuations. [Each local taxing unit] shall be bound by the assessed valuations established by the county assessor for all property subject to its taxing power.

Section 16. Multi-county Assessment Districts.[4] (a) Any two or more contiguous counties may enter into an agreement for joint or cooperative performance of the assessment function.

(b) Such agreement shall provide for;

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

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

(3) The rights and responsibilities of the parties with respect to the direction and supervision of work to be performed under the agreement.

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[4] The possibility of including this paragraph may depend in a particular state on constitutional or statutory considerations.

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

(5) Any other necessary or appropriate matters.

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

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

the joint or cooperative performance of the assessment function may provide for such assessor and employee coverage in county employee benefit programs.

(e) No agreement made pursuant to this section shall take effect until it has been approved in writing by the Commission of the /~state tax agency~/ and the /~attorney general~/.

(f) Copies of any agreement made pursuant to this section, and of any amendment thereto, shall be filed in the office of the /~Secretary of State~/ and the /~state office of local government~/.

Section 17. State Performance of County Assessment Function. The /~governing board~/ of a county may, /~by resolution~/, request the /~state tax agency~/ to assume the county assessment function and to perform the same in and for the county. If the Commissioner of the /~state tax agency~/ finds that direct state performance of the function is necessary or desirable to the economic and efficient performance thereof, he may direct the Division to undertake such performance pursuant to the request. Unless otherwise authorized by law, the Division shall undertake and perform the function only after the execution of a suitable agreement between the county and the /~state tax agency~/ providing for responsibility for costs. During the continuance of performance of the county assessment function by the Division, the office and

functions of the county assessor shall be suspended, and the performance thereof by the Division shall be deemed performance by the county assessor.

Section 18. Discontinuance of Certain Assessors' Offices. On and after /date/ assessment of property for purposes of taxation, unless pursuant to agreement as authorized in Section 16 of this act, shall be only by the county and state in accordance with law. However, any assessor in office on /date/ who is serving a fixed term as provided by statute or local law may continue in office until the expiration of such term, and the jurisdiction of which he is the assessor shall continue to have the assessment function previously conferred upon it until the expiration of such term. Any vacancy in an elective or appointive office permitted to continue by reason of this section shall be filled only for the unexpired portion of the term.

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

PROPERTY TAX ASSESSMENT STANDARDS AND EQUALIZATION*

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

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

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

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

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

*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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

Suggested Legislation

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

(Be it enacted, etc.)

Section 1. Definitions. (a) "Current market value" means the estimated price a property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

(b) "Assessment level" means the percentage relationship which the assessed value of taxable property bears to its current market value.

(c) "Assessment ratio study" means the comparison, on a sampling basis, of the current market value determined from the best information available which may include, but is not limited to appraisals, deed recordings, documentary or tax stamps and statements of parties to the transaction with their assessed valuations, and the application of statistical procedures to determine assessment levels and to measure nonuniformity of assessments.

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

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

Section 3. Preparation of Assessment Ratio Studies.[1] The /Division of Property Taxation of the state tax agency/ annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity and overall compliance with assessment requirements for each major class of property in each county in the state. In order to determine the degree of assessment uniformity and compliance in the assessment of major classes of property within each county, the /Division of Property Taxation of the state tax agency/ shall compute the average dispersion.

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

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[1]See note 2, page 14.

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

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

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

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

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

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

levying unit of government] shall apportion their tax levies among the various counties in the same proportion that the current market value of the property subject to the tax of the [tax levying unit of government] in each county bears to the current market value of all property subject to the tax of the [tax levying unit of government]. Such apportionment shall be based upon the current market value determinations derived from the annual assessment ratio studies made by the [Division of Property Taxation of the state tax agency]. Thereafter the tax rates of the [tax levying unit of government] shall be fixed in the respective counties in such manner as is calculated to raise the amounts so apportioned when applied to the assessed values therein.

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

PROPERTY TAX REVIEW AND APPEAL PROCEDURE*

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

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

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

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

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*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

Suggested Legislation

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

(Be it enacted, etc.)

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

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

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

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

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

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

assessor shall have jurisdiction to hear or determine a protest. Any such protest shall be heard and determined by the [Commissioner of the state tax agency].

(e) Review of determinations of a [local board of property tax review], a county assessor when acting on a protest of assessment, and of determinations of the [Commissioner of the state tax agency] when acting on a protest of assessment, may be had only in the State Tax Court.

Section 3. Initiation of Protest. (a) Within [thirty] days of his receipt of a notice of assessment or reassessment of property, the owner thereof may protest such assessment or reassessment. Such protest shall be in writing on a form provided by the [county assessor] [Division of Property Taxation of the state tax agency]. Such protest may include or be accompanied by a written statement of the grounds for the protest, and may include a request for a hearing. The protest, together with the accompanying statement, if any, shall be filed with the county assessor having jurisdiction to hear the protest or the [local board of property tax review], as the case may be. Thereupon, such county assessor or [local board of property tax review], if a hearing has been requested, shall fix the time and place where the protest shall be heard and shall serve a notice thereof on the protesting taxpayer.

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

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

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

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

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

same manner as appointments to full terms. During his continuance in office neither the chief judge nor an associate judge shall have any other employment, but shall devote full time to his duties as such judge.

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

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

(d) Consistent with this act and [cite statutes applicable to proceedings of administrative tribunals], the State Tax Court shall provide by rule for practice before it and the

conduct of its proceedings.

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

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

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

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

deposition shall then be subscribed by the deponent.

(b) The protesting taxpayer whose assessment is in question and the county assessor or [Commissioner of the state tax agency] may obtain an order of the State Tax Court summoning witnesses or requiring the production of any returns, books, papers, documents, correspondence and other evidence pertinent to the matter under inquiry in the same manner in which witnesses may be summoned and evidence may be required to be produced for the purpose of trials in the [_____ court]. Any witness summoned or whose deposition is taken shall receive the same fees and mileage as witnesses in the [_____ court].

Section 6. Small Claims. (a) The State Tax Court shall establish by rule a small claims procedure which, to the greatest extent practicable, shall be informal. The Court shall take special care to provide all protesting taxpayers, wherever located within the state, reasonable and convenient access to the Court, and shall sit at such times and places as may be appropriate to promote such accessibility.

(b) Any protesting taxpayer who, pursuant to the disposition of his protest by the county assessor, [local board of property tax review], or [Commissioner of the state tax agency], would incur a tax liability of less than [$1,000.00] by reason of the protested assessment in the first year to which such assessment applies may elect to employ such

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

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

Section 7. Appeal to [state supreme court]. [Use this section to provide procedure for appeal of tax court determinations to state supreme court.]

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

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

that a proven deviation of ten percent or more from the relevant county assessment ratio shall establish conclusively the the invalidity of such defense.

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

COLLECTION OF LOCAL NONPROPERTY TAXES BY THE STATE *

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

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

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

Suggested Legislation

/Title should conform to state requirements/

(Be it enacted, etc.)

Section 1. Authority to contract. The director of /tax department/ is hereby authorized to negotiate and contract with any political subdivision of the state for the purpose of arranging for the collection by the /tax department/ of any tax levied by a political subdivision of the state which is also levied and collected by the /tax department/ for the state. Such agreements shall include

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

a fee to be paid by the political subdivision to the /tax department/ in such amount as may be necessary fully to cover the cost of collection of the local portion of the tax by the /tax department./ Pursuant to the agreement the director shall transmit to such political subdivisions on or before /date/ all taxes so collected on behalf of such political subdivisions less the agreed upon collection fee.

INTERLOCAL COORDINATION OF NONPROPERTY TAXES *

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

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

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

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

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

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

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

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

(1) to facilitate economies in tax administration and to ease the burdens of compliance for taxpayers, the pooling of tax enforcement efforts should be provided, when possible, by permitting (a) the local tax to be added to the state tax for collection purposes where the state imposes the same kind of tax, or (b) authorizing the pooled administration of separate local taxes by a collection agency serving groups of jurisdictions;

(2) to minimize intercommunity tax differentials, the city and the other jurisdictions comprising metropolitan or other cohesive economic areas should be provided with uniform taxing powers and authority for cooperative tax enforcement;

(3) to minimize needless varieties among local nonproperty taxes, the states should accompany the authorization for using these taxes with specifications with respect to their structure (taxpayer, tax base exemptions, etc.) and administrative features;

(4) states should take active leadership in guiding local governments toward sound policies with respect to nonproperty taxes and providing technical assistance to them by organizing training facilities for tax enforcement personnel, advising them on the usefulness of state tax records in local tax enforcement and by serving as a clearinghouse of information of tax experience elsewhere, particularly within the state.

COUNTY SUBORDINATE TAXING AREAS

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

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

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

The following suggested act is designed to authorize counties to establish subordinate taxing areas in order to provide any governmental service therein which the county is otherwise authorized by law to provide. Section 2 defines a county subordinate taxing area and Section 3 permits the county governing body to set tax rates within such areas at a different level than the overall county tax rate, in order that only those receiving a particular service pay for it. It should be noted that a constitutional amendment may be necessary in some states to permit use of this device.

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

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

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

Suggested Legislation

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

(Be it enacted, etc.)

Section 1. Purpose. It is the purpose of this act to provide a means by which counties as units of general local government can effectively provide and finance various governmental services for their residents in an equitable manner as among urban, rural or special areas within the county.

Section 2. Definition. "County subordinate taxing area" means an area within a county in which one or

more governmental services are provided by the county and financed solely from revenues secured from within that area.

Section 3. Notwithstanding any provision of law requiring uniform property tax rates on real or personal property within a county, counties are authorized to establish subordinate taxing areas to provide and finance any governmental service or function which they are otherwise authorized to undertake.[1]

Section 4. Establishing a Subordinate Taxing Area by Counties. The /county governing body/ may, on its own motion, establish a subordinate taxing area in any portion of the county pursuant to a resolution adopted by a majority of its members. The resolution shall specify the type of service or services to be provided within the subordinate taxing area and shall specify the territorial boundaries of the area.

Section 5. Creation of Subordinate Taxing Area Pursuant to Petition. (a) A petition signed by / _/ percent of the qualified voters within any portion of a

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

county may be submitted to the /county governing body/ requesting the establishment of a subordinate county taxing area to provide any service or services which the county is otherwise authorized by law to provide. Such petition shall include the territorial boundaries of the proposed subordinate taxing area and shall specify the types of services to be provided therein.

(b) Upon receipt of the petition, and verification of the signatures thereon by the /county clerk/, the /county governing body/ shall, within /30/ days, hold a public hearing on the question of whether or not such a subordinate taxing area shall be established.

(c) Within /30/ days following the holding of a public hearing, the /county governing body/, by resolution, shall approve or disapprove the establishment of the subordinate county taxing area. A resolution approving creation of a subordinate taxing area may contain such amendments or modifications of any aspects of the area's boundaries or functions as the /county governing body/ deems appropriate.

Section 6. Publication and Effective Date. Upon passage of any resolution authorizing creation of a subordinate county taxing area the /county governing

body/ shall cause to be published in /_ _/ newspapers of general circulation within the county a concise summary of such resolution. The summary shall include a general description of the territory to be included within the area, the type of service or services to be undertaken within the area, a statement of the means by which the service or services will be financed, and a designation of the county agency or officer who will be responsible for supervising the provision of the service or services specified. The service area shall be deemed established, subject to initiative and referendum as hereinafter prescribed, /30/ days after publication of such notice.

Section 7. Initiative and Referendum. (a) Upon receipt of an initiative petition signed by /_ _/ percent of the qualified voters within the territory of the proposed taxing area prior to the effective date of its creation as specified in Section 6, the creation of such taxing area shall be held in abeyance pending referendum vote of all qualified electors residing within the boundaries of the subordinate taxing area.

(b) The /county governing body/ shall make appropriate arrangements for the holding of a special election

not less than /30/ nor more than /60/ days after receipt of such petition within the boundaries of the proposed taxing area. The question to be submitted and voted upon by the qualified voters within the territory of the proposed subordinate taxing area shall be phrased substantially as follows:

> Shall a subordinate taxing area be established in order to provide -- /service or services to be provided/ financed by /revenue sources/?

If a majority of those voting on the question favor creation of a subordinate taxing area, the area shall be deemed created upon certification of the vote by the /county election board/.

Section 8. Expansion of the Boundaries of a Subordinate Taxing Area. The /county governing body/, on its own motion or pursuant to petition, may expand the boundaries of any existing subordinate county area pursuant to the procedures specified in Sections 4 through 7, except that all references to qualified voters shall be limited to those residing within the territory to be added to the existing subordinate taxing area.

Section 9. Upon adoption of the next annual budget following the creation of a subordinate county taxing area the /county governing body/ shall include in such

budget appropriate provisions covering the financing of such services as will be derived from a property tax levied only on property within the boundaries of the subordinate taxing area or by levy of a service charge against the users of such service within the area, or by any combination thereof.

COOPERATIVE TAX ADMINISTRATION AGREEMENTS *

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

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

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

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

Suggested Legislation

/Title should conform to state requirements/

(Be it enacted, etc.)

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

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

jurisdictions. The agreement may provide for joint administration or for administration by one political subdivision on behalf of one or more political subdivisions that are parties to such an agreement and shall provide for the allocation of the cost of such administration among the parties.

EXCHANGE OF TAX RECORDS AND INFORMATION *

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

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

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

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

Suggested Legislation

/Title should conform to state requirements/

(Be it enacted, etc.)

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

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

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

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

STATE ASSISTANCE TO LOCAL DEBT MANAGEMENT *

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

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

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

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

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* Only Title I is included in Council of State Governments' SUGGESTED STATE LEGISLATION.

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

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

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

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

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

Suggested Legislation

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

(Be it enacted, etc.)

TITLE I

TECHNICAL AND ADVISORY ASSISTANCE

Section 1. Purpose. It is the intent of this Title to facilitate, through state technical and advisory assistance, the

marketing of local government bonds and other long-term obligations at the lowest possible net interest cost.

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

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

(c) "Agency" means /insert name of the appropriate agency of state government/. [1]

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

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

Section 3. Authorization for State Technical and Advisory Assistance. The /Agency/ is authorized and directed to provide technical and advisory assistance regarding the issuance of long-term debt to those local governments whose governing

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

bodies request such assistance. Such assistance shall include, but need not be limited to, (a) advice on the marketing of bonds by local governments, (b) advisory review of proposed local government debt issues, including the rendering of opinions as to their legality, (c) conduct of training courses in debt management for local financial officers, and (d) promotion of the use by local governments of such tools for sound financial management as adequate systems of budgeting, accounting, auditing, and reporting.

Section 4. Advisory Review of Proposed Local Government Debt Issues. At the request of the governing body of any local government, the /Agency/ is authorized to review a proposed debt issue and to render an advisory opinion based upon the facts concerning the proposed issue. Any request for an advisory review shall be submitted to the /Agency/ in such form and with such information as the /Agency/ may require.

Section 5. State Sale of Local Government Security Offerings. At the request of the governing body of any local government, the /Agency/ is authorized to market such local government's security offerings by preparing bond issues for sale, advertising for sealed bids, receiving bids at its offices, and making the award to the bidder that offers the most favorable terms. The /Agency/ may, at its discretion, offer for concurrent sale the bonds of several local governments. State sale of a local security offering under this section shall in no way imply state guarantee

of such debt issue.

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

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

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

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

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

(e) All departments, divisions, boards, bureaus, commissions, or other agencies of the state government shall provide such assistance and information as, not inconsistent with law, the /Agency/ may require to enable it to carry out its duties under

this Act.

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

TITLE II

STANDARDS FOR OFFICIAL STATEMENTS ON LOCAL DEBT OFFERINGS

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

Section 2. Authorization. The /Agency/ is authorized and directed to prepare regulations concerning the minimum content of the notice of sale advertisements and prospectuses required by /statutory citation/. Regulations as to the content of such notices and prospectuses may make an appropriate differentiation among types of bond issues and types of local government.

Section 3. Notice of Sale Advertisement. The notice of sale advertisement shall set forth the purpose of the bond issue,

principal amount of the bond issue, designation of type of bond issue according to the authorizing statute, date of issue, the method of bond repayment, showing the denominations and maturities offered for sale, the basis of bidding and award of the bonds, the date, hour, and place that bids will be opened, the name of the chief financial officer who will furnish additional information about the issuing local government or the bond sale, and any other appropriate information, in accordance with the regulations prepared by the /Agency/.

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

Section 5. Inclusion of Additional Information. The chief financial officer may, at his discretion, include information in the notice of sale advertisement and in the prospectus in addition to that specified as the minimum content in regulations

issued by the /Agency/.

Section 6. Bid Forms. The /Agency/ is authorized and directed to prepare and supply standard bid forms to be used by local governments in securing bids from prospective purchasers.

TITLE III

SEPARABILITY AND EFFECTIVE DATE

Section 1. /Insert separability clause/.

Section 2. /Insert effective date/.

LOCAL INDUSTRIAL DEVELOPMENT BOND FINANCING *

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

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

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

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

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

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

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

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

Suggested Legislation

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

(Be it enacted, etc.)

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

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

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

(b) To avoid overextension of local government industrial development credit;

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

(d) To provide technical assistance to local units of general government choosing to utilize industrial development bond financing.

Section 2. Definitions.

(a) "Industrial development bond" means any general obligation or revenue bond issued by any local unit of general government of the state for the purpose of financing the purchase of land, the purchase or construction, including reconstruction, improvement, expansion, extension and enlargement, of buildings and appurtenances and the purchase and installation of machinery, equipment or fixtures, the purpose of such purchases being primarily for sale or continuing lease to a private individual, partnership or corporation for use in connection with the operation of an industrial enterprise, except /docks, wharves and marine warehouses, airport terminal and hangar facilities,

other transportation facilities, municipal stadiums, theaters, or ...].

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

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

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

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

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

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

Section 4. Statutory limitations imposed upon the borrowing powers of local units of general government shall be construed as not being applicable with respect to the issuance of industrial development bonds. In addition to the limitations on the powers of local units of general government provided in this act, the agency shall limit the aggregate volume of industrial development bonds outstanding at any time on behalf of all local units of general government in the state to an amount not to exceed [_____ percent of the personal income of the population in the state as last determined by the United States Department of Commerce] or [_____ percent of total state and local tax collections in the state during the preceding fiscal year] [_____dollars]. The agency shall determine from time to time the aggregate volume of industrial development bonds which may be issued pursuant to this limitation and in the light of employment needs and industrial development prospects shall allot among all eligible local units of general government the amount of industrial development bonds each may issue.

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

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

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

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

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

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

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

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

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

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

(e) That opportunities for employment are inadequate in the area from which the proposed industrial plant would reasonably draw its labor force and that there exists in that area a condition of substantial and persistent unemployment or underemployment;

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

(g) That financing by banks, other financial institutions

or other parties, of the property required by the lessee is not readily available to the lessee on ordinary commercial terms in adequate amounts either on the local market or on the national market;

(h) That no portion of the proposed industrial development bond issue will be purchased by the lessee or any affiliate or subsidiary of the lessee at the time of the initial marketing;

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

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

(k) That the issuance of the proposed bonds and the operation of the enterprise of the lessee will not disrupt the fiscal stability of the issuing local unit of general government in the event it should become necessary for it to assume responsibility for payment of the interest and principal of the proposed industrial development bonds.

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

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

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

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

the authority of the local unit of general government to proceed thereunder is contested in any judicial proceeding, the court in which such proceeding is pending or, upon proper application, to the [appropriate state agency], the [appropriate state agency] may issue an order extending the life of such certificate for a period not to exceed the time from the initiation of such proceeding to final judgment or other termination thereof.

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

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

of the bonds.

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

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

Section 11. The [appropriate state agency] shall make an annual report to the Governor and the legislature, including recommendations to further the purposes of this act.

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

Section 13. [Insert separability clause.]

Section 14. [Insert effective date.]

INVESTMENT OF IDLE FUNDS (Amended) *

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

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

It is the purpose of the suggested act to authorize the governing body of a municipality, county, school district or other local governmental unit or political subdivision to invest and reinvest its funds in certain interest-bearing obligations. This amended version of the suggested act repeats draft language appearing in the volumes for 1962 and 1963[1] and adds a new section providing for state technical assistance to local governments in investing idle funds, a matter previously covered by statement only.

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

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

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

Since many state governments regularly invest their free balances in short-term obligations, their officials possess technical expertness in this activity. It is urged that states consider authorizing and directing their appropriate officials to share their specialized knowledge in the investment of short-term public funds with the appropriate financial officials of the smaller subdivisions. The suggested act provides for such state technical assistance to local governments.

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

The question of how far to go in the type of investments authorized is a matter of judgment which will vary from state to state. At the very least, as provided in Section 1 of the suggested act, authority is provided for the placement of idle funds in (a) obligations of the United States and of its agencies and instrumentalities; (b) bonds or certificates of indebtedness of the state concerned and of its agencies and instrumentalities; and (c) shares of any building and loan association insured by the government of the United States or any agency thereof, up to the amount so insured. Particular states may wish to authorize additional types of investment, such as the securities of the local unit of government concerned, the securities of other states, or of municipalities or other local governments within the state, or other types of securities that meet appropriate tests of liquidity and security.

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

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

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

Suggested Legislation

/Title should conform to state requirements./

(Be it enacted, etc.)

Section 1. The governing body of a municipality, county, school district, or other local governmental unit or political subdivision, may invest and reinvest money subject to its control and jurisdiction in:

(a) Obligations of the United States and of its agencies and instrumentalities;

(b) Bonds or certificates of indebtedness of this state and of its agencies and instrumentalities;

(c) Shares of any building and loan association insured by an agency of the government of the United States up to the amount so insured;

(d) /_ _/ [2]

(e) /_ _/ [2]

Provided however that the provisions of this act shall not

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

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

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

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

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

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

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

FINANCIAL AND TECHNICAL ASSISTANCE TO LOCAL GOVERNMENTS *

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

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

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

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

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

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

A recent report published by the Council of State Governments, entitled State Technical Assistance to Local Governments,[1] reviews the technical assistance services available from certain major staff agencies of state government in the fields of finance, legal services, purchasing, planning and personnel. It reports also on technical assistance activities of general agencies concerned with local governments in five states.

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

B. URBAN PROBLEMS

Introductory Statement

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

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

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

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

to local units of government, thereby asserting a determination to assist continually and to intervene where necessary in ameliorating jurisdictional problems in their metropolitan areas. The Commission also proposes that Federal grants-in-aid to local governments for urban development be channeled through the States in cases where the State provides significant financial and technical assistance. Finally, given the many uncoordinated sources of development activities and the number of local units in metropolitan areas, the Commission urges the use of metropolitan planning and coordinating machinery effectively geared into the political decision-making processes within the entire metropolitan area.

METROPOLITAN STUDY COMMISSIONS*

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

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

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

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

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

* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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

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

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

The draft legislation is based on Chapter 516, Laws of 1963, State of Oregon.

Suggested Legislation

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

(Be it enacted, etc.)

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

relating to water supply, sewage disposal, transportation, parking, parks and parkways, police and fire protection, refuse disposal, health, hospitals, welfare, libraries, air pollution control, housing, urban renewal, planning and zoning. These problems when extending beyond the boundaries of individual units of local government frequently cannot be adequately met by such individual units.

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

Section 2. Definitions. As used in this act:

(a) "Central city" means the city having the largest population in the tentative metropolitan area according to the latest Federal decennial census.

(b) "Central county" means the county in which the greatest number of inhabitants of a central city reside.

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

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

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

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

which are determined by a metropolitan study commission pursuant to sections 9 and 10 of this act.

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

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

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

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

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

Section 3. Initiating Election to Establish a Metropolitan Study Commission. (a) A metropolitan study commission may be established by vote of the qualified voters residing in a tentative metropolitan area. An election to authorize the creation of a metropolitan area study commission may be called pursuant to resolution or petition in the following manner:

(1) A joint resolution requesting such an election may be adopted by a majority of the governing bodies of the counties, cities, /insert names of other types of units of government exercising general government powers/ having any jurisdiction within the tentative metropolitan area. A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the /insert name of governing body/ of the central county; or

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

Upon receipt of such a petition, the (official) shall examine the source and certify to the sufficiency of the signatures thereon. Within 30 days following receipt of such petition, the (official) shall transmit the same to the board

of commissioners of the central county together with his certificate as to the sufficiency thereof. [2]

(b) Only one commission may be established for each tentative metropolitan area at any one time.

Section 4. Election on Establishing Metropolitan Study Commission. The election on the formation of the metropolitan study commission shall be conducted by the (officials) of the component counties in accordance with the general election laws of the state and the results thereof shall be canvassed by the county canvassing board of the central county, which shall certify the result of the election to the /insert name of governing body/ of the central county, and shall cause a certified copy of such canvass to be filed in the office of the secretary of state. Notice of the election shall be published in one or more newspapers of general circulation in each component county in the manner provided in the general election laws. No person shall be entitled to vote at such election unless he is a qualified voter under the laws of the state in effect at the time of such election for at least thirty days preceding the date of the election. The ballot proposition shall be substantially in the following form:

Establishment of Metropolitan Study Commission

"Shall a metropolitan study commission be established for

[2] Alternatively, establishment of a commission might be authorized by joint or concurrent resolution of governing bodies in the tentative metropolitan area.

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

YES .....

NO ....."

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

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

Section 5. Selection of Metropolitan Study Commission.

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

(1) One member selected by the /insert name of governing body/ of each component county.

(2) One member selected by the mayor and city council of each component city of at least 2,500 population; provided that any city having more than /_____/ population by the last official United States census shall be entitled to one more member for each additional /_____/

of population or fraction thereof.

(3) One member representing all cities under 2,500 population and /insert name of other types of units of general government/ to be selected by the /insert name of chief elected official, such as mayor or council president/ of such cities and /insert name of other units/; provided that if the combined population of such cities and /insert name of other units/ exceeds /_____/, they shall be entitled to one more member for each /_____/ additional population or fraction thereof. The members from such cities and /insert name of other units/ shall be elected as follows: The /insert name of chief elective official/ of all such units of government shall meet on the second Tuesday following the establishment of a metropolitan study commission and thereafter on (date) of each even-numbered year at /_____/ o'clock at the office of the /insert name of governing body/ of the central county. The chairman of such /county governing body/ shall preside. After nominations are made, ballots shall be taken and the /_____/ candidate(s) receiving the highest number of votes cast shall be considered elected. [3]

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

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

(b) Each member shall reside at the time of his appointment in the /insert name of unit/ by which appointed.

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

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

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

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

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

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

member he replaced.

(b) Members of a commission shall receive no compensation but shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

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

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

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

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

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

Section 10. Considerations in Setting Boundaries. In recommending boundaries and determining the need for furnishing metropolitan services, a commission shall study and take into consideration:

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

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

(c) The boundaries of existing units of local government;

(d) Population density, distribution and growth;

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

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

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

(h) Maintenance of citizen accessibility to, controllability of, and participation in local government;

(i) Such other matters as might affect provision of metropolitan services on an equal basis throughout the area, and provide more efficient and economical administration thereof.

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

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

(a) Consolidation of any existing /insert names of units of general government other than county/ with any other existing /repeat insert/;

(b) Consolidation of any /insert names of units of general government other than county/ with the county in which it lies;

(c) Consolidation of two or more counties;

(d) Annexation of unincorporated territory to any existing city;

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

(f) Creation of a new special service district to perform one or more metropolitan services, with provision for the dissolution of any existing special service districts performing like service or services within the proposed boundaries of such new district;

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

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

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

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

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

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

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

Section 14. Public Hearings on Proposed Program. Within two years after the date of its organization, a commission shall complete the preparation of its preliminary determination of boundaries and program for furnishing metropolitan services, and shall provide for adequate publication and explanation of the program. The commission shall fix the dates and places for public hearings on the program. Notice

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

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

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

after submission of the proposals by the commission.[5]

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

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

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

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

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

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

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

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

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

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

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

Section 19. Appropriations. The units of local government of the tentative metropolitan area may appropriate funds for the necessary expenses of the commission.

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

study commissions, the /If State has office of local government, insert its name/ is authorized to enter into contracts to make grants to metropolitan study commissions to help finance their activities. The amount of any such grant may equal but not exceed the amount of funds appropriated by local units of government pursuant to section 19.

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

Section 22. /Separability clause./

Section 23. /Effective date./

EXTRATERRITORIAL PLANNING, ZONING, AND SUBDIVISION REGULATION *

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

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

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

The suggested legislation is in the form of an amendment to existing state statutes on planning, zoning, and subdivision regulation. It is adapted from a 1959 North Carolina statute on extraterritorial zoning [1] recommended by the Municipal Government Study Commission of the North Carolina Assembly [2] and an earlier North Carolina statute on extraterritorial subdivision regulation.[3]

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* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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

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

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

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

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

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

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

whether it be giving municipalities greater initiative in annexation proceedings or, as in this case, greater control through extraterritorial zoning, should be accompanied by simultaneous strengthening of the state's regulation of new incorporations, as provided in suggested legislation on control of municipal incorporations (see page 137).

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

Suggested Legislation

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

(Be it enacted, etc.)

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

"Section /____/ Extraterritorial Jurisdiction.

(a) Planning. In any county not having a county planning agency with jurisdiction in the unincorporated territory, the legislative body of any municipality whose population at the time of the latest decennial census of the United States was (____) or more may exercise the comprehensive planning powers granted in /cite appropriate statutes/ not only within its corporate limits but also within (____)

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

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

(c) Subdivision Regulations. In any county not having county subdivision regulations applicable to the unincorporated territory, the legislative body of any municipality whose population at the time of the latest decennial census of the United States was (___) or more may exercise the subdivision regulation powers granted in /cite appropriate statutes/ not only within its corporate limits but also within (___) mile(s) in all directions of its corporate limits and not located in any other municipality;

Provided, that any ordinance intended to have application beyond the corporate limits of the municipality shall expressly so provide, and provided further that such ordinance be adopted in accordance with the provisions set forth therein.

"Section /___/ Boundary Lines. In the case of land lying outside a municipality and lying within a distance

of (___) mile(s) of more than one municipality, the jurisdiction of each such municipality shall terminate at a boundary line equidistant from the respective corporate limits of such municipalities, or at such line as is agreed to by the governing bodies of the respective municipalities.

"Section /~ ___ ~/ Representation on Boards and Commissions.

(a) Planning and Zoning. As a prerequisite to the exercise of such powers, the membership of the /~planning board~/ /~zoning commission~/ charged with the preparation of proposed comprehensive planning, zoning, and subdivision regulations for the (___) mile area outside the corporate limits shall be increased to include additional members who shall represent such outside area. The number of additional members representing such outside area shall be /~equal in number to the members of the (planning board) (zoning commission) appointed by the governing body of the municipality~/; provided, that if the extraterritorial area includes parts of two or more counties, the area included from each county shall have additional members /~equal in number to the members of the (planning board) (zoning commission) appointed by the governing body of the municipality~/. Such additional members shall be residents of the (___) mile area outside the corporate limits and shall be appointed by the board of county commissioners of the county wherein the unincorporated area is situated. Such members shall have equal rights,

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

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

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

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

"Section /___/ Enforcement. Any municipal governing body exercising the powers granted by this section may provide for the enforcement of its regulations for the outside area in the same manner as the regulations for the area inside the municipality are enforced."

Section 2. Separability. /Insert separability clause./

Section 3. Effective Date. /Insert effective date./

METROPOLITAN FUNCTIONAL AUTHORITIES *

A notable phenomenon of the past decade has been the proliferation of local public "authorities" or "special districts," generally created to provide a single type of governmental service or facility, e.g., housing, some phase of natural resources activity, sewage disposal, parks, hospital service, water supply, or other utility services. In 1962 there were 18,323 special district governments, half again as many as there were in 1952.[1] Much of the increase occurred in metropolitan areas; between 1957 and 1962, the number of special districts in the 212 areas officially recognized as SMSA's in 1962 rose from 3,736 to 5,411.[1] While most special districts are located outside city borders, a sizeable number (probably over 500) serve or are included in the metropolitan area central cities.

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

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

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* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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

chose, of handling numerous areawide services and functions. Secondly, by providing for a board of directors made up of members ex officio from boards of county commissioners, city councils, and mayors, the affairs of the corporation would be kept in the hands of elected officials and not entrusted to an independent, "untouchable" body. Poor performance of the corporation would carry the possibility of retribution at the polls for its board of directors. Third, the corporation could at the most result in the addition of a single unit of government in any given metropolitan area, while holding the potentiality of absorbing the functions and responsibilities of a considerable number of separate organizational units within the existing units of local government in the area.[2]

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

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

Suggested Legislation

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

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

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

(Be it enacted, etc.)

Title I

Purpose of Act, and Definitions

Section 1. It is hereby declared to be the public policy of the state of / / to provide for the people of the populous metropolitan areas in the state the means of obtaining essential services not adequately provided by existing agencies of local government. The growth of urban population and the movement of people into suburban areas has created problems of sewage and garbage disposal, water supply, public transportation, planning, parks and parkways which extend beyond the boundaries of cities, counties and special districts. For reasons of topography, location and movement of population, and land conditions and development, one or more of these problems cannot be adequately met by the individual cities, counties and districts of metropolitan areas. It is the purpose of this act to enable cities and counties to act jointly to meet these common problems in order that the proper growth and development of the metropolitan areas of the state may be assured and the health and welfare of the people residing therein may be secured.

Section 2. As used herein:

(a) "Metropolitan service corporation" means a municipal service corporation of the state of /_ _/ created pursuant to this act.

(b) "Metropolitan area" as used herein is an area designated as a "standard metropolitan statistical area" by the U.S. Bureau of the Census in the most recent nationwide Census of the Population.[1]

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

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

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

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

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

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

(i) "Special district" means any municipal corporation

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

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

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

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

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

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

(n) "Authorized metropolitan function" means a metropolitan function which a metropolitan service corporation shall have been authorized to perform in the manner provided in this act.

Title II

Area and Functions of a Metropolitan Service Corporation

Section 1. A metropolitan service corporation may be organized to perform certain metropolitan functions, as provided in this act, for a service area consisting of contiguous territory which comprises all or part of a metropolitan area and includes the entire area or two or more cities, of which at least one has a population of [50,000] or more; Provided, that if a metropolitan service corporation shall be authorized to perform the function of metropolitan comprehensive planning it shall exercise such power,

to the extent found feasible and appropriate, for the entire metropolitan area rather than only for some smaller service area. No metropolitan service corporation shall have a service area which includes only a part of any city, and every city shall be either wholly included or wholly excluded from the boundaries of a service area. No territory shall be included within the service area of more than one metropolitan service corporation.

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

(a) Metropolitan comprehensive planning.

(b) Metropolitan sewage disposal.

(c) Metropolitan water supply.

(d) Metropolitan public transportation.

(e) Metropolitan garbage disposal.

(f) Metropolitan parks and parkways.

(g) [ ]

(h) [ ]

Section 3. With respect to each function it is authorized to perform, a metropolitan service corporation shall make services available throughout its service area on a uniform basis, or subject only to classifications or distinctions which are applied uniformly throughout the service

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

Section 4. In the event that a component city shall annex territory which, prior to such annexation, is outside the service area of a metropolitan service corporation, such territory shall by such annexation become a part of the service area.

Title III

Establishment and Modification of a Metropolitan Service Corporation

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

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

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

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

(3) The board of commissioners of a central county.

A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the [board of commissioners] of the central county.

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

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

Upon receipt of such a petition, the [official] shall examine the same and certify to the sufficiency of the signatures thereon. Within thirty days following the receipt of such petition, the [official] shall transmit the same, together with his certificate as to the sufficiency thereof, to the legislative body of each county and city within the metropolitan area.

Section 2. The election on the formation of the metropolitan service corporation shall be conducted by the /appropriate official/ of the central county in accordance with the general election laws of the state and the results thereof shall be canvassed by the county canvassing board of the central county, which shall certify the result of the election to the board of county commissioners of the central county, and shall cause a certified copy of such canvass to be filed in the office of the secretary of state.[2] Notice of the election shall be published in one or more newspapers of general circulation in each component county in the manner provided in the general election laws. No person shall be entitled to vote at such election unless he is a qualified voter under the laws of the state in effect at the time of such election and has resided within the service area for at least /thirty/ days preceding the date of the election. The ballot proposition shall be substantially in the following form:

FORMATION OF METROPOLITAN SERVICE CORPORATION

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

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

the /_ _/ day of /_ _/ 19 /_ _/ to perform the metropolitan functions of /here insert the title of each of the functions to be authorized as set forth in the petition or initial resolution/?

YES..... /_/

NO ..... /_/

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

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

If a majority of the persons voting on the proposition shall vote in favor thereof the metropolitan service corporation shall be authorized to perform such additional metropolitan function or functions.

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

(a) The metropolitan council of a metropolitan service corporation may make or authorize studies to ascertain the desirability and feasibility of extending the service area of the corporation to include particular additional territory within the metropolitan area which is contiguous to the existing service area of the corporation. If such studies appear to justify, the metropolitan council may adopt a resolution stating that it has formally under consideration the annexation of certain territory to the service area. The resolution shall clearly describe the area or areas concerned,and shall specify the time and place of a public hearing to be held on the matter by the metropolitan council. Such resolution shall be published in one or more newspapers having general circulation in the metropolitan area, at least /~~thirty~~/ days before the date set for the public hearing.

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

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

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

(d) Any annexation to the service area of a metropolitan service corporation which is authorized in the manner provided above shall become effective on the date specified unless nullified pursuant to a popular referendum conducted as follows:

To be sufficient, a petition calling for a popular referendum on the prospective annexation of particular territory to the service area of a metropolitan service corporation

shall be signed by at least either: (1) /4/ per cent of the qualified voters residing within the entire service area of the corporation as prospectively enlarged; or (2) /20/ per cent of the qualified voters residing within the territory concerning which a referendum is proposed. The petition shall indicate such territory, in terms of any one or more entire areas specified for annexation by the metropolitan council resolution which is described in paragraph (3) above. Such petition shall be filed with the /appropriate official/ of the central county within /thirty/ days of the publication of the annexation resolution by the metropolitan council. The /official/ shall examine the same and certify to the sufficiency of the signatures thereon. If a sufficient petition is filed, the question specified by such petition shall be submitted at the next regular primary for general election held throughout the metropolitan area. If, at such election, a majority of the vote cast on the question within the service area of the metropolitan service corporation as prospectively enlarged shall vote against the annexation of a particular area or areas, the action of the metropolitan council with respect to such area or areas shall thereby be nullified. [3]

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

Title IV

Organization and Governing Body of a Metropolitan Service Corporation

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

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

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

(c) One member from each of the three largest component cities other than the central city, selected by, and from, the mayor and city council of each of such cities;

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

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

shall be taken and the /_ _7 candidate(s) receiving the highest number of votes cast shall be considered selected;

(e) One member, who shall be chairman of the metropolitan council, selected by the other members of the council. He shall not hold any additional public office other than that of notary public or member of the military forces of the United States or of the state of /_ _/, not on active duty.

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

proceedings which shall be a public record. Every legislative act of the council of a general or permanent nature shall be by resolution.

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

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

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

of [ ] dollars per diem but not exceeding a total of [ ] dollars in any one month, in addition to any compensation which they may receive as officers of component cities or counties: PROVIDED, That officers serving in such capacities on a full time basis shall not receive compensation for attendance at metropolitan council or committee meetings. Members of the council may be reimbursed for expenses actually incurred by them in the conduct of official business for the metropolitan service corporation.

Section 6. The name of a metropolitan service corporation shall be established by its metropolitan council. Each metropolitan service corporation shall adopt a corporate seal containing the name of the corporation and the date of its formation.

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

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

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

(b) To appoint or provide for the appointment of, and to remove or to provide for the removal of, all officers and employees of the metropolitan service corporation except those whose appointment or removal is otherwise provided for by this act /subject to the civil service provisions of [5] /.

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

(d) To employ such engineering, legal, financial, or other specialized personnel as may be necessary to accomplish the purposes of the metropolitan service corporation.

Title V

Duties of a Metropolitan Service Corporation

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

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5 Cite appropriate civil service statute provisions.

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

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

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

(a) To prepare a recommended comprehensive land use plan and public capital facilities plan for the metropolitan area as a whole.

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

cause such ordinances, resolutions and plans to be reviewed by the planning staff of the metropolitan service corporation and return such ordinances, resolutions and plans, together with their findings and recommendations thereon, within ninety days following their submission.

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

Section 5. A metropolitan service corporation shall offer to employ every person who on the date such corporation acquires a metropolitan facility is employed in the operation of such facility by a component city or county or by a special district. Where a metropolitan service corporation employs a person employed immediately prior thereto by a component city or county, or by a special district, such employee shall be deemed to remain an employee of such city, county or special district for the purposes of any pension plan of such city, county, or special district, and shall continue to be entitled to all rights and benefits thereunder as if he had remained as an employee of the city, county, or special district, until the metropolitan service corporation has provided a pension plan and such employee has elected, in writing, to participate therein. Until such election, the metropolitan service corporation shall deduct from the remuneration of

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

Title VI

General Powers of a Metropolitan Service Corporation

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

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

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

Section 4. A metropolitan service corporation shall have power to acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of facilities requisite to its performance of authorized metropolitan functions, together with all lands, properties, equipment and accessories necessary for such facilities. Facilities which are owned by a city or special district may, with the consent of the legislative body of the city or special districts owning such facilities, be acquired or used by the metropolitan service corporation. Cities and special districts are hereby authorized to convey or lease such facilities to a metropolitan service corporation or to contract for their joint use on such terms as may be fixed by agreement between the legislative body of such city or special district and the metropolitan council, without submitting the matter to the voters of such city or district.

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

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

Section 7. Except as otherwise provided herein, a metropolitan service corporation may sell or otherwise dispose of any real or personal property acquired in connection with any authorized metropolitan function and which is no longer required for the purposes of the metropolitan service corporation in the same manner as provided for cities of the [ ] class. When the metropolitan council determines that a metropolitan facility or any part thereof which has been acquired from a component city or county without compensation is no longer required for metropolitan purposes, but is required as a local facility by the city or county from which it was acquired, the metropolitan council shall by resolution transfer it to such city or county.

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

Title VII

Financial Powers of a Metropolitan Service Corporation [6]

Section 1. A metropolitan service corporation shall have power to set and collect charges for services it supplies and for the use of metropolitan facilities it provides.

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

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

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

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

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

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

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

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

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

Title VIII

Separability and Effective Date

Section 1. /Insert effective date./

Section 2. /Insert separability clause./

ASSERTION OF LEGISLATIVE AUTHORITY*

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

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

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* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

MUNICIPAL INCORPORATIONS *

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

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

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

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

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

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

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* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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

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

Suggested Legislation

/Title should conform to state requirements. The following is a suggestion: An act establishing a state office to review petitions for the incorporation of municipalities./

(Be it enacted, etc.)

Section 1. Purpose. Because of the growing urban population with subsequent increased demands for services, and because of the fragmented approach to fulfilling these demands due to the proliferation of municipalities, it is the purpose of this act to establish procedures for the review of new demands for municipal incorporations. The term municipalities as used herein includes /villages, towns, townships, boroughs, cities of all classes./

Section 2. Creation of an Office of Municipal Incorporation Review. There is hereby created an Office of Municipal Incorporation Review /in the department of state government in charge of local affairs if such exists/ to review petitions

for the incorporation of territory into municipalities.[1]

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

Section 3. Incorporation Procedure and Standards. Subsection(a). Standards for Initiating Petition.[2] If the proposed area for incorporation is found to be /__ __/ square miles in area, to include a population of /__ __/ with a density of /__ __/ per square mile, a petition may be prepared and submitted to the Director of the Office of

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

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

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

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

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

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

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

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

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

If the proposed corporation is to assume any property and obligations of a unit of government /such as county or township/ having jurisdiction within any part of the proposed incorporation area prior to the incorporation, the Director shall apportion such property and obligations in such manner as shall be just and equitable having in view the value of all such property, if any, located in the area to be incorporated, the assessed value of all the taxable property in each of the jurisdictions concerned, both within and without the area to be incorporated, the indebtedness, the taxes due and the delinquent and other revenue accrued but not paid to such jurisdictions. Subsequent to the apportionment, the area incorporated will not be liable for the remaining debts of such jurisdictions.

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

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

Subsection (e). Filing of Incorporation Document. Immediately upon the completion of the counting of the ballots, the /~~B~~oard of Elections/ shall execute a signed and verified certificate declaring the time and place of holding the referendum, that it has canvassed the ballots cast, and the number cast both for and against the proposition, and it shall then file the certificate with the Director of the Office of

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

Section 4. Appeals to the Supreme Court from Orders of the Director.[3] The /Court/ shall have original jurisdiction upon appeal to review the final orders of the Director. Any party may appeal to the /Court/ within thirty days after service of a copy of such order by service of a written notice of appeal on the Director of the Office of Municipal Incorporation Review. Upon service of the notice of appeal, the Director shall file with the clerk of the /Court/ a certified copy of the order appealed from, together with the findings of fact and the record, on which the same is based. The person

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

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

In reviewing the order of the Director, the /Court/ shall limit its review to questions affecting the jurisdiction of the Office of Municipal Incorporation Review, the regularity of the proceedings, and, as to the merits of the order, whether the determination was arbitrary, oppressive, unreasonable, fraudulent, or without substantial evidence to support it. The /Court/ may reverse and remand the decision of the Director with directions as it may deem appropriate and permit him to take additional evidence, or to make additional findings in accordance with law. Such appeal shall not stay or supersede the order appealed from unless the /Court/ upon examination of the order and the return made on the appeal, and after giving the respondent notice and opportunity to be heard, shall so direct; however, in no event shall the /Court/ so direct, when an order contemplates a referendum until subsequent to the said election.

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

Section 5. Separability. /Insert separability clause./

Section 6. Effective Date. /Insert effective date./

SECURING AND PRESERVING "OPEN SPACE"*

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

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

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

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* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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

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

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

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

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

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

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

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

Suggested Legislation

/Title should conform to state requirements. The following is a suggestion: "An act to provide for the acquisition and designation of real property by the state, counties, and municipalities[1] for use as permanent open-space land."/

(Be it enacted, etc.)

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

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

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

severe problems of urban and suburban living; that the provision and preservation of permanent open-space land are necessary to help curb urban sprawl, to prevent the spread of urban blight and deterioration, to encourage and assist more economic and desirable urban development, to help provide or preserve necessary park, recreational, historic and scenic areas, and to conserve land and other natural resources; that the acquisition or designation of interests and rights in real property by public bodies to provide or preserve permanent open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state; and that the exercise of authority to acquire or designate interests and rights in real property to provide or preserve permanent open-space land and the expenditure of public funds for these purposes would be for a public purpose.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) in connection with the real property acquired or designated for the purposes of this act, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities or structures that may be necessary to the provision, preservation, maintenance and management of the property as open-space land;

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

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

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

to enter into agreements for joint or cooperative action.

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

(1) appropriate funds;

(2) levy taxes and assessments;

(3) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state; and

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

Section 7. Planning for the Urban Area.[2] The state, counties, cities, towns, or other municipalities in an urban area, acting jointly or in cooperation, are authorized to perform comprehensive planning for the urban area and to establish and maintain a planning commission for this purpose and related planning activities. Funds may be appropriated and made available for the comprehensive planning, and financial or other assistance from the federal government and any other public or private sources may be accepted and utilized for the planning.

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

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

public body for the purposes of this act, assessments made on the property for taxation shall reflect any change in the market value of the property which may result from the interest held by the public body. The value of the interest held by the public body shall be exempt from property taxation to the same extent as other property owned by the public body.

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

(a) "Public body" means [ ]3

(b) "Urban area" means any area which is urban in character, including surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional and other activities.

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

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

(d) "Comprehensive planning" means planning for development of an urban area and shall include (1) preparation, as a guide for long-range development, of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development; (2) programing and financing plans for capital improvements; (3) coordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and (4) preparation of regulatory and administrative measures in support of the foregoing.

Section 10. Separability; Act Controlling. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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

CONTROL OF URBAN WATER SUPPLY AND SEWERAGE SYSTEMS

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

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

In view of the need for adequate water supply and sewerage system planning and control and the varying requirements of different parts of urban areas, the Advisory Commission on Intergovernmental Relations in its report, Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas, has recommended that "legislation be enacted endowing the appropriate State and local agencies with regulatory authority over individual wells and septic tank installations, with a view to minimizing and limiting their use to exceptional situations consistent with comprehensive land use goals." Model State legislation to meet these needs has been developed by a special advisory committee to the U. S. Public Health Service on the basis of a draft prepared by the Commission and staff of the Public Health Service. The

special committee included representatives from the Public Health Service, the Commission, the Housing and Home Finance Agency, the American Municipal Association, American Society of Planning Officials, National Association of Counties, National Association of Home Builders, Water Systems Council, Conference of State Sanitary Engineers, and the Septic Tank Industry.

In December, 1964 the Interstate Conference on Water Problems, an organization of State officials associated with the Council of State Governments, endorsed the draft legislation's principle of "combined planning and control for the balanced use of community and individual water supply and waste disposal systems."

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

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

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

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

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

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

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

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

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

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

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

The act makes installation of water supply and sewerage systems dependent on existence of an official plan. It provides that within a specified time after submission of the community plan, no individual or community water supply or sewerage system may be installed in the areas covered by the community plan unless an official plan is in effect in such areas, and the systems and installations are consistent with the official plan. Further, no State or local agencies may grant building permits or approve subdivision plans, maps, or plats unless individual or community water supply and sewerage systems covered by such permits, plans, maps, or plats are found to conform with the official plan.

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

Suggested Legislation

/Title should conform to State requirements/

(Be it enacted, etc.)

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

Section 2. Findings and Policy. (a) The (State) legislature finds that properly planned and installed individual and community water supply systems and sewerage systems in and near urban areas (1) assure the availability of adequate and safe water for various purposes, including drinking and culinary use, (2) promote the health and welfare of citizens of this State by preventing the pollution of ground and surface water, (3) eliminate nuisances and hazards to the public health, (4) contribute to proper conservation and use of ground water, (5) encourage economical and orderly development of land for residential, industrial, and other purposes, and are essential to the orderly processes of urban growth.

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

Section 3. Definitions. As used in this Act:

(a) "Community plan" means a comprehensive plan and all revisions thereto for the provision to a municipality or municipalities of both adequate water supply systems and sewerage systems, adopted by a municipality or municipalities having authority to provide or having jurisdiction over the provision of such systems.

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

(c) "Community water supply system" means a source of water and a distribution system including treatment facilities, whether publicly or privately owned, serving two or more individual lots.

(d) "Department" means the _____ State Department of Health or its authorized representative. 1/

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

(f) "Individual water supply system" means a single system of piping, pumps, tanks or other facilities utilizing a source of

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1/ The designated agency should be the one presently having authority to regulate sanitary practices within the State.

ground or surface water to supply only a single lot.

(g) "Lot" 2/ means a part of a subdivision or a parcel of land used as a building site or intended to be used for building purposes, whether immediate or future, which would not be further subdivided.

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

(i) "Official plan" means a community plan which has been approved by the Department.

(j) "Potable water" means water free from impurities in amounts sufficient to cause disease or harmful physiological effects with the bacteriological and chemical quality conforming to applicable standards of the Department. 3/

(k) "Subdivision" 4/ means the division of a single tract or other parcel of land, or a part thereof, into two or more lots, for the purpose, whether immediate or future, of sale or of building development, and shall also include changes in street lines or lot lines, provided, however, that divisions of land for agriculture

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2/ The definitions should be consistent with any definitions of the same terms established in the State's planning, subdivision control, and zoning enabling acts.

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

4/ See footnote 2/.

purposes into parcels of more than ____ acres not involving any new street or easement of access, shall not be included within the meaning of "subdivision."

(l) "Urban area" means any area designated by the Department in accordance with Section 5 (e).

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

(b) When more than one municipality has authority within a single urban area, the required community plan or any revision thereof may be submitted jointly by the municipalities concerned, or jointly by one or more of the municipalities with the concurrence of the others.

(c) Every community plan shall delineate, in accordance with applicable regulations adopted by the Department pursuant to Section 5 of this Act, those portions of the designated urban areas:

1. (i) where community water supply systems must be provided;

(ii) where individual water supply systems may be installed during an interim period pending the availability of a programmed community water

supply system;

(iii) where individual water supply systems may be installed.

2. (i) where community sewerage systems must be provided;

(ii) where individual sewerage systems may be installed during an interim period pending availability of a programmed community sewerage system;

(iii) where individual sewerage systems may be installed.

(d) In addition every required community plan shall:

(1) provide for the orderly expansion and extension of community water supply systems and community sewerage systems in a manner consistent with the needs and plans of the area;

(2) provide for adequate sewage treatment facilities which will prevent the discharge of untreated or inadequately treated sewage or other waste of a liquid nature into any waters, or otherwise provide for the safe and sanitary treatment of sewage and other liquid waste;

(3) delineate with all practicable precision those portions of the urban areas which community systems may reasonably be expected to serve within five years, ten years, after ten years, and any portions in which the provision of such services is not reasonably foreseeable, taking into consideration (i) all related aspects of planning, zoning, population estimates, engineering, and

economics, and (ii) any existing State plan affecting the development, use, and protection of water resources;

(4) establish procedures for delineating and acquiring on a time schedule consistent with that established in Subsection (d) (3) of this Section necessary rights-of-way or easements for community systems;

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

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

(7) include provision for periodic revision of the plan.

Section 5. Administration--Department Powers and Functions.

(a) The Department shall adopt and from time to time amend rules and regulations which provide for: (1) the control, limitation or prohibition of installing, and use of individual and community water supply systems and sewerage systems in accordance with the provisions of this Act; (2) the procedures in connection with the preparation, submission, revision, review, and approval or disapproval of community plans; (3) the minimum contents of such plans, and (4) the criteria upon which approval of such plans shall be based.

(b) Such regulations in providing criteria for the delineation in community plans of areas pursuant to Section 4 (c)

of this Act, and for the approval of community plans, shall be related to the present and future density of population, size of the lots, contour of the land, porosity and absorbency of the soil, ground water conditions and variations therein from time to time and place to place, including availability of water from unpolluted aquifers or portions thereof, type of construction of water supply systems and sewerage systems, size of the proposed development, and other factors reasonably necessary to implement the public policy as stated in Section 2 (b) of this Act.

(c) Such regulations shall:

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

(2) Permit in areas where community water supply systems or sewerage systems are not available nor required to be installed under Section 5 (c) (1) of this Act, but are programmed to become available within a reasonable period of time not to exceed _____ years, 5/ individual water supply systems or sewerage systems or both, provided that: (i) such individual water supply systems or

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

sewerage systems are adjudged by the Department to be adequate and safe for use during the period before a community water supply system or a sewerage system as the case may be are scheduled to become available and (ii) adequate provisions are made prior to or at the time of the installation of such individual systems to permit the discontinuance of their use and the connection of the premises served thereby to the community water supply system and the community sewerage system, respectively, in as economical and convenient a way as can be foreseen. Such provision for any subdivision shall include either the posting of a bond, with satisfactory surety, to secure to the municipality the actual construction and installation of such systems at a time fixed by the municipality not in excess of ____ years 6/ and in accordance with the regulations issued hereunder and with all other State and municipal requirements, or such other arrangements as may be deemed necessary and adequate to accomplish the purposes of this Section, and

(3) Permit in areas where community water supply systems or community sewerage systems are not available nor required to be installed under Section 5 (c) (1) of this Act, nor programmed to become available within a reasonable period of time not in excess of ____ years, 7/ individual water supply systems or sewerage systems, or both as the case may be, provided that such

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

7/ See footnote 6/.

individual systems are adjudged by the Department to be adequate and safe.

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

(e) The Department shall designate those areas for which municipalities are required to submit community plans and revisions thereto in which applicable regulations shall apply. The designation shall take into consideration such factors as present and future population trends and densities, patterns of urban growth, geographic features and political boundaries, the location and plans for location of utility systems, and the distribution of industrial, commercial, residential, governmental, institutional, and other activities.

(f) After public hearing upon not less than 60 days prior notice published in one or more newspapers as may be necessary to assure general circulation throughout the State 8/ such regulations shall be adopted, amended, or revised.

(g) The Department is hereby authorized to approve or disapprove community plans submitted in accordance with Section 4. The Department may approve a community plan in part provided that the part approved includes all the required elements for such plan and applies to at least ninety percent (90%) of that geographic

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

area of the municipality for which a plan is required. That part of the plan which is approved shall constitute the Official Plan for the area to which it is applicable. When the plan is disapproved, in whole or in part, the Department shall notify the municipality in writing setting forth the reasons for such disapproval. Any such disapprovals and any other actions of the Department under this law are subject to judicial review as to whether they are arbitrary, capricious or unreasonable, and otherwise as provided for under the laws of the State. 9/

(h) The Department, upon request, shall provide technical assistance and consultation to municipalities in preparing and coordinating community plans required in Section 4 of this Act, including revisions of such plans. Such assistance may include studies, surveys, investigations, research and analyses on its own initiative.

(i) The Department is authorized to administer grants to municipalities to assist them in preparing community plans required by Section 4 of this Act and for carrying out related studies, surveys, investigations, research, and analyses. Such grants shall be made from funds appropriated by the legislature for these purposes. For purposes of this Section, costs shall be exclusive of those reimbursed or paid by grants from the Federal Government. 10/

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

10/ Any State not wishing to establish such a grant program may simply omit this paragraph.

(j) For purposes of this Act, the Department is authorized to accept and administer Federal grants and to comply with any conditions imposed by Federal law or regulation in connection with such grants.

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

(l) There is appropriated $_____ to provide grants to municipalities as authorized under Subparagraph (i) of this Section and to cover necessary expenses of the Department in administering this Act.

Section 6. Conformance to Official Plan.

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

(b) Within six months after the submission of a community plan or revision thereof, or six months after the time prescribed in Subsection (a) of this Section for the submission of a community plan or revision thereof, whichever is earlier, the Department shall approve or disapprove the community plan or revision thereof. Any community plan or revision thereof which has been submitted in accordance with this Section and which has not been disapproved by the Department within the time required by this Section shall be

deemed to be approved.

(c) After nine months following the submission of a community plan, or revision thereto, or nine months following the time within which a community plan or revision thereto is required to be submitted under Subsection (a) of this Section, whichever is earlier, or after such later date as may be established by the Department for good cause shown, no community water supply system or sewerage system, or individual water supply system or sewerage system may be installed in those geographic areas to which such community plan or revision thereto relates unless an official plan and any required revisions are in effect in such areas, and such system and installation are consistent with the official plan and any required revision thereto and with applicable rules and regulations.

(d) No State or local authority empowered to grant building permits or to approve subdivision plans, maps, or plats shall grant any such permit or approve any such plan, map, or plat which provides for individual or community water supply or sewerage systems unless such systems are found to be in conformance with the Official Plan and applicable rules and regulations. 11/ As a condition of such approval, the transfer of community systems to a municipality may be required in accordance with applicable provisions of State law as to compensation.

(e) Applicants for building permits and subdivision approvals,

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11/ See footnote 9/.

and water supply systems and sewerage systems construction approval, shall submit to the approving authority such information, in such form as may be reasonably necessary and required to show compliance with Subsection (c) of this Section.

(f) Any violation of Subsection (c) of this Section shall be punishable by a fine not to exceed $ _____. 12/ This shall be in addition to all other remedies and sanctions provided by law.

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

Section 8. Conflict with Other Laws. The provisions of any zoning ordinance, subdivision regulation, building code, or other law or regulation of any municipality of the State establishing standards designed to afford greater protection to the public health, safety, and welfare of the community shall prevail over regulations adopted pursuant to this Act within the area over which the municipality has jurisdiction.

Section 9. Severability. /Insert severability clause./

Section 10. Effective Date. /Insert effective date./

12/ Penalty under this Act should be consistent with penalties under subdivision regulations and building codes within the State. A commonly used penalty is $100 with any persistent condition constituting a new violation each day it continues.

MASS TRANSPORTATION IN METROPOLITAN AREAS *

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

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

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

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

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

Suggested Legislation

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

(Be it enacted, etc.)

Section 1. Purpose. The legislature hereby finds and declares that (a) adequate and efficient mass transportation services are essential in the economic growth of the metropolitan areas of the state and the well-being of its people; (b) the state should have a general mass transportation policy growing from consultation among the various departments and agencies of the state, and with the communities of the state, neighboring states and the federal government; (c) financial and technical assistance should be provided to the urban communities of the state with respect to organizing and financing adequate mass transportation facilities and services; and (d) responsibility for leadership and direction should be vested in an agency of the state to assist and advise the Governor and the legislature in the development of such programs and policies.

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

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

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

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

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

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

and research organizations.

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

Section 7. Separability. /Insert separability clause./

Section 8. Effective Date. /Insert effective date./

CHANNELIZATION OF FEDERAL GRANT PROGRAMS FOR URBAN DEVELOPMENT

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

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

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

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

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

boundaries as part of an interrelated system, yet close enough to enable it to treat urban regional problems individually and at first hand. [1]

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

In 1955, the Commission on Intergovernmental Relations (Kestnbaum Commission) found very few states offering significant financial aid for public housing and slum clearance, but it urged more states to follow those examples. In 1962, 14 states were providing direct financial aid to their localities for housing to be rented or sold, and four authorized grants or loans to assist municipalities in paying the local share of federally aided renewal projects.[2] In the airport program, 33 states assist their localities to some degree, and 13 have regular cost-sharing keyed to the federal grant program. In addition, a few states contribute to the non-federal shares of programs for urban planning assistance, hospital and medical facilities construction, and waste treatment works.

The Advisory Commission on Intergovernmental Relations has recommended "that the states assume their proper responsibilities for assisting and facilitating urban development; to this end it is recommended that federal grants-in-aid to local governments for urban development be channeled through the states in cases where a state (a) provides appropriate administrative machinery to carry out relevant responsibilities, and (b) provides significant financial contributions, and when appropriate, technical assistance to the local governments concerned." [3]

State legislation to carry out these responsibilities for urban development should establish appropriate administrative machinery and technical assistance programs, as well as financial assistance

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

2 Book of the States, 1962, 1963 (Chicago: Council of State Governments, 1962), pp. 456-460.

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

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

The following legislation would (1) authorize state financial and other assistance to localities for specified purposes, (2) designate appropriate state administrative machinery to carry out the states' urban development responsibilities, (3) appropriate funds for carrying out the purposes of the Act, and (4) provide that where the foregoing three conditions are met with respect to any federal aid program, all funds and relationships with respect to such program would flow through the state except as might be provided otherwise for purposes of administrative convenience by the state agency concerned.

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

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

Suggested Legislation

/Title should conform to state requirements./

(Be it enacted, etc.)

Section 1. Programs Authorized. The legislature finds that the federal government has established and continues to establish grant programs of direct assistance to the local governments of the state, and that, due to the large number of local governments in the state's urban areas and the lack of coincidence of service needs and tax jurisdictions, it is frequently difficult for local government to marshal the technical and financial resources needed to meet the needs of its residents. In order to assume its proper responsibility and leadership in meeting the needs of its urban residents, it is the declared policy of the state to render technical assistance, to contribute to the non-federal share of the cost of the following federally aided programs, and to assume responsibility for coordinating relationships between local governments and federal agencies with regard to such programs: [1]

(a) Open Space. A combination of economic, social, demographic, governmental, and technological forces have caused a rapid expansion of the state's urban areas, which has created critical problems of service and finance for local governments

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

and threatens severe problems of urban and suburban living, including the loss of valuable and vitally necessary open space land in such areas. Open space grants made in accordance with this Act shall be for the purpose of helping to curb urban sprawl, prevent the spread of urban blight and deterioration, encourage more economic and desirable urban development, and provide necessary recreational, conservation, and scenic areas. The /appropriate state agency/ shall administer such grants.[2] State grants shall be /20 to 50/ percent of the non-federal share of the individual project costs.

(b) Urban Planning. Haphazard and unplanned urban development increases the cost of local government, makes adequate public services difficult to provide, and results in the creation of undesirable living environments. Urban planning grants made pursuant to this Act shall be for the purpose of helping local governments to solve planning problems resulting from the increasing concentration of population in urban areas, including small communities as well as large, on a continuing and coordinated basis, and to encourage the establishment and improvement of local planning staffs. The /appropriate state agency/ shall administer such grants. State grants shall be /20 to 50/ percent of the non-federal share of

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

the individual project costs.

(c) Urban Renewal. Many areas of urban development have become or are becoming obsolete, substandard, or unfit for human habitation. Land ownership patterns and financial problems frequently impede the renewal of such areas through unassisted private efforts. In order to protect the health, safety, and general welfare of the citizens of the state, urban renewal grants given in accordance with this Act shall be for the purpose of helping to eliminate urban blight and to renew obsolete patterns of urban development. The /appropriate state agency/ shall administer such grants. State grants shall be /20 to 50/ percent of the non-federal share of the individual project costs.

(d) Public Housing. Many families inhabiting substandard housing which should be condemned for public health and other purposes cannot afford adequate housing at prices or rents which the private housing industry can provide. Public housing grants given in accordance with this Act shall have the purpose of helping families having financial need to be accommodated in safe and sanitary housing in a suitable living environment. The /appropriate state agency/ shall administer such grants. State grants shall be /20 to 50/ percent of the non-federal share of the individual project costs.

(e) Airport Development. Civilian air transportation of both freight and passengers is an essential element of the economy and welfare of the state. The airport is the nucleus

of an adequate air transportation system. The safe and efficient movement of air traffic depends upon the adequacy of each airport and of the airport system. Airport development grants made in accordance with this Act shall be for the purposes of planning, constructing, and developing airports important to the continued growth and safety of air commerce within the state. The /appropriate state agency/ shall administer such grants. State grants shall be /20 to 50/ percent of the non-federal share of the individual project costs.

(f) Hospital and Medical Facility Construction. The health and well-being of the state's citizens depend in large measure upon an adequate supply of hospital and other medical facilities. Hospital and medical facility construction grants made in accordance with this Act shall be for the purposes of helping local governments plan for and assist in assuring adequate hospital and other medical facilities. The /appropriate state agency/ shall administer such grants. State grants shall be /20 to 50/ percent of the non-federal share of the individual project costs.

(g) Waste Treatment Works. Water pollution is becoming an increasing hazard to the public health and welfare of the citizens of this state, and is causing increased burdens on local governments in assuring an adequate supply of water for domestic use, and recreational areas for the use of their citizens. Grants for waste treatment works made in accordance

with this Act shall be for the purpose of preventing and controlling water pollution by means of planning and providing works for the collection and treatment of sewage. The /appropriate state agency/ shall administer such grants. State grants shall be /20 to 50/ percent of the non-federal share of the individual project costs.

Section 2. Relationships with Federal Agencies. (a) All applications for federal grants for purposes of the programs designated in Section 1 shall be submitted to the state agencies designated in Section 1. The directors of said state agencies shall approve or disapprove state grants to apply toward the non-federal share of project costs consistent with the purposes of Section 1. Such approval may be conditional upon subsequent approval of the project by an appropriate federal agency for federal grant funds. Upon approval of the application, the directors shall transmit it to the appropriate federal agency. Any application disapproved by the director of the appropriate state agency shall be returned to the applicant with written notice of the modifications necessary to make the project eligible, in terms of state or federal policy.

(b) The directors of said state agencies are authorized to provide by administrative regulation the procedures by which negotiations and other relationships between local units of government and federal agencies are conducted with respect to

programs designated in Section 1.

Section 3. Technical Assistance and Administration. Directors of the state agencies designated in Section 1 shall establish appropriate technical, administrative, coordinative, and other measures relating to project sponsors within the state eligible for federal grants in order to facilitate their participation in the programs established by this Act. They shall establish, with the approval of the governor, such rules and regulations as may be necessary to carry out their responsibilities in accordance with the purposes of this Act.

Section 4. Appropriations. The following sums are hereby appropriated to carry out the purposes of this Act for the year. /Insert a specific number of dollars for each lettered paragraph of Section 1, and, if desired, a percentage limitation on the portion of the funds which may be used for administration and technical assistance./

Section 5. Separability. /Insert separability clause./

Section 6. Effective Date. /Insert effective date./

METROPOLITAN AREA PLANNING COMMISSIONS*

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

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

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

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

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

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

It should be noted that the Congress in the Housing Act of 1961 has granted advance consent to interstate compacts for urban planning functions in interstate metropolitan areas.

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

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

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

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

Another approach to organizing for the provision of planning services within a metropolitan area is provided by the "Metropolitan Functional Authorities" proposal in this Program on page 85.

Suggested Legislation

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

(Be it enacted, etc.)

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

policies of the separate units of government comprising the area.

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

(a) Two or more adjacent incorporated municipalities, two or more adjacent counties, or one or more counties and a city or cities within or adjacent to the county or counties may, by agreement among their respective governing bodies, create a metropolitan area planning commission, provided (1) that in the case of municipalities and cities, the largest one within the metropolitan planning area, as defined in Section 3, shall be a party to the agreement; and (2) that the number of counties, cities, other municipalities, townships, school and other special districts or independent governmental bodies party to the agreement shall equal 60 per cent or more of the total number of such counties, cities and other local units of government within the metropolitan area,[1] as defined in Section 3. The agreement shall be effected through the adoption by each governing body concerned, acting individually, of an appropriate resolution. A copy of such agreement shall be filed with the /chief state records officer/, /state office of local affairs/ and /state

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

planning agency.7

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

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

Section 3. Designation of a Metropolitan Planning Area. "Metropolitan area" as used herein is an area designated as a "standard metropolitan statistical area" by the U. S. Bureau of the Census in the most recent nationwide Census of the Population.[2] The specific geographic area in which a metropolitan area planning commission shall have jurisdiction shall be stipulated in the agreement by which it is established.

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

Section 4. Membership and Organization. Except as provided below, membership of the commission shall consist of representatives from each participating government or stipulated combinations thereof, in number and for a term to be specified in the agreement. Such representatives shall consist of elected officials, except that the Commission may appoint not to exceed [ ] members from the general public, such members to have demonstrated outstanding leadership in community affairs. A representative of the state government may be designated by the Governor to attend meetings of the commission. Members of the commission shall serve without compensation, but shall be reimbursed for expenses incurred in pursuit of their duties on the commission. The commission shall elect its own chairman from among its members, and shall establish its own rules and such committees as it deems necessary to carry on its work. Such committees may have as members persons other than members of the commission and other than elected officials. The commission shall meet as often as necessary, but no less than four times a year.

The commission shall adopt an annual budget, to be submitted to the participating governments which shall each contribute to the financing of the commission according to a formula specified in the agreement. Subject to approval of any application therefor by the [appropriate state agency], a metropolitan area planning commission established pursuant

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

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

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

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

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

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

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

(2) Recommendations for the most desirable pattern and intensity of general land use within the metropolitan area, in the light of the best available information concerning natural environmental factors, the present and prospective economic and demographic bases of the area, and the relation of land use within the area to land use in adjoining areas. The land use pattern shall include provision for open as well as urban, suburban, and rural development.

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

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

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

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

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

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

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

(e) Participate with other government agencies, educational institutions and private organizations in the coordination of metropolitan research activities defined under (c) and (d).

(f) Cooperate with, and provide planning assistance to county, municipal or other local governments, instrumentalities or planning agencies within the metropolitan area and coordinate metropolitan area planning with the planning activities of the state and of the counties, municipalities,

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

(g) Provide information to officials of departments, agencies and instrumentalities of federal, state and local governments, and to the public at large, in order to foster public awareness and understanding of the objectives of the metropolitan area plan and the functions of metropolitan and local planning, and in order to stimulate public interest and participation in the orderly, integrated development of the region.

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

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

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

The metropolitan planning commission may exercise its powers jointly or in cooperation with agencies or political subdivisions of this state or any other state, or with agencies of the United States, subject to statutory provisions applicable to interjurisdictional agreements.

Section 7. Certification and Implementation of Metropolitan Area Plans. All comprehensive metropolitan area plans as defined under Section 6(a) as well as zoning, subdivision and platting regulations, proposed under Section 6(b) shall be adopted by the metropolitan area planning commission after public hearing, and certified by the commission to all local governments, governmental districts and special purpose authorities within the metropolitan area. The agreement creating the metropolitan area planning commission shall specify that these plans be implemented in the following way: The metropolitan area plans and regulations, or parts thereof, may be officially adopted by any local government, governmental district or special purpose authority within the metropolitan area, and when so adopted shall supersede previous local plans and regulations.

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

and all participating local governments, governmental districts and special purpose authorities shall, file with the metropolitan planning commission all current and proposed plans, zoning ordinances, official maps, building codes, subdivision regulations, and project plans for capital facilities and amendments to and revisions of any of the foregoing, as well as copies of their regular and special reports dealing with planning matters. Each governmental unit within the geographic area over which a metropolitan area planning commission has jurisdiction shall afford such commission a reasonable opportunity to comment upon any such proposed plans, zoning, subdivision and platting ordinances, regulations and capital facilities projects and shall consider such comments, if any, prior to adopting any such plan, ordinance, regulation or project. By appropriate provision of an agreement, the parties thereto may require that as a condition precedent to their adoption, any or all proposed plans, zoning, subdivision and platting ordinances, regulations, and capital facilities projects of their respective jurisdictions be determined by the metropolitan area planning commission to be /in conformity with/ /not in conflict with/ the relevant plan of the commission, but any power so to pass upon proposed plans, ordinances, regulations or projects shall be exercisable only with respect to the jurisdictions party to the agreement.

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

Section 10. Separability. /Insert separability clause./

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

C. OTHER INTERGOVERNMENTAL PROBLEMS

Introductory Statement

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

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

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

The basis for the distribution of seats in State legislatures lies at the core of the democratic process. Although the question of apportionment formulas to be used is now to be determined pursuant to interpretation of the Constitution of the United States, there remains significant scope for State discretion. However, if the task of apportioning legislative seats according to a State constitutional formula is not to be assumed by the courts, State constitutions must contain a detailed and specific procedure to insure proper and timely apportionment.

OFFICE OF LOCAL AFFAIRS*

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

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

Two points regarding the suggested legislation deserve emphasis:

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

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

Suggested Legislation

/Title should conform to state requirements/

(Be it enacted, etc.)

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

*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

governmental needs of metropolitan and nonmetropolitan areas by establishing an agency of state government concerned with collecting information and making evaluations about metropolitan and local conditions and relations and aiding in the development of both remedial and preventive programs./ [1]

Section 2. Creation of the Agency. There is hereby created the Office of Local Affairs to be located in /the office of the Governor/.[2]

Section 3. Chief and Staff of Agency. The Office of Local Affairs shall be directed by a chief who shall be appointed /by the Governor and who shall serve at his pleasure/. The staff of the Office shall be appointed by the chief /subject to state civil service regulations/.

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

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

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

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

which involve significant relationships with local governments.

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

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

(d) To serve as a clearinghouse, for the benefit of local governments, of information concerning their common problems and concerning state and federal services available to assist in the solution of those problems.

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

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

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

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

Section 6. Severability. /Insert severability clause./

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

STATE ASSISTANCE FOR INTERLOCAL COOPERATION *

Many organizations of Government officials have recognized the need for authority by local governments, especially in urban areas, to cooperate with each other where the efficient and economical provision of governmental services requires functions to be administered within geographic areas larger than the boundaries of the existing political subdivisions. Such cooperation permits local governments to cope more adequately with areawide problems, finance necessary services on an equitable basis, take advantage of the economies of scale, and avoid creation of special districts. The Committee on Suggested State Legislation included in its 1957 program proposed state legislation authorizing localities to participate in joint undertakings with other localities having common interests. At least 45 states have adopted all or a portion of such general interlocal cooperation authority. Other legislation endorsed in previous years by the Committee has included voluntary transfer of functions between municipalities and counties, and removal of constitutional barriers to intergovernmental cooperation.

However, such legislation by itself does not actively promote joint undertakings nor permit a positive state role. In addition, states should consider the enactment of legislation to actively encourage joint undertakings by local governments having common program objectives affecting the development of urban areas overlapping existing political boundaries. A new Georgia act, enacted in 1963, authorizes state aid where political subdivisions establish joint undertakings. It is an example of how other states might actively encourage joint urban development efforts by two or more of their political subdivisions.

Briefly, the Georgia act authorizes all state departments and agencies, empowered to assist individual political subdivisions in the state, to also assist any two or more such political subdivisions jointly in cases where the political subdivisions are "able and willing to provide for the consolidation, combining, merger, or joint administration of...any...function...by the two or more units, so as to effectuate economy or simplification in the administration or financing thereof." [1] The Georgia law also provides that the state share of financial assistance can be increased for joint projects.

The new Georgia law is reproduced below and suggested for consideration by other states wishing to furnish or make available services, assistance, funds, property and other incentives to any

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

1 Section 1, Act No. 303, Georgia Laws 1963, p. 354.

two or more localities in connection with joint undertakings.

The last sentence in Section 1 authorizing the state to assume up to the entire cost of the consolidated program, and Section 3 authorizing state agencies to consolidate their field offices for such consolidated programs are intended to meet Georgia's statutory needs which may not be present elsewhere. Other states considering this legislation may therefore not wish to include these provisions.

Suggested Legislation

/Title should conform to state requirements./

(Be it enacted, etc.)

Section 1. The state and all departments, boards, bureaus, commissions and other agencies thereof are hereby authorized and empowered, within the limitations of the Constitution, to furnish and make available services, assistance, funds, property and other incentives to any two or more counties, municipal corporations, public corporations, and other subdivisions of this state, or any combination thereof, in connection with any program of services, benefits, administration or other undertaking in which the state or any of its above-named agencies participates by furnishing supervision, services, property, administration of funds, where such counties, municipal corporations, public corporations or other subdivisions are thereby able and willing to provide for the consolidation, combining, merger or joint administration of such program or any part or function thereof, by the two or more units, so as to effectuate economy or simplification in the administration or financing thereof. /The incentives hereinbefore referred to

shall also include the assuming by the state or its agencies of a greater share, or where funds are available and such is deemed feasible, the entire cost of such participating program./ [2]

Section 2. The state and all of its aforesaid agencies are hereby authorized to execute such contracts, plans or other documents as may be necessary or desirable to effectuate the purposes hereof.

/Section 3. The state and all of its aforesaid agencies are likewise empowered to establish and maintain area offices for such combined, consolidated or merged undertakings./ [2]

Section 4. The state and its aforesaid agencies shall be authorized to prescribe such reasonable rules, regulations and requirements, and to require the submission of such plans and reports from the participating units, as may be deemed necessary or desirable to the proper administration of this act.

Section 5. /Insert effective date./

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[2] As indicated in the explanatory statement, this language reflects Georgia's statutory needs and may not be appropriate in other states.

STATE WATER RESOURCES PLANNING AND COORDINATION*

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

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

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

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

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

*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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

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

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

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

Suggested Legislation

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

(Be it enacted, etc.)

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

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

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

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

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

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

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

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

(c) Consultations. In developing recommendations for the Governor relating to the use and control of the water resources of the state, the Director shall: (1) consult with representatives of any federal, state, interstate, or local units of government which would be affected by such recommendations; and (2) be authorized to appoint such interdepartmental and public advisory boards as necessary to advise him in developing policies for recommendation to the Governor.

(d) Local Assistance. The Director shall encourage, assist and advise regional, metropolitan, and local governmental agencies, officials or bodies responsible for planning in relation to water aspects of their programs, and shall assist in coordinating local water resources activities, programs and plans.

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

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

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

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

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

(c) Water navigation facilities.

(d) Hydroelectric power.

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

(f) Land stabilization measures.

(g) Drainage measures, including salinity control.

(h) Watershed protection and management measures.

(i) Outdoor recreational and fish and wildlife opportunities.

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

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

Section 6. Separability. /Insert separability clause./

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

STATE AND LOCAL GOVERNMENT RETIREMENT SYSTEMS*

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

1. Extending staff retirement coverage to all public employees.

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

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

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

*Included in Council of State Governments' SUGGESTED STATE LEGISLATION, with some modifications (see footnotes).

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

Legislative action would be required in 15 states to make all public employees eligible for staff retirement coverage in a state administered system. Action should be taken to establish general public employee retirement systems for state and local employees in the 3 states having no system. Existing legislation should be amended in 12 states to enable employees of all local units of government to participate in state administered systems. The states should take the lead in assisting local governments in providing retirement coverage for their employees, because it is difficult even for the larges to maintain financially sound retirement systems.

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

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

2. Consolidation of existing public employee retirement systems.

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

States should provide the necessary leadership for retirement system consolidation by encouraging the merger of economically precarious small systems, preferably by making it possible for all local units of government to participate in state administered

retirement systems. The general guidelines in the preceding section are equally appropriate for legislation to deal with the consolidation problem. Action in this regard is essential or state and local governments risk failure to attract qualified personnel, and employees risk the loss of pension dollars.

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

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

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

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

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

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

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1 The Committee of State Officials on Suggested State Legislation of the Council of State Governments differs with the Advisory Commission on this point, stating that "a requirement in the range of 10 to 15 years for vesting appears to be the most reasonable from the standpoint of both the employer and employee." However, we have found that the trend in the number of years service required for vesting is definitely downward and by now has already reached a figure lower than the maximum recommended by the Council of State Governments.

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

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

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

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

The suggested retirement act presented here is patterned largely after the Illinois Reciprocal Retirement Act. It provides essentially that after the employee has completed at least two[2]

2 The Committee of State Officials on Suggested State Legislation of the Council of State Governments believes that an employee should be required to complete at least 5 years of service in the employment of a participating unit of government to receive retirement credit for this service. The Advisory Commission has found that 26 states have reciprocal arrangements between at least 2 of their major retirement systems. Most of these arrangements do not have such a lengthy requirement as 5 years service in a system. Since the report was issued, the states of Colorado, Idaho, and New Mexico have adopted some type of reciprocal arrangement bringing the total number of states which have some such provisions to 29.

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

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

Suggested Legislation

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

(Be it enacted, etc.)

Section 1. There is hereby established a plan for the continuity and preservation of pension credit, in the case of employees transferring employment from one governmental unit to another governmental unit, if such employees shall have acquired such credit in any established retirement system or pension fund

maintained by any such governmental unit. The purpose of this plan is to assure full and continuous pension credit for all service rendered by a person in public employment which service is covered by a retirement system or pension fund authorized by state law.

Section 2. As used in this act:

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

(b) "Governmental Unit" means the state or any agency or instrumentality thereof, or any political subdivision or municipal corporation, which maintains a retirement system for the benefit of its employees;

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

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

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

(f) "Pension credit" means credits or equities acquired by an employee toward a retirement annuity from a public employees' retirement system in the form of contributions or services defined under the provisions of the act governing each retirement system in which he has such credits of equities, except credits and equities (1) of less than two years in any one system,[3] or (2) which were granted during the periods when the employee was in receipt of a retirement annuity from any of the retirement systems covered by this Act, or (3) which have previously been applied towards a retirement annuity and have not been re-established in accordance with the provisions of the Act governing the retirement system from which the retirement annuity has been received; and

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

Section 3. Any employee who has withdrawn or withdraws from the service of one employer and then or later enters the service of another employer covered by the provisions of this Act, and who has not forfeited his pension credit in the retirement system maintained by the employer from whose service he has

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3 See footnote 2.

withdrawn, shall be entitled to a proportional retirement annuity, computed as stated herein, for the periods of credited service in each retirement system, notwithstanding that the employee may not have fulfilled the minimum service requirement prescribed by any retirement system for the receipt of a retirement annuity. If a retirement system provides no refund of contributions, the pension credit in the case of any employee who shall have participated in such system shall be considered effective for the purposes of this Act.

Eligibility for a proportional retirement annuity in each retirement system under the provisions of this Act shall be determined by taking into account the entire length of service of the employee for which he has been granted pension credit under all retirement systems particpating under this Act, provided that in order to qualify for either proportional annuity from any of such retirement systems the employee must have a combined pension credit at least equal to the longest minimum qualifying period prescribed by any of the retirement systems involved in the combined pension credits.

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

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

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

If, at the date of retirement, the employee shall have attained the age prescribed for the receipt of a minimum retirement annuity under any retirement system subject to the provisions of this Act which prescribes a minimum retirement annuity, in which he has a pension credit, and his combined pension credit in all retirement systems participating under this Act is sufficient to meet the service qualification prescribed in the applicable retirement system for the receipt of a minimum retirement annuity, the employee shall have the option of receiving the proportional retirement annuity based upon the minimum annuity formula applicable in each such system.

If any proportional retirement annuity is calculated upon the basis of the average salary of an employee for a specified

number of years of service, and the employee has to his credit in a system fewer years than the prescribed number, the actual number of years of credited service in the retirement system computing the proportional annuity shall be used as the basis for such calculation.

If (1) a minimum annuity formula available for the completion of a specified minimum period of service under the retirement system provides a definite sum or percentage of average compensation for completion of such minimum service, in addition to a certain percentage of average compensation for each year of service, and (2) the employee has not received credit in the retirement system for the minimum number of years required to qualify for such minimum benefit formula, and (3) the combined pension credits under all systems are equal to or more than the period of service prescribed in the system for the receipt of a minimum annuity, the employee shall be entitled to that portion of the definite sum or percentage of average compensation which his service in such retirement system bears to the minimum service required by that system to qualify for such minimum formula.

/Section 5.1. Notwithstanding the provisions of the other sections of this Act, or the acts governing those retirement systems covered by this Act, the alternative formula prescribed in this section for calculation and payment of the retirement annuity, shall be applicable in lieu of the formula prescribed in the other sections of this Act, if the employee pays to the

system under which retirement occurs prior to the date his retirement annuity begins, an amount equal to 1 percent of the actual annual full-time rate of salary on the date of separation from service under each of the other systems, multiplied by the number of years of pension credits in each of these systems which are considered by the system under which retirement occurs in determining the retirement annuity payable under this section and for which contributions were made by the employee.

The system under which retirement occurs shall calculate and pay a retirement annuity based upon the combined pension credits under all systems participating under this section, using the final average salary and formula prescribed by the system under which retirement occurs. Service rendered prior to a break in employment of more than 12 months under governmental units covered by the retirement systems which are subject to this Act, shall not be considered, by the system under which retirement occurs, in determining the retirement annuity payable under this section. If an employee is concurrently employed by governmental units covered by two or more systems participating under this section during a period of service which is used in determining the average salary on which his annuity is based, his earning credits under all of these systems during the period of concurrent employment shall be considered by the system under which retirement occurs in computing his final average salary.

If an employee who becomes entitled to retirement benefits under this section, has elected a deferred annuity under any of

the systems participating under this section and in which he has pension credits, the system under which retirement occurs shall reduce the retirement annuity otherwise payable under this section, by the actuarial equivalent of the amount required to provide the deferred annuity. This actuarial equivalent shall be determined by and in accordance with the actuarial tables of of the system under which the election of the deferred annuity is made.

Each of the other systems participating under this section in which the employee has pension credits, shall assume a portion of the annuity liability by paying at least annually to the system under which retirement occurs, the amount of the proportional retirement annuity which would otherwise have been payable under the other sections of this Act, and the employee concerned shall, by the acceptance of the retirement annuity payable under this section, waive and forfeit the right to receive such proportional retirement annuity from such other systems. If the minimum age requirement of the system under which the retirement occurs is lower than that of any of the other systems in which the employee has pension credits, the payment by such other system to the system under which retirement occurs shall be deferred until the minimum age requirement of such other system has been met.

For the purpose of this section, the system under which retirement occurs and to which the employee last contributes

for a period of five[4] or more years shall be the system to which this section applies. If the employee contributes concurrently to two or more of such systems during this period, the system under which retirement occurs shall be that system under which he has the greatest earnings credits during the period of concurrent employment, or if he has equal earnings credits under these systems during this period, the system under which he has the longest period of pension credits.

The alternative formula prescribed in this section shall be used only in determining the retirement annuity.7

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

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4 The Committee of State Officials on Suggested State Legislation of the Council of State Governments recommends that an employee should be required to spend at least 10 years in the service of the final unit of government by which he is employed in order to receive the benefits from all of the other reciprocal units. Most of the same arguments for the 5-year vesting as opposed to the 10 to 15 years vesting are applicable to such a 10-year requirement. With the complex problems which confront all levels of government and with the difficulties involved in attracting capable personnel into the public service at the present time, the Commission does not see justification for attempting to anchor an employee into a position for more than 5 years.

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

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

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

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

Section 11. Each retirement system shall submit to the other retirement systems, upon request, a report, properly certified, regarding the length of service rendered for the purpose of establishing the employee's eligibility for retirement and any other pertinent information as may be necessary in the administration of this Act and to effectuate the provisions thereof.

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

Two or more retirement systems subject to the provisions hereof may agree, at the time of retirement of an employee, to have the retirement system under which the employee retires to pay currently the combined amounts of the proportional payments on account of the retirement annuity. Such agreement shall be evidenced by a written document between two or more retirement systems in the form agreed upon between them. At the end of each fiscal year of the last retirement system,

reimbursement thereto shall be made by the other retirement systems providing proportional annuities of the amount paid on their account by the last retirement system. Such arrangement shall be optional with the several retirement systems. If no such arrangement is made, each retirement system shall pay its own proportional annuities to the beneficiaries entitled thereto.

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

LOCAL GOVERNMENT RESIDUAL POWERS*

A familiar rule of law with respect to local governmental units is that they may exercise only those powers affirmatively conferred upon them by statute or constitutional provision. Even when legislatures have conferred powers affirmatively, state courts usually have narrowly construed grants of powers to local government. Such narrow construction, despite the best efforts of legislatures and local governments themselves, often have prevented local government from assuming its proper responsibilities.

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

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

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

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

It should be noted that while the amendment would permit municipalities and counties and other selected units of local government to exercise the authority granted by the proposed amendment, such authority should be granted only to units of general government whose governing bodies are held directly responsible for their actions by the people at election time. Therefore, states should consider carefully what units of general government should be granted the powers authorized by the amendment.

Residual Powers Constitutional Provision

"Municipalities and counties /or selected units identified to best suit the conditions in a given state/ shall have all residual functional powers of government not denied by this constitution or by /general/ law. Denials may be expressed or take the form of legislative pre-emption and may be in whole or in part. Express denials may be limitations of methods or procedure. Pre-empted powers may be exercised directly by the state or delegated by /general/ law to such subdivisions of the state or other units of local government as the legislature may by /general/ law determine." [1]

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

CONSTITUTIONAL BARRIERS TO INTERGOVERNMENTAL COOPERATION*

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

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

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

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

*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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

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

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

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

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

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

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

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

Suggested Constitutional Amendment

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

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

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

Any other provision of this constitution to the contrary notwithstanding, an officer or employee of the state or any municipal corporation or other subdivion or agency thereof may serve on or with any governmental body as a representative of the state or any municipal corporation or other subdivision or agency thereof, or for the purpose of participating or assisting in the consideration or performance of joint or cooperative undertakings or for the study of governmental problems, and shall not be required to relinquish his office or employment by reason of such service. The legislature by statute may impose such restrictions, limitations or conditions on such service as it may deem appropriate.

OPTIONAL FORMS OF COUNTY GOVERNMENT*

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

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

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

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

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

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

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

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

The legislation submitted herewith is a means of implementing this objective. The suggested act authorizes three basic forms of county government and requires voter approval before a change may be made. It is patterned after a North Carolina statute (N C., Gen. Sts., Ch. 153, Art. 3).

Suggested Legislation

/Title should conform to state requirements. The following is a suggestion: "An act to authorize optional forms of county government."/

(Be it enacted, etc.)

Section 1. Optional Forms of County Government Authorized. Any county in this state may, pursuant to the provisions of this act and any other appropriate provisions of law, adopt any one of the optional forms of county government herein provided.

Section 2. /County Commissioners/ Form. (a) /County Commissioners/ Form Defined. /The County Commissioners/ form of county government shall be that form in which the government is administered by /a board of county commissioners/.

(b) Modification or Regular Forms. There may be modifications of the /County Commissioners/ form adopted as hereinafter provided as follows: (1) the number of

/commissioners/ may vary in number from /three/ to /five/; and (2) all /commissioners/ may be elected for uniform or overlapping terms not exceeding /four/ years.

Section 3. Manager Form. (a) Manager Appointed or Designated. The /board of county commissioners/ may appoint a county manager who shall be the administrative head of the county government, and shall be responsible for the administration of all departments of the county government which the /board of county commissioners/ has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the /board/ may impose and confer upon the /chairman of the board of county commissioners/ the duties and powers of a manager, as hereinafter set forth, and under such circumstances said chairman shall be considered a full-time chairman. Or the /board/ may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties, and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation for all the duties of his office. The term "manager" herein used shall apply to such chairman, officer, or agent in the performance of such duties.

(b) Duties of the Manager. It shall be the duty of the county manager: (1) to see that all the orders, resolutions, and regulations of the /board/ are faithfully executed; (2) to attend all the meetings of the /board/ and recommend such measures for adoption as he may deem expedient; (3) to make reports to the /board/ from time to time upon the affairs of the county, and to keep the /board/ fully advised as to the financial condition of the county and its future financial needs; (4) to appoint, with the approval of the /board/, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and (5) to perform such other duties as may be required of him by the /board/.

Section 4. /Elected County Executive/. (a) /Elected County Executive/ Form Defined. The /Elected County Executive/ form of government shall be that form in which the government is administered by a single county official, elected at large by the qualified voters of the county. The /board of county commissioners/ shall act as the legislative body of the county under this form of county government. The elected county executive shall be responsible for the administration of all departments of the county government. Qualifications for the office of elected county executive shall be the same as those for the

/board of county commissioners/.

(b) Duties of the /Elected County Executive/. It shall be the duty of the elected county executive: (1) to see that all the orders, resolutions, and regulations of the /board/ are faithfully executed; (2) to attend all the meetings of the /board/ and recommend such measures for adoption as he may deem expedient; (3) to make reports to the /board/ from time to time upon the affairs of the county, and to keep the /board/ fully advised as to the financial condition of the county and its future financial needs; (4) to appoint, with the approval of the /board/, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and (5) to perform such other duties as may be required of him by the /board/.

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

government, election of county officers for such optional form of county government shall be held at the next general election held within the county. If a majority of the voters disapprove, the existing form shall be continued and no new referendum may be held during the next /two/ years following the date of such disapproval.

Section 6. Effective Date. /Insert effective date/.

INTERLOCAL CONTRACTING AND JOINT ENTERPRISES*

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

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

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

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*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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

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

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

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

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

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

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

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

Suggested Legislation

/Title should conform to state requirements./

(Be it enacted, etc.)

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

Section 2. Short Title. This act may be cited as the Interlocal Cooperation Act.

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

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

Section 4. Interlocal Agreements. (a) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state

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

(b) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this act.

Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(c) Any such agreement shall specify the following:

1. Its duration.

2. The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created.

3. Its purpose or purposes.

4. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget

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

therefor.

5. The permissable method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

6. Any other necessary and proper matters.

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

1. Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board public agencies party to the agreement shall be represented.

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

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

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

to the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state. The attorney general shall approve any agreement submitted to him hereunder unless he shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within /____/ days of its submission shall constitute approval thereof.

/(g) Financing of joint projects by agreement shall be as provided by law./

Section 5. Filing, Status, and Actions. Prior to its entry into force, an agreement made pursuant to this act shall be filed with /the keeper of local public records/ and with the /secretary of state/. In the event that an agreement entered into pursuant to this act is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States said agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by

reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

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

Section 7. Appropriations, Furnishing of Property, Personnel and Service. Any public agency entering into an agreement pursuant to this act may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing

such personnel or services therefor as may be within its legal powers to furnish.

Section 8. Interlocal Contracts. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which (each public agency) (any of the public agencies) entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.[1]

Section 9. /Insert severability clause, if desired./

Section 10. /Insert effective date./

1 This section is not included in suggested legislation approved by the Committee of State Officials on Suggested State Legislation.

VOLUNTARY TRANSFER OF FUNCTIONS BETWEEN MUNICIPALITIES AND COUNTIES *

It is suggested that states enact legislation authorizing the legislative bodies of municipalities and counties located within metropolitan areas to take mutual and coordinate action to transfer responsibility for specified governmental services from one unit of government to the other. Specifically, it is proposed that the states enact a statute authorizing voluntary transfer of functions between municipalities and counties within metropolitan areas to the extent agreed by the governing boards of these respective types of units.[1] If desired, the statute could spell out the functions authorized for such voluntary transfer in order to make sure that responsibilities carried on by counties as agents of the state were not transferred to municipal corporations. Within a particular metropolitan area, for example, such a statute would enable the board of county commissioners and the mayors and councils of municipalities to assess collectively the manner in which particular service-type functions were being carried out. By concurrent action, the governing boards might have the county assume functions such as water supply, sewage disposal, etc., throughout the area, relieving the municipalities of their respective fragmented responsibilities in those functional areas. Conversely, they might agree that the county government should cease to carry on certain functions within the boundaries of the municipalities, with the municipalities assuming such responsibility on an exclusive basis.

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

Suggested Legislation

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

(Be it enacted, etc.)

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

*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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

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

(b) "Local service function" as used herein is a local governmental service or group of closely allied local governmental services performed by a county or a city for its inhabitants and for which, under constitutional and statutory provisions, and judicial interpretations, the county or city, as distinguished from the state, has primary responsibility for provision and financing. /Without in any way limiting the foregoing, the following are examples of such local service functions: (1) street and sidewalk maintenance; (2) trash and garbage collection and disposal; (3) sanitary and health inspection; (4) water supply; (5) sewage disposal; (6) police protection; (7) fire protection; (8) library services; (9) planning and zoning; (10) . . . , etc./[2]

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

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

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

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

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

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

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

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

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

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

Section 4. /Insert appropriate separability section./

Section 5. /Insert effective date./

SUPERVISION OF SPECIAL DISTRICT ACTIVITIES

More than 18,000 "special districts" existed in the United States in 1962, according to the Census of Governments. These districts provide valuable governmental services to the people. In 1962 their total expenditures exceeded $3.1 billion and their current revenues, mostly from taxes and service and toll charges, exceeded $2.5 billion.

These financial data alone clearly indicate the impact of special districts upon local government in the United States. Despite this fact, the activities of special districts and the activities of state government and units of general local government are frequently not coordinated. In addition, adequate information concerning special district activities is often not available to the general public. Even where a special district is governed by elected officials, the turnout for district elections is extremely small and the availability of financial and other data relating to the district activities is often non-existent. This is true even in some states where statutes provide for a state agency to review, or at least be informed of, the financial operations of special districts. The recent report of the Advisory Commission on Intergovernmental Relations entitled The Problem of Special Districts in American Government noted, in a number of instances, the failure of both state supervisory agencies and special districts to comply with such requirements of state law.

The suggested act is designed, in a number of instances, to insure that special district activities are related to those of general local government, (i.e., counties, cities, and towns), as well as to insure the availability of appropriate information concerning the activities of districts available to the general public.

Section 3 requires the approval by a municipality and/or county of land acquisitions by special districts located therein and, where the activity engaged in by the district affects the state function, by the appropriate state agency. Where a local government or a state agency denies approval of the proposed land acquisition, the special district may seek judicial review of the decision.

Section 4 provides for an advisory review by the unit of general local government and, where appropriate, by state agencies of proposed capital improvements by a special district. Such review is merely advisory.

Section 5 requires that notification be given a state official and a county official of activities of existing and newly created special districts.

Section 6 directs a state agency, to the extent feasible, to establish uniform budget and account standards for all special districts and to audit or approve private audits of district accounts.

Section 7 provides a means whereby the taxpayer can be informed of all special district property taxes and assessments he pays at the same time that he is informed of county and municipal taxes and assessments.

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

Finally, Section 9 provides for review and approval or modification, by a state agency, of service charges or tolls assessed by special districts where such services and tolls are not already approved or reviewed by a local government or a state or federal agency.

Suggested Legislation

/Title should conform to state requirements. The following is a suggestion: "An act to coordinate special district activities with activities of other governments and to insure public availability of information relating to special district activities."/

(Be it enacted, etc.)

Section 1. Purpose and Policy. It is the purpose of this act to establish certain minimum procedures to insure that the activities of special districts are

properly coordinated with those of other governmental units within the state. Further, it is essential that special districts, as well as other governmental units, take affirmative action to insure that the public is fully aware of the activities of all governmental entities operating within a particular community.

Section 2. Definitions. (a) "Special District" means /any agency or political subdivision of the state organized for the purpose of performing governmental or prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, a town, or a school district/.

(b) "Governing Body" means the body possessing legislative authority in a city, county, or special district.

Section 3. Land Acquisitions by Special Districts. (a) Prior to acquisition of title to any land by a special district authorized by law to acquire land, the district shall submit a statement indicating its intention to acquire such land to the city and/or county in which such land is located. If the land is located within the territorial limits of two or more such jurisdictions, the statement shall be submitted to all such jurisdictions.

(b) The statement shall be in the form of a motion, adopted by the governing body of the district, indicating the intention of the district to acquire such land, and shall contain a brief but appropriate identification of the land to be acquired, an indication of the use to which such land will be put, and such other information as the district deems appropriate.

(c) Within /30/ days after receipt of the statement of intention to acquire land, the governing bodies of the city or county or cities or counties shall by resolution indicate their approval or disapproval of the proposed acquisition; a resolution disapproving the proposed acquisition shall state the reasons therefor.

(d) Where the special district is performing a function which directly affects a program conducted by the state it shall, upon receiving approval for the acquisition pursuant to subsection (b), transmit a copy of its statement of intention and the approving resolution or resolutions to the /office of local affairs or the Secretary of State/ who shall immediately refer such material to the /state agency responsible for the

administration of the state program involved]. [1] The state agency shall within [30] days of receipt of this information either approve or disapprove the proposed acquisition. The agency's action shall be communicated to the governing body of the district by an order signed by the [head of the state agency], and if the proposed acquisition is disapproved, the order shall state the reasons therefor.

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

(f) When any governing body of a city or county or a state agency refuses to give approval to the proposed acquisition of land, the special district may challenge the decision by bringing suit in the (county court of general jurisdiction) in which such land is located. The court shall review the material pertinent to the proposed land acquisition and reasons for disapproval of such acquisition and shall render a decision either

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1 If there is an agency of state government exercising supervisory responsibility over the fiscal affairs or activities of local government, this agency should be inserted herein. If no such agency exists, either an office of local affairs or audit agency should be inserted.

sustaining or overruling the disapproval. The court shall not substitute its judgment for that of the governing body or agency as to questions of fact. The court may affirm the decision or remand the matter for further consideration. The court may reverse a denial where it finds that such denial was (1) clearly erroneous in view of the reliable and substantial facts on the whole record, or (2) arbitrary or capricious or characterized by abuse of discretion or clearly an unwarranted exercise of discretion.

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

(b) Cities, counties, and/or state agencies receiving proposals for special district capital improvements shall review such proposals and, within /60/ days, submit their comments thereon to the governing body of the special district. Upon receipt of the comments of all jurisdictions or agencies notified pursuant to this section, or /60/ days after the transmittal of the proposed improvement program to such jurisdictions and agencies, the governing body of the district may adopt said capital improvements, with or without modification, as part of the district program as otherwise authorized by law.

Section 5. Reporting the Creation of Special Districts. (a) The governing body of any existing special district shall, within /30/ days after the adoption of this act, notify the /office of local affairs or Secretary of State/ and the /clerk of the county governing body or bodies/ in which it is authorized to operate of its existence. Such notification shall include a citation to the statute pursuant to which it was created and a brief description of its activities.

(b) The governing body of a newly created special district shall, at its first meeting, submit notification of its existence as directed in subsection (a), and within one year of such meeting, a brief description

of its activities.

Section 6. Uniform Special District Accounts. (a) The /insert appropriate state agency/ [2] is hereby directed to establish minimum standards of uniformity for the budget and accounts of all types of special districts operating within this state. To the extent feasible such standards shall be uniform for all special districts.

(b) The /insert state agency/ annually shall audit the accounts of all special districts operating within the state, /or may approve annual private audit of the accounts of special districts performed at the expense of the district/. The reports /of private auditors shall be transmitted to the /insert state agency/ and the reports of private auditors and/ audits made by the /state agency/ shall be transmitted to the county or counties within which the special district is authorized to operate.

Section 7. Special District Property Taxes and Special Assessments. (a) Every special district authorized by law to levy a property tax or a special

2 If there is an agency of state government exercising supervisory responsibility over the fiscal affairs or activities of local government, this agency should be inserted. If no such agency exists, either an office of local affairs or the state audit agency should be inserted.

assessment shall annually inform every county and city within which it operates of the tax and/or special assessment rate levied by the district and the assessed valuation of property against which such tax is levied and for the basis for such assessment rate.

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

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

Section 9. Review of Special District Service Charges. The /state public service commission/ shall review and approve, disapprove, or modify the service charges or tolls assessed by special districts within the state authorized to levy such charges or tolls; except that such review shall not extend service charges or tolls levied by special districts which are otherwise approved or reviewed by the governing body of a county or a city or a state or federal agency. The /public service

commission/ is authorized to establish such rules and procedures as it deems appropriate to carry out its responsibilities under this section.

CREATION AND CONSOLIDATION OR DISSOLUTION OF SPECIAL DISTRICTS*

The 1962 Census of Governments indicated the existence of 18,323 special districts in the United States in 1962. This was an increase of almost 40 percent over the comparable figure for 1952 (considering classification changes). The rapid growth of special districts during this 10-year period and since the end of World War II has been the cause of increasing concern to many state and local governments. As early as 1953 the Council of State Governments in Public Authorities in the States: A Report to the Governors' Conference discussed at length some of the problems created by resort to specialized agencies for undertaking governmental functions. In a subsequent report on metropolitan areas, State Responsibility in Urban Development, the Council indicated the difficulties often encountered in metropolitan areas where special districts exist.

The recent report of the Advisory Commission on Intergovernmental Relations, The Problem of Special Districts in American Government, noted that problems associated with the existence of special districts may occur in rural as well as urban areas. As a matter of fact, over two-thirds of the special districts in the United States in 1962 were not in metropolitan areas. Not only does the continued creation of numerous special districts tend to increase the complexity of government but the continued existence of some special districts may be unnecessary. Often special districts were created because local government did not have the statutory authority to provide a particular service or because of limitations on the borrowing or taxing powers of such governments. Numerous special districts created merely to circumvent such restrictions continue to exist, despite elimination or modification of the earlier restrictions. Their continued existence hinders efforts to secure economical performance of local governmental services.

The following draft bill would provide a procedure under which the creation of new special districts would be carefully reviewed by a local government body to determine whether an existing unit of general government--basically a county or municipality though in some instances an existing special district--could provide the service that the proposed district would provide. This procedure is not designed to eliminate the creation of special districts; it would merely restrict their use to those situations where an existing unit of general local government is unwilling

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

or unable to provide a service desired by the people. This aspect of the draft bill is patterned after legislation adopted by California, Nevada and Texas in 1963. The bill also establishes a procedure whereby existing districts can be merged, consolidated or dissolved when they have outlived their usefulness.

The draft bill contains no specific definition of special districts. In view of the diversity in the utilization of special districts by the individual states, each state must determine for itself what governmental entities should be affected by this statute. Generally speaking, those entities included as special districts by the Bureau of the Census should be included within the definition. In addition states may wish to include a number of other semi-autonomous governmental entities.

Section 2 authorizes the creation of a county special district commission in each county of the state. The commission would be composed of executive or legislative officials of the county government and municipalities within the county and consequently would not constitute a significant cost. Such a body would be activated only when and if the need arose. Section 3 defines the powers of the commission to review proposals for the creation or dissolution, merger, or consolidation of special districts. Sections 4, 5, 6, 8, and 9 spell out the basic procedures to be utilized by the commission in reviewing such proposals, including the holding of public hearings. Section 7 details various factors that must be considered by the commission in reaching its decision. In those states where an agency such as the commission cannot constitutionally exercise the full range of authority conferred in this bill on the proposed commissions, it would be necessary to substitute local legislative bodies for such commissions.

Section 11 provides for review of proposals for the creation of new special districts, approved by the local agency formation commission, by a state agency where the state is engaged in a regulatory or operational program which would be affected by the activities of the proposed special district. No specific programs are mentioned, but special districts engaged in such activities as water supply, flood control and sewerage disposal are examples of districts which might have a significant impact on statewide programs. The essential purpose of this review would be to insure that the proposed special district would not adversely affect the statewide program.

Finally, Section 12 provides for judicial review of state or local decisions disapproving proposals to create a special district, and local agency decisions ordering consolidation, merger, or dissolution of existing special districts.

Suggested Legislation

/Title should conform to state requirements. The following is a suggestion: "An act establishing county commissions to review proposals for the creation, consolidation, merger, or dissolution of special districts."/

(Be it enacted, etc.)

Section 1. Definitions. (a) "Special District" means /any agency or /political/ subdivision of the state organized for the purpose of performing governmental or prescribed functions within limited boundaries. It includes all /political/ subdivisions of the state except a city, a county, a town, or a school district/. [1]

(b) "County Officer" means (1) a chief elected county official or (2) a member of the /elected governing body of a county/.

(c) "City Officer" means (1) a mayor or (2) member of a /city council or legislative body of a city/.

Section 2. County Special District Commission. (a) There is hereby authorized to be created in each county of the state a County Special District Commission /hereafter called Commission/ consisting of /five/ members selected as follows: (1) /two/ representing the county, each of whom shall be a county officer appointed by the /county governing body/; (2) /two/ representing the cities in the county, each of

1 Some states may wish to define special districts by reference to the statutes authorizing their creation.

whom shall be a city officer appointed by the /chief executive officers/ of the cities within the county at a joint meeting; and (3) /one/ representing the general public, who shall be chairman of the Commission, appointed by the four other members of the Commission.

(b) The term of each member shall be four years and until the appointment and qualification of his successor, except that the term of each county officer and each city officer shall expire upon the termination of his county or city office. Any city or county member may be removed by his appointing authority.

(c) Vacancies on the Commission shall be filled for the unexpired term by the appointing authority which originally appointed the member whose position has become vacant. Commission members who are full-time city or county officers shall serve without compensation but shall be reimbursed the actual amounts for their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their office. Commission members who are not /full-time/ city or county officers shall receive such compensation as the /county governing body/ may determine.

(d) Prior to establishment of a Commission in a county, any proposals for the creation of a special district, or petition for the merger, consolidation, or dissolution of

an existing special district shall be submitted to the /clerk of the county governing body/ as otherwise provided in the act. Upon receipt of such proposal or petition the /clerk/ shall immediately notify the /county governing body/ and the /governing bodies of all cities/ within the county of such receipt. The county and cities shall then proceed to establish a Commission.

Section 3. Powers and Duties of Commission. The Commission shall have the following powers and duties:

(a) To review and approve or disapprove with or without amendment wholly, partially, or conditionally proposals to create special districts within the county.

(b) To review and approve or disapprove petitions for the dissolution, consolidation, or merger of special districts within the county.

(c) To adopt standards and procedures consistent with the provisions of this act for the evaluation of proposals for the creation, dissolution, consolidation, and merger of special districts.

Section 4. Proposals for Creation of Special Districts. (a) Any proposal for the creation of a special district shall be submitted to the Commission prior to /insert here appropriate reference to legislation authorizing creation of special districts which would minimize cost and expense of creating special districts if a Commission decision

were to be against creation of the proposed district. For example, where a referendum is required, action of the Commission should take place prior to the holding of such referendum/ by those parties authorized by law to initiate proceedings for the creation of a special district.

(b) Upon receiving notice of a proposal to create a special district the Commission shall direct the /clerk of the county governing body/ to notify: (1) each city within / / miles of the territory of the proposed district; (2) each special district whose boundaries are adjacent to the proposed boundaries of the proposed district and is performing the same type of service that the proposed district would perform; and (3) the /county governing body/ of the proposal to create a special district.

(c) At the same time the Commission shall cause to be published in / / newspapers of general circulation in the county an announcement of its receipt of the aforementioned proposal, and notice of intention to hold a public hearing on a proposal to create the proposed district, which hearing shall be held not less than /20/ nor more than /40/ days from receipt of the notification of the proposal to create the special district.

Section 5. Merger, Consolidation, or Dissolution of Special Districts. (a) Any city, county, or special district may, by resolution adopted by its governing body, petition the Commission requesting the merger, dissolution, or consolidation of any special district within the county. Merger or consolidation petitions shall include such information as will permit the Commission to evaluate the degree to which the proposed action will permit more effective and efficient performance of the service provided by the special district.

(b) The residents of any special district may petition the Commission requesting the merger, dissolution, or consolidation of any special district in which they reside. Such petition shall be signed by at least ____ percent of the residents actually residing within the territory of the district.

(c) Upon receipt of a petition for the merger, dissolution, or consolidation of a special district, the Commission shall direct the /~clerk of the county governing body~/ to notify: (1) each city within /~ ~/ miles of the territory of the district specified in the petition; (2) each special district whose boundaries are adjacent to the boundaries of the district specified in the petition and which is performing the same type of service as is the special district; (3) the /~county governing body~/; and

(4) the governing body of the district which is the subject of the petition.

(d) At the same time the Commission shall cause to be published in /[ ]/ newspapers of general circulation in the county an announcement of its receipt of the aforementioned petition and notice of intention to hold a public hearing on the petition to dissolve, merge, or consolidate said special district, which hearing shall be held not less than /20/ nor more than /40/ days from receipt of the petition.

Section 6. Hearings. At public hearings held pursuant to this act, the Commission shall hear any interested party having made a written request to be heard, and shall receive a report of the Commission staff on the proposal before it. The Commission shall have the power to make and enforce such rules and regulations as shall provide for orderly and fair hearings on the issues before it.

Section 7. Factors to be Considered. (a) Factors to be considered in the review of a proposal for creation, consolidation, merger, or dissolution of a special district shall include but not be limited to:

(1) Population; population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant

growth in the area, and in adjacent incorporated and unincorporated areas, during the next /10/ years.

(2) Need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for such services and controls; probable effect of the proposed formation and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.

(3) The effect of the proposed action, and of alternative actions, on adjacent areas, on mutual social and economic interests and on the local governmental structure of the county.

(b) Any city, county, or special district receiving notification of hearings to be held by the Commission may:

(1) In the case of a petition for creation of a new district indicate to the Commission its willingness and ability to provide the service to be undertaken by the proposed district. Such notification shall include references to appropriate legal authority empowering such city, county, or special district to assume responsibility for providing such service within the territory of the proposed district and shall include appropriate evidence of its financial ability to provide same. It may also include reasons why it rather than the proposed district should provide the service.

(2) In the case of a petition for the dissolution, consolidation, or merger of a special district, submit to the

Commission its recommendations concerning such proposals. If the petition for dissolution, consolidation, or merger is based upon a city, county, or special district assuming the function undertaken by the subject special district, the notification shall include references to appropriate legal authority empowering such city, county, or special district to assume responsibility for providing such service within the territory of the subject district and shall include appropriate evidence of its financial ability to provide same. It may also include reasons why it rather than the subject district should provide the service.

Section 8. Multi-County Special Districts. In the event that the territory of any special district lies in two or more counties, proposals to create, or petitions to merge, consolidate or dissolve special districts shall be forwarded to the Commission in each of the counties affected. The Commissions shall within /10/ days agree upon a date and place for a joint public hearing and shall proceed jointly as otherwise directed by this Act, except that all time spans shall be measured from the date of such agreement.

Section 9. Decisions of Commission. (a) Upon conclusion of the hearing, the Commission may take the matter under consideration and shall, within /30/ days following conclusion of the hearing, present its decision. The Commission may also adjourn a hearing from time to time, but not to

exceed a total of /60/ days.

(b) If the Commission approves the formation of the proposed district, proceedings for its formation, subject to Section 11 of the Act, may be continued as otherwise provided by law. If the Commission approves the proposed formation with modifications or conditions, further proceedings for its formation may be continued only in compliance with such modifications or conditions. If the Commission disapproves the formation of the proposed special district no further action may be taken to create the special district and notice of intention to create such a district may not be presented to the Commission for at least /2/ years after the date of disapproval.

(c) The Commission may order the merger, dissolution, or consolidation of a special district where the factors specified in Section 8 indicate such action is appropriate and finds:

(1) That a petitioning city, county, or existing special district adjacent to the subject district can provide the service to the residents of the subject district more effectively and more economically; or

(2) Where it finds that there is no longer a need for the service provided by a subject district.

(d) Decisions approving proposals for the merger, consolidation, or dissolution of a special district shall provide for the equitable disposition of the assets of the subject

district, for the adequate protection of the legal rights of employees of the district as specified in /cite here statutes which afford various civil service and tenure protection to employees of special districts/, and for adequate protection of the legal rights of creditors.

Section 10. Administration. (a) The /county governing body/ shall furnish the Commission with quarters, equipment, and supplies necessary to perform its duties, and the usual and necessary operating expenses incurred by the Commission shall be a charge to the /county/ except that counties are authorized to enter into agreements with cities within its borders pursuant to which the expenses of the Commission will be shared by the parties to the agreement.

(b) The Commission may appoint an executive officer who shall conduct and perform day-to-day business of the Commission. If the Commission does not appoint an executive officer, the county /administrative officer or clerk/ shall act as the executive officer of the Commission.

(c) The Commission may appoint and assign staff personnel necessary to the performance of its duties and may employ or contract for professional or consultant services to carry out its responsibilities specified in this act. Cities, counties, and existing special districts are directed to furnish all reasonable assistance and service to the Commission as it may request in order to fulfill its responsibilities.

Section 11. State Approval of Proposed District.[3/]

Where a Commission approves the creation of a special district undertaking a function or service which affects a state regulatory or operational program, the Commission shall immediately notify the /Secretary of State/ who shall immediately forward the notification to the state agency responsible for the state program of its action. Such notification shall include a complete record of the proceedings before the Commission. The state agency shall, within /30/ days of such notification, either give its approval of the creation of proposed special districts or indicate its reasons for initially denying such approval and schedule a public hearing on the question of the creation of the district within the county of the proposed district within /45/ days of receipt of notification from the Commission. Within /30/ days after the hearing the state agency shall either approve or disapprove creation of the proposed district. Decisions of the state agency shall be based on whether or not the proposed district will further

3 States may wish to specify those functions for which proposals for creation of special districts must receive state agency approval. Functions in this category should be those for which the state has either supervisory or operator responsibilities. For instance, water resource development--water supply, conservation, and irrigation districts; pollution control--sewerage districts.

or hamper the effectiveness of the state regulatory or operational program.

Section 12. Judicial Review. All final determinations of a Commission or a state agency shall be reviewable /pursuant to the state administrative procedure act/ /by a proceeding in the _____ court/.

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

LEGISLATIVE APPORTIONMENT PROCEDURE

The United States Supreme Court decision in Baker v. Carr established the principle that Federal courts have jurisdiction to hear suits involving the apportionment of state legislatures. While the actual formulas for apportioning seats in the legislative bodies of a state is a matter of individual state concern, subject to whatever limits may be imposed by the United States Constitution, it is essential that state constitutions specifically provide procedures that will insure that the states themselves are in a position to comply with their constitutional requirements for periodic reapportionment of the legislature. The suggested constitutional amendment below is designed to insure compliance with apportionment provisions of the state constitution. The suggested amendment deals only with apportionment procedure and does not treat the substantive issues of the bases (population, political subdivision, etc.) of allocating state legislative seats.

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

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

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

Section 3 gives the State Supreme Court original jurisdiction to determine whether a reapportionment statute enacted by the legislature complies with the provisions of the state constitution. Any qualified voter of the state can bring this question before the court within 30 days after enactment of the reapportionment. If the court finds that the reapportionment does not comply with the constitution, the court shall direct either the named state official or the apportionment board to reapportion the legislature in accordance with the constitution. The court is also granted authority to review a reapportionment plan so prepared and if it is found that such plan does not comply with the constitution, the court is authorized to direct the named state official or apportionment board to make appropriate changes.

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

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

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

Suggested Constitutional Amendment

Section 1. Apportionment of Senators and Representatives.

a. Senators (insert provisions for the apportionment of State Senators).

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

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

Section 3. Jurisdiction of /State Supreme Court/. Original jurisdiction is vested in the /State Supreme Court/[2] upon the petition of any qualified voter of the state filed with the /clerk of the Supreme Court/ within /30/ days after enactment of a reapportionment measure to review any measure so enacted. If the /Supreme Court/ determines that the measure complies with

1 If Section 1 requires only one house of the legislature to be reapportioned at regular intervals, an appropriate deletion should be made.

2 State court of last resort.

Section 1 of this Article it shall dismiss the petition by written opinion within /30/ days and the legislation enacted shall become operative upon the date of opinion. If the /Supreme Court/ determines that the measure does not comply with Section 1 of this Article said measure shall be null and void and it shall direct /the named state official/ /the apportionment board/ to prepare a reapportionment of the legislature in compliance with Section 1 of this Article and return same to the Supreme Court within /30/ days. The /Supreme Court/ shall review the reapportionment thus returned and, if it is in compliance with Section 1 of this Article, shall file it with the Governor within /30/ days and it shall become law upon the date of filing. If the /Supreme Court/ shall determine that the draft returned to it by the /named state official/ /apportionment board/ does not comply with Section 1 of this Article the Court shall return it forthwith accompanied by a written opinion specifying with particulars wherein the draft fails to comply with the requirements of Section 1 of this Article. The opinion shall further direct the /named state official/ /apportionment board/ to correct the draft in these particulars and in no others and file the corrected reapportionment with the Governor within /30/ days and it shall become law upon the date of filing.

Section 4. Failure of Legislature to Reapportion Itself. If the legislature fails to enact any reapportionment measure by /July 1st/ of the year of the session of the legislature next following a decennial census by the United States, the /named state official/ /apportionment board/ shall make a reapportionment of the legislature in accordance to the provisions of Section 1 of this Article. The reapportionment so made shall be filed with the Governor within /30/ days and shall become law, subject to /Supreme Court/ review, upon date of filing.

Original jurisdiction is hereby vested in the /Supreme Court/ upon petition of any qualified voter of the state filed with the /clerk of the Supreme Court/ within /30/ days after any reapportionment made by the /named state official/ /apportionment board/ has been filed with the Governor. If the Court determines that the reapportionment thus made complies with the provisions of Section 1 of this Article it shall dismiss the petition by written opinion within /30/ days and the reapportionment law shall become operative upon the date of the opinion. If the Supreme Court determines that the reapportionment does not comply with Section 1 of this Article, said reapportionment shall be null and void and the Supreme Court shall return it forthwith to the /named state official/

/apportionment board/ accompanied by a written opinion specifying with particulars wherein the reapportionment fails to comply with Section 1 of this Article. The opinion shall further direct the /named state official/ /apportionment board/ to correct the reapportionment in those particulars and in no others and file the corrected reapportionment with the Governor within /30/ days and it shall become law upon the date of filing.

/Section 5. Apportionment Board. There is hereby created an Apportionment Board consisting of /named state officials; do not include members of the judiciary/ /consisting of /two/ members appointed by the Chairman of the political party whose candidate for Governor in the last preceding gubernatorial election received the largest number of votes, /two/ members appointed by the Chairman of the political party whose candidate for Governor received the second largest number of votes at the last preceding gubernatorial election/ /and one member who shall be Chairman of the Apportionment Board, appointed by the aforementioned members/. /The Apportionment Board shall convene prior to July 10th of any year in which the legislature has failed to comply with its responsibility under Section 2 of this Article and reapportion the state legislature in accordance with the provisions of Section 1 of this Article. In such event the Apportionment Board shall within /30/ days

reapportion seats in the state legislature in accordance with the provisions of Section 1 of this Article and file a copy of such apportionment with the Governor. Such reapportionment shall become law, subject to /Supreme Court/ review, upon date of filing. In the event the /Supreme Court/ shall declare that a reapportionment law enacted by the legislature fails to comply with the provisions of Section 1 of this Article the /Apportionment Board/ shall convene within /10/ days after the decision of the Court and the /Board/ shall proceed to reapportion seats in the legislature as if no reapportionment action was taken by the legislature/.[3] /The /Secretary of State/ shall be secretary of the /Board/, and in that capacity shall furnish, under its direction, all necessary technical services./

Section 6. Right Reserved to the People. In addition to any authority the legislature possesses for initiating amendments to the constitution, the people reserve to themselves the power to propose changes in Section 1 of this Article. This power is

3 Some states may wish to include a provision here similar to that in the Michigan Constitution which reads as follows: "If a majority of the /Board/ cannot agree on a plan, each member of the /Board/, individually or jointly with other members, may submit a proposed plan to the /Supreme Court/. The /Supreme Court/ shall determine which plan complies most accurately with the constitutional requirement and shall direct that it be adopted by the /Board/ and /published/ as provided in this /article/."

reserved by the people and as set forth herein. Qualified and registered voters of state equal in number to at least /15/ percent of the total vote cast for all candidates for Governor at the last preceding general election at which a Governor was elected shall be required to propose any such amendment. A petition proposing such change shall set forth in full the proposed amendment and shall be filed with the /Secretary of State/ or such other person or persons as may hereafter be authorized by law to receive same. Every petition shall be certified to as having been signed by the required number of qualified and registered voters of the state. Upon receipt of any such petition the /Secretary of State/ or such other person or persons hereafter authorized by law shall canvass the petition to ascertain if such petition has been signed by the required number of qualified and registered voters and may in determining the validity thereof cause any doubtful signatures to be checked against the registration records by the clerk of any political subdivision in which said petition was circulated for properly determining the authenticity of such signatures. If a petition is filed with the /Secretary of State/ or such other person or persons hereafter authorized by law to receive same and if the canvass determines that the petition is legal and in proper form and has been signed by a required number of qualified and

registered voters such proposed amendment shall be submitted to the people for approval or rejection at the next ensuing general election.

ENDORSEMENT OF STATE LEGISLATIVE AND POLICY RECOMMENDATIONS OF THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

RECOMMENDATION	Organizations Taking Formal Action in Support of ACIR Recommendations				
	Governors' Conference	National Legislative Conference	Nat'l. Assoc. of Counties	American Municipal Assoc.	U.S. Conf. of Mayors
A. Taxation and Finance					
1. Property Taxation:					
a. Property Tax Survey Commission	---	X	X	X	X
b. Property Tax Organization and Administration ..	---	X	X	X	X
c. Property Tax Assessment Standards and Equalization	---	X	X	X	X
d. Property Tax Review and Appeal Procedure	---	X	X	X	X
2. Collection of Local Nonproperty Taxes by the State ..	---	---	X	X	X
3. Interlocal Coordination of Nonproperty Taxes	---	---	X	X	X
4. County Subordinate Taxing Areas	---	---	X	X	---
5. Cooperative Tax Administration Agreements	---	---	X	X	X
6. Exchange of Tax Records and Information	---	X	X	---	X

See explanation of symbols at end of table.

ENDORSEMENT OF STATE LEGISLATIVE AND POLICY RECOMMENDATIONS OF THE ACIR, Continued

RECOMMENDATION	Organizations Taking Formal Action in Support of ACIR Recommendations				
	Governors' Conference	National Legislative Conference	Nat'l. Assoc. of Counties	American Municipal Assoc.	U.S. Conf. of Mayors
7. State Assistance to Local Debt Management	X	---	X	X	---
8. Local Industrial Development Bond Financing	---	---	---	---	X
9. Investment of Idle Funds	X	X	X	X	X
10. Financial and Technical Assistance to Local Governments	X	---	X	X	X
B. Urban Problems					
1. Metropolitan Study Commissions	X	X	X	X	X
2. Extraterritorial Planning, Zoning, and Subdivision Regulation	---	---	---	X	X
3. Metropolitan Functional Authorities	X	X	X	X	X
4. Assertion of Legislative Authority	---	---	---	---	---
5. Municipal Incorporations	X	X	X	X	X
6. Securing and Preserving "Open Space"	X	X	---	X	X
7. Control of Urban Water Supply and Sewerage Systems	---	---	X	X	X

See explanation of symbols at end of table.

ENDORSEMENT OF STATE LEGISLATIVE AND POLICY RECOMMENDATIONS OF THE ACIR, Continued

RECOMMENDATION	Organizations Taking Formal Action in Support of ACIR Recommendations				
	Governors' Conference	National Legislative Conference	Nat'l. Assoc. of Counties	American Municipal Assoc.	U.S. Conf. of Mayors
8. Mass Transportation in Metropolitan Areas	X	X	X	X	---
9. Channelization of Federal Grant Programs for Urban Development	---	---	X	---	---
10. Metropolitan Area Planning Commissions	X	X	X	X	X
C. Other Intergovernmental Problems					
1. Office of Local Affairs	X	X	---	X	X
2. State Assistance for Interlocal Cooperation	---	---	---	---	---
3. State Water Resources Planning and Coordination	---	X	X	X	X
4. State and Local Government Retirement Systems	---	X	X	X	X
5. Local Government Residual Powers	X	---	X	---	X
6. Barriers to Intergovernmental Cooperation	---	---	---	---	---
7. Optional Forms of County Government	---	---	---	---	---
8. Interlocal Cooperation	X	X	X	X	X

See explanation of symbols at end of table.

ENDORSEMENT OF STATE LEGISLATIVE AND POLICY RECOMMENDATIONS OF THE ACIR, Continued

RECOMMENDATION	Organizations Taking Formal Action in Support of ACIR Recommendations				
	Governors' Conference	National Legislative Conference	Nat'l. Assoc. of Counties	American Municipal Assoc.	U.S. Conf. of Mayors
9. Voluntary Transfer of Functions between Municipalities and Counties	X	X	X	X	X
10. Supervision of Special District Activities	---	---	X	X	---
11. Creation and Consolidation or Dissolution of Special Districts	---	---	X	X	---
12. Legislative Apportionment Procedure	---	---	X	X	---

X - Endorsed.

--- Either not specifically considered or rejected.

* U.S. GOVERNMENT PRINTING OFFICE: 1965 O - 752-506 (132)

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[1] Single copies of reports may be obtained from the Advisory Commission on Intergovernmental Relations, Washington, D.C., 20575. Multiple copies of items marked with asterisk (*) may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C., 20402.